MEMORANDUM OF UNDERSTANDING FOR
CITY OF LINCOLN and LANCASTER COUNTY, NEBRASKA
COOPERATIVE CONTRACT
MOU065

Contract Title: Food Products and Distribution with Related Equipment, Supplies and Services
Lead Entity and Contract Number: Sourcewell (Formerly NJPA) Contract # 112917-MUG
State of NE Participating Addendum No. 15060 OC

THIS MEMORANDUM OF UNDERSTANDING (MOU) is hereby issued to Unipro Foodservice, Inc., The Multi-Unit Group, 2500 Cumbreland Parkway SE Suite 600, Atlanta, GA 30339-3924. Nebraska’s Distributor: Cash-Wa Distributing Company, 401 W. 4th Street, Kearney, NE hereinafter called “Contractor”, from the City of Lincoln, Nebraska, a municipal corporation, and the County of Lancaster, Nebraska, a political subdivision of the State of Nebraska hereinafter called the “Owners” for the purpose of the Contractor and the Owners agreeing to the terms and conditions provided in this MOU.

The Contractor and the Owners hereby agree to the following supplemental Terms and Conditions from those in the Lead Contract listed above:
TERMS AND CONDITIONS

A. PARTICIPATING TERM
The Owners shall participate in the Lead Contract to supply Food Products and Distribution with Related Equipment, Supplies and Services. The initial term of the Memorandum of Understanding (MOU) will begin upon execution, for a term of one year. The MOU may be renewed by mutual agreement of all parties for one (1) additional one (1) year term, then for a subsequent term ending October 22, 2022 under the same terms and conditions of the Lead Contract. After the final renewal term ending October 22, 2022, the MOU may be extended for one additional one (1) year term at Sourcewell’s discretion.

B. SCOPE
The Contractor shall provide the same scope of services and provide the same products as set forth in the Lead Contract, and Attachment A. The parties agree that additional delivery information may be arranged between the City and the County separately with the Contractor as a supplemental attachment, to be approved between the Contractor and City or County as a single entity.

C. PRICING
Pricing for these goods and/or services shall be pursuant to the Lead Contract and Attachment A, a copy thereof is attached to this Memorandum.

The Owners will pay for products, according to the contract pricing as listed in the Lead Contract and Attachment A, a copy thereof being attached to and made a part of this Contract. The Owners shall order separately on an as-needed basis for the duration of the contract. The cost of products for City Departments shall not exceed $180,000.00 during the contract term without approval by the City of Lincoln. The cost of products for County agencies shall not exceed $3,600.00 during the contract term without approval by the Board of Commissioners.

D. CONFLICTING TERMS
To the extent other terms and conditions attached hereto conflict with the terms and conditions stated herein, the parties agree that conflicts among the documents comprising this Memorandum shall be resolved according to priority, and that a document’s priority shall be determined according to the order in which the document appears in the list below in section “E. Memorandum of Understanding Documents”.

E. MOU DOCUMENTS
The following documents comprise the Memorandum of Understanding:
1. This Memorandum of Understanding and associated Terms and Conditions;
2. Attachment A
3. Insurance Clause/Certificate of Insurance
4. Copy of State of NE Participating Addendum No. 15060 OC
5. Sourcewell Contract #112917-MUG
6. Grant Documents
7. Tax Forms
F. LAWS
The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this Memorandum of Understanding. During the term of the MOU, the Contractor shall perform all services and/or supply all goods in accordance with the established and applicable standards and in accordance with applicable State and Local laws.

G. IMPLIED REQUIREMENTS
All products and services not specifically mentioned in this document or the Lead Contract, but which are necessary to provide the functional capabilities described in the Lead Contract, shall be included.

H. CONTRACT MODIFICATION
The MOU shall be modified only by a written MOU amendment and approval of the parties. No alteration or variation of the terms and conditions of this Memorandum shall be valid unless made in writing and signed by the parties. Every amendment shall specify the date on which its provisions shall be effective.

I. TERMINATION
This MOU may be terminated by the following:
1. Termination for Convenience. Either party may terminate this MOU upon thirty (30) days written notice to the other party, for any reason, without penalty.
2. Termination for Cause. The Owners may terminate this MOU for cause if the Contractor:
   a. Refuses or fails to supply the proper labor, materials and equipment necessary to provide services and/or products pursuant to the Lead Contract or;
   b. Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders or;
   c. Otherwise commits a substantial breach or default of any provision of the Lead Contract or this MOU. In the event of a substantial breach or default the Owners will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the MOU shall terminate.
3. In the event that funding is not available to continue with services as written, the Owner(s) separately, as either the City or County or together, reserve the right to terminate use of the MOU for convenience with no financial obligation to the Contractor, Subcontractors or other stakeholders except for any amount due for services rendered or products supplied prior to notice of cancellation.

   The Owner(s) separately as the City or County or together as a mutual decision may terminate this MOU in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of the Owner(s). In the event of unavailability of funds to pay any amounts due under the MOU, the Owner(s) shall immediately notify the Contractor and the MOU shall terminate without penalty or expense to the Owner(s). Upon termination, the Owner(s) shall pay the Contractor for any approved and documented services or products completed or purchased up to the date of termination, but not to exceed the maximum amount allowed by the Lead Contract or this MOU.
J. **SEVERABILITY**
If any provision of this MOU is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of the MOU shall not be affected and each provision of the MOU shall be enforced to the fullest extent permitted by law.

K. **ASSIGNMENT**
This MOU shall not be transferred to/or assigned to another Contractor without prior written consent confirming approval by the Owners. Any assignment without such prior written consent shall be absolutely void.

L. **FORCE MAJEURE**
Neither party shall be liable for any costs or damages from its inability to perform any of its obligations under the MOU due to a natural disaster, or other similar event outside the control and not the fault of the affected party (“Force Majeure Event”). A Force Majeure Event shall not constitute a breach of the Lead Contract or this MOU. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The Owners may grant relief from performance of the MOU if the Contractor is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest on the Contractor. To be released based on a Force Majeure Event, the Contractor shall file a written request for relief with the City of Lincoln/Lancaster County Purchasing Division. Labor disputes with the impacted party’s own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the Contract.

M. **ATTORNEY’S FEES**
In the event of any litigation, appeal, or other legal action to enforce any provision of the MOU, the Contractor agrees to pay all expenses of such action, as permitted by law, including Attorney’s fees and costs, if the Owner is the prevailing party.

N. **OWNER INCLUSION**
It is understood and agreed by all parties that “Owner/s” shall include the City of Lincoln, and Lancaster County, Nebraska. Whenever in the Contract documents, a singular entity is referenced (i.e., “the City” or “the County”) it shall mean the “Owners” encompassing the City of Lincoln and Lancaster County. Notwithstanding the foregoing, the duties and obligations of the City and Lancaster County pursuant to the MOU shall be treated as divisible and severable duties and obligations, and default by any one of the City or the County, shall not be attributed to any other of the City and County will be responsible for payment on orders and obligations pursuant to the contract separately, but shall remain the sole obligation of the defaulting entity.

O. **PAYMENT**
Unless stated otherwise, the Contractor will invoice the City and County separately pursuant to their orders and the City and County pursuant to their separate orders for services. The City and County will initiate payment within thirty (30) calendar days after:
1. All work has been performed and all equipment or other merchandise has been delivered.
2. All such labor and equipment and other materials have met all MOU specifications.
3. All such work has been approved by the City and County.
4. An invoice has been submitted which corresponds with the MOU amount and any subsequent changes approved by the City and County.
P. INSURANCE
The Contractor agrees to the insurance provisions required for all City/County and Building Commissions contracts (see Insurance Requirements for City, County, and Building Commission).

Q. TAXES AND TAX EXEMPTION CERTIFICATE
The Owners are generally exempt from any taxes imposed by the State or Federal government. A Tax Exemption Certificate will be provided as applicable.

The Water Division of the City of Lincoln is taxable per Reg. 066.14A and no exemption certificate will be issued.

R. INDEPENDENT CONTRACTOR
Employees of the Contractor shall not be deemed to be employees of the Owners and employees of the Owners shall not be deemed to be employees of the Contractor. The Contractor and the Owners shall be responsible to their respective employees for all salary and benefits. Neither the Contractor’s employees nor the Owners’ employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers’ compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers’ compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees’ compensation.

S. EQUAL EMPLOYMENT OPPORTUNITY
In connection with the carrying out of this project, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

T. E-VERIFY
In accordance with Neb. Rev. Stat. 4-108 through 4-114, the Contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

Generally E-Verify does not apply to US Foods because as a (sub)contractor we are exempt from E-Verify because we are a provider of COTS – Commercially available Off the Shelf items
U. CITY AUDIT ADVISORY BOARD
All parties doing business with the Owners shall be subject to audit (City of Lincoln - Chapter 4.66 of the Lincoln Municipal Code) and shall make available to a Contract Auditor copies of all financial and performance related records and materials germane to the MOU/purchase order, as allowed by law.

V. INDEMNIFICATION
The Contractor shall indemnify and hold harmless the Owners from and against all losses, claims, damages, and expenses, including, attorney's fees arising out of or resulting from the performance of the MOU that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including loss of use resulting therefrom and is caused in whole or in part by the Contractor, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Contractor to indemnify or hold harmless the Owners for any losses, claims damages, and expenses arising out of or resulting from the sole negligence of the Owners.

In any and all claims against the Owners or any of its elected officials, members, officers or employees by an employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation listed herein shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

W. WAIVER
Owners' failure or neglect to enforce any of its rights under this Memorandum will not be deemed to be a waiver of the Owners' rights.

X. THIRD PARTIES
This Memorandum is not intended to, and does not, create any rights or benefits on behalf of any person, whether an individual or an entity, other than the Parties involved. Owners shall not be obligated or liable hereunder to any person, whether an individual or an entity, other than Contractor.

Y. AUDIT
This MOU shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and all parties shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

The Contractor and the Owners hereby agree that all the terms and conditions of this MOU shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

The Contractor hereby agrees to this MOU upon completion of signatures on the Vendor Signature Page.
MEMORANDUM OF UNDERSTANDING
Food Products and Distribution with Related Equipment,
Supplies and Services
Sourcewell (Formerly NJPA) Contract #112917-MUG
State of NE Participating Addendum No. 15060 OC
MOU065
City of Lincoln and Lancaster County, Nebraska
Cash-Wa Distributing Company

EXECUTION BY CONTRACTOR

IF A CORPORATION:

Attest: ________________________________
Cash Wa Distributing Co.
Name of Corporation
401 W 4th St Kearney, NE 68845
Address
By: ____________________________
Duly Authorized Official
Director of Multi-Unit Accounts
Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

Type text here
Name of Organization

Type of Organization

Address

By: ____________________________
Member

By: ____________________________
Member

IF AN INDIVIDUAL:

Name

Address

Signature

Type text here
MEMORANDUM OF UNDERSTANDING
Food Products and Distribution with Related Equipment,
Supplies and Services
Sourcewell (Formerly NJPA) Contract #112917-MUG
State of NE Participating Addendum No. 15060 OC
MOU065
City of Lincoln and Lancaster County, Nebraska
Cash-Wa Distributing Company

EXECUTION BY THE CITY OF LINCOLN, NEBRASKA

ATTEST:

_______________________________
City Clerk

CITY OF LINCOLN, NEBRASKA

_______________________________
Leirion Gaylor Baird, Mayor

Approved by Executive Order No._______________

dated _________________________________
MEMORANDUM OF UNDERSTANDING
Food Products and Distribution with Related Equipment,
Supplies and Services
Sourcewell (Formerly NJPA) Contract #112917-MUG
State of NE Participating Addendum No. 15060 OC
MOU065
City of Lincoln and Lancaster County, Nebraska
Cash-Wa Distributing Company

EXECUTION BY LANCASTER COUNTY, NEBRASKA

Contract Approved as to Form:

The Board of County Commissioners of Lancaster, Nebraska

Deputy Lancaster County Attorney

dated _________________________________
INSURANCE CLAUSE FOR ALL CITY OF LINCOLN, LANCASTER COUNTY AND PUBLIC BUILDING COMMISSION CONTRACTS

Insurance coverage on this Contract will be required for the entities selected below
☒ City of Lincoln
☒ Lancaster County
☐ Public Building Commission

Vendors must provide coverage & documents related to the items with a check mark in Sections 1 – 1.9.
This includes proof of coverage and waivers as required below.
All Vendors must comply with Sections 2-8.

THE REQUIREMENTS HEREIN APPLY TO CONTRACTS TO BE ISSUED BY THE CITY OF LINCOLN, LANCASTER COUNTY, AND THE LINCOLN-LANCASTER COUNTY PUBLIC BUILDING COMMISSION.
FOR PURPOSES OF CERTIFICATES, ENDORSEMENTS AND OTHER PROOF REQUIRED HEREIN, ONLY INCLUDE THE ENTITY ISSUING THE CONTRACT.

FAILURE OF THE APPROPRIATE ENTITY (CITY, COUNTY, OR PUBLIC BUILDING COMMISSION) TO OBJECT TO THE FORM OF THE CERTIFICATE OR ENDORSEMENT OR TO DEMAND SUCH PROOF AS IS REQUIRED HEREIN SHALL NOT CONSTITUTE A WAIVER OF ANY OF THE INSURANCE REQUIREMENTS SET FORTH BELOW.

Insurance: Coverage Information
The Contractor shall, prior to beginning work, provide proof of insurance coverage in a form satisfactory to the City/County/PBC, which shall not withhold approval unreasonably. The coverages and minimum levels required by this Contract are set forth below and shall be in effect for all times that work is being done pursuant to this Contract. No work on the Project or pursuant to this Contract shall begin until all insurance obligations herein are met to the satisfaction of the City/County/PBC, which shall not unreasonably withhold approval. Self-insurance shall not be permitted unless consent is given by the City/County/PBC prior to execution of the Contract and may require submission of financial information for analysis. Deductible levels shall be provided in writing from the Contractor’s insurer and will be no more than $25,000 per occurrence or as may be approved by the City or County as appropriate. Said insurance shall be written on an OCCURRENCE basis, and shall be PRIMARY, with any insurance coverage maintained by the City/County/PBC being secondary or excess.

Certificates
The Contractor shall provide certificates of insurance and such other proof, such as endorsements, as may be acceptable to the City or County (as appropriate) evidencing compliance with these requirements. The Contractor shall provide a Certificate of Insurance demonstrating the coverage required herein and the necessary endorsements or other proof and waivers described herein and below before being permitted to begin the work or project pursuant to this Contract.
1. **Commercial General Liability**

The Contractor shall provide proof of Commercial General Liability Insurance with a minimum limit of not less than $1,000,000 each occurrence and $2,000,000 aggregate. These minimum limits can be met by primary and umbrella liability policies. Coverage shall include: Premises-Operations, Products/ Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury. Such coverage shall be endorsed for the general aggregate to be on a PER PROJECT basis, and the Contractor shall provide an additional insured endorsement acceptable to the City/County/PBC. The required insurance must include coverage for all projects and operations of Contractor or similar language that meets the approval of the City/County/PBC, which approval shall not be unreasonably withheld.

1.1 **Additional Insured (Requires an Endorsement Form)**

All Contractors shall provide an Additional Insured Endorsement form or other proof showing the City/County/PBC as additional insured for commercial general liability, auto liability and such other coverages as may be required by the City/County/PBC. The form or other proof shall be as is acceptable to the City/County Attorney.

1.2 **Automobile Liability**

The Contractor shall provide proof of Automobile Liability coverage, which shall include: Owned, Hired and Non-Owned. Bodily Injury and Property Damage Combined Single Limit shall be at least $1,000,000 Per Accident.

1.3 **Garage Keepers / Garage Liability**

The Contractor shall provide garage insurance, if required. Coverage shall include Garage Liability and Garage Keepers on a Direct Primary Basis, including Auto Physical Damage, with limits of not less than $1,000,000 each accident Bodily Injury and Property Damage combined liability and Actual Cash Value auto physical damage. Coverage symbol(s) 30 and 21 shall be provided, where applicable.

1.4 **Workers' Compensation; Employers' Liability**

The Contractor shall provide proof of workers’ compensation insurance of not less than minimum statutory requirements under the laws of the State of Nebraska and any other applicable State. Employers’ Liability coverage with limits of not less than $500,000 each accident or injury shall be included. The Contractor shall provide the City/County/PBC with an endorsement for waiver of subrogation or other proof of such waiver as may be acceptable to the City or County. The Contractor shall also be responsible for ensuring that all subcontractors have workers’ compensation insurance for their employees before and during the time any work is done pursuant to this Contract.
1.5 **Builder's Risk Insurance**

The Contractor shall purchase and maintain builder’s risk property insurance for all sites upon which construction is occurring as provided by Contract and all storage sites where equipment, materials, and supplies of any kind purchased pursuant to the Contract are being held or stored unless the Contractor receives notice that the City/County/PBC has obtained a builder’s risk policy for itself. Except to the extent recoverable by Contractor from another subcontractor, deductibles shall be the responsibility of the Contractor. This coverage is required whenever the work under contract involves construction or repair of a building structure or bridge.

1.5.1 **Waiver of Builder's Risk Insurance Carrier's Subrogation Rights**

The Contractor and its subcontractor(s) waive all rights of action and subrogation that the insurance company providing the builder's risk policy may have against each of them and/or the City/County/PBC, Architect, and the officers, agents and employees of any of them, for all claims, damages, injuries and losses, to the extent covered by such property insurance. Such waiver of subrogation shall be effective for such persons even though such persons would otherwise have a duty of indemnification or contribution, contractual or otherwise, and even though such persons did not pay the insurance premium directly or indirectly, and whether or not such persons had an insurable interest in any property damaged. The Contractor or subcontractor shall provide proof of such waiver.

1.6 **Pollution Liability**

Contractors shall provide proof of pollution liability insurance arising out of all operations of the Contractors and subcontractors, due to discharge, dispersal, release, or escape of contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water with bodily injury and property damage limits of not less than $1,000,000 per occurrence and $2,000,000 annual aggregate for:
1) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
2) Property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
3) Defense including loss adjustment costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;
4) Definition of pollution conditions shall include asbestos, lead, and mold so that these risks are covered if caused by Contractor/successful candidate’s work or operations.
5) Coverage is required on an occurrence form.
1.7 Errors and Omissions; Professional Liability
Errors and Omissions or Professional Liability insurance, as may be required, covering damages arising out of negligent acts, errors, or omissions committed by Contractor in the performance of this Contract, with a liability limit of not less than $1,000,000 each claim. Contractor shall maintain this policy for a minimum of two (2) years after completion of the work or shall arrange for a two year extended discovery (tail) provision if the policy is not renewed. The intent of this policy is to provide coverage for claims arising out of the performance of professional Services under this contract and caused by any error, omission, breach or negligent act, including infringement of intellectual property (except patent and trade secret) of the Contractor. This coverage is required whenever the Contractor or service provider is required to be certified, licensed or registered by a regulatory entity and/or where the provider’s judgment in planning and design could result in economic loss to City/County/PBC.

1.8 Railroad Contractual Liability Insurance
If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or railroad crossing, the Contractor must provide proof acceptable to the City or County that any exception for such work in the Contractor’s commercial general liability policy has been removed or deleted.

1.8.1 Railroad Protective Liability
If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with minimum limits for bodily injury and property damage of $2,000,000 per occurrence, $6,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City/County/PBC Purchasing Department prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

1.9 Cyber Insurance
The Contractor shall maintain network risk and cyber liability coverage (including coverage for unauthorized access, failure of security, breach of privacy perils, as well at notification costs and regulatory defense) in an amount of not less than $1,000,000. Such insurance shall be maintained in force at all times during the term of the Contract and for a period of two years thereafter for services completed during the term of the Contract.
2. **Cancellation Notice**
All Contractors shall include an endorsement to provide for at least thirty (30) days’ firm written notice in the event of cancellation during the term of the Contract and during the period of any required continuing coverages. The Contractor shall provide, prior to expiration of the policies, certificates and endorsement forms evidencing renewal insurance coverages. The parties agree that the failure of City/County/PBC to object to the form of a certificate and/or additional insured endorsement or endorsement forms provided shall not constitute a waiver of this requirement.

3. **Risk of Loss**
Except to the extent covered by the builder's risk insurance, the Contractor shall have the sole responsibility for the proper storage and protection of, and assumes all risk of loss of, any subcontractor's Work and tools, materials, equipment, supplies, facilities, offices and other property at or off the Project site. The Contractor shall be solely responsible for ensuring each subcontractor shall take every reasonable precaution in the protection of all structures, streets, sidewalks, materials and work of other subcontractors. Contractor shall protect its Work from damage by the elements or by other trades working in the area.

4. **Umbrella or Excess Liability**
The Contractor may use an Umbrella, Excess Liability, or similar coverage to supplement the primary insurance stated above in order to meet or exceed the minimum coverage levels required by this Contract.

5. **Minimum Scope of Insurance**
All Liability Insurance policies shall be written on an "Occurrence" basis only. All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted otherwise.

6. **Indemnification**
To the fullest extent permitted by law the Contractor shall indemnify, defend, and hold harmless the Owner, its elected officials, officers, employees, agents, consultants, and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible or intangible property, including the Work itself, but only to the extent caused by the negligent, wrongful, or intentional acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or
expense is caused in part by the negligence of a party indemnified hereunder. In the event the claim, damage, loss or expense is caused in part by the negligence of a party indemnified hereunder, the indemnification by the Contractor shall be prorated based on the extent of the liability of the party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce obligations of indemnity which would otherwise exist as to a party or person described in this Section. Nothing herein shall be construed to be a waiver of sovereign immunity by the Owner.

7. **Reservation of Rights**
   The City/County/PBC reserves the right to require a higher limit of insurance or additional coverages when the City/County/PBC determines that a higher limit or additional coverage is required to protect the City/County/PBC or the interests of the public. Such changes in limits or coverages shall be eligible for a change order or amendment to the Contract.

8. **Sovereign Immunity**
   Nothing contained in this clause or other clauses of this Contract shall be construed to waive the Sovereign Immunity of the City/County/PBC.

9. **Further Contact**
   For further information or questions concerning coverage or acceptable forms, Contractors may contact the Purchasing Division or the department that issued the bid or the request for proposal.

   For general questions regarding Insurance Requirements, please contact Risk Management for the City or County.
**CERTIFICATE OF LIABILITY INSURANCE**

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFER NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

### PRODUCER

Arthur J. Gallagher Risk Management Services, Inc.
6967 S River Gate Dr #200
Midvale UT 84047

### INSURED

Cash Wa Distributing Company of Kearney Inc.
H&S Enterprises, Inc.
PO BOX 309
Kearney NE 68848

### COVERAGES

**CERTIFICATE NUMBER:** 1590924860

**REVISION NUMBER:**

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

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**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101), Additional Remarks Schedule, may be attached if more space is required**

City of Lincoln and Lancaster County are Additional Insured under the General Liability and Auto Liability as required by written contract. Waiver of subrogation applies in favor of Additional Insureds under the Workers Compensation policy as required by written contract.

**CERTIFICATE HOLDER**

City of Lincoln
Lancaster County
555 So. 10th Street
Lincoln NE 68508

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**AUTHORIZED REPRESENTATIVE**

[Signature]

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Additional Insured – Automatic – Owners, Lessees Or Contractors

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Named Insured: CASH WA DISTRIBUTING COMPANY OF KEARNEY INC.

Address (including ZIP Code):
401 W 4TH
KEARNEY, NE 68845

This endorsement modifies insurance provided under the:
Commercial General Liability Coverage Part

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. Such person or organization is an additional insured only with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,
in the performance of your ongoing operations or “your work” as included in the “products-completed operations hazard”, which is the subject of the written contract or written agreement.

However, the insurance afforded to such additional insured:
1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insurer.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:
“Bodily injury”, "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the “occurrence” which caused the “bodily injury” or “property damage”, or the offense which caused the “personal and advertising injury”, involved the rendering of or the failure to render any professional architectural, engineering or surveying services.
C. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – Commercial General Liability Conditions:

The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. We receive written notice of a claim or "suit" as soon as practicable; and
3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. For the purpose of the coverage provided by this endorsement:

1. The following is added to the Other Insurance Condition of Section IV – Commercial General Liability Conditions:

   Primary and Noncontributory insurance

   This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

   a. The additional insured is a Named Insured under such other insurance; and
   b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – Commercial General Liability Conditions:

   This insurance is excess over:

   Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – Limits Of Insurance:

   The most we will pay on behalf of the additional insured is the amount of insurance:

   1. Required by the written contract or written agreement referenced in Paragraph A. of this endorsement;
   2. Available under the applicable Limits of Insurance shown in the Declarations, whichever is less.

   This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms and conditions of this policy remain unchanged.
Coverage Extension Endorsement

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

- Business Auto Coverage Form
- Motor Carrier Coverage Form

A. Amended Who Is An Insured

1. The following is added to the **Who Is An Insured** Provision in Section II – Covered Autos Liability Coverage:

   The following are also "insureds":
   
   a. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you. Any "employee" of yours is also an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
   
   b. Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
   
   c. Anyone else who furnishes an "auto" referenced in Paragraphs **A.1.a.** and **A.1.b.** in this endorsement.
   
   d. Where and to the extent permitted by law, any person(s) or organization(s) where required by written contract or written agreement with you executed prior to any "accident", including those person(s) or organization(s) directing your work pursuant to such written contract or written agreement with you, provided the "accident" arises out of operations governed by such contract or agreement and only up to the limits required in the written contract or written agreement, or the Limits of Insurance shown in the Declarations, whichever is less.

2. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary and Excess Insurance Provisions Condition** in the Motor Carrier Coverage Form:

   Coverage for any person(s) or organization(s), where required by written contract or written agreement with you executed prior to any "accident", will apply on a primary and non-contributory basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the Coverage Form.

B. Amendment – Supplementary Payments

Paragraphs **a.(2)** and **a.(4)** of the **Coverage Extensions** Provision in Section II – Covered Autos Liability Coverage are replaced by the following:

(2) Up to $5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.
C. Fellow Employee Coverage

The Fellow Employee Exclusion contained in Section II – Covered Autos Liability Coverage does not apply.

D. Driver Safety Program Liability and Physical Damage Coverage

1. The following is added to the Racing Exclusion in Section II – Covered Autos Liability Coverage:

   This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

2. The following is added to Paragraph 2. in the Exclusions of Section III – Physical Damage Coverage of the Business Auto Coverage Form and Paragraph 2.b. in the Exclusions of Section IV – Physical Damage Coverage of the Motor Carrier Coverage Form:

   This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

E. Lease or Loan Gap Coverage

The following is added to the Coverage Provision of the Physical Damage Coverage Section:

Lease Or Loan Gap Coverage

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

a. Any amount paid under the Physical Damage Coverage Section of the Coverage Form; and

b. Any:

   (1) Overdue lease or loan payments at the time of the "loss";

   (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;

   (3) Security deposits not returned by the lessor;

   (4) Costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and

   (5) Carry-over balances from previous leases or loans.

F. Towing and Labor

Paragraph A.2. of the Physical Damage Coverage Section is replaced by the following:

We will pay up to $75 for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

G. Extended Glass Coverage

The following is added to Paragraph A.3.a. of the Physical Damage Coverage Section:

If glass must be replaced, the deductible shown in the Declarations will apply. However, if glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

H. Hired Auto Physical Damage – Increased Loss of Use Expenses

The Coverage Extension for Loss Of Use Expenses in the Physical Damage Coverage Section is replaced by the following:

Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or written rental agreement. We will pay for loss of use expenses if caused by:
(1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";

(2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or

(3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is $100 per day, to a maximum of $3000.

I. Personal Effects Coverage

The following is added to the Coverage Provision of the Physical Damage Coverage Section:

Personal Effects Coverage

a. We will pay up to $750 for "loss" to personal effects which are:

   (1) Personal property owned by an "insured"; and
   (2) In or on a covered "auto".

b. Subject to Paragraph a. above, the amount to be paid for "loss" to personal effects will be based on the lesser of:

   (1) The reasonable cost to replace; or
   (2) The actual cash value.

c. The coverage provided in Paragraphs a. and b. above, only applies in the event of a total theft of a covered "auto". No deductible applies to this coverage. However, we will not pay for "loss" to personal effects of any of the following:

   (1) Accounts, bills, currency, deeds, evidence of debt, money, notes, securities, or commercial paper or other documents of value.
   (2) Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry, watches, precious or semi-precious stones.
   (3) Paintings, statuary and other works of art.
   (4) Contraband or property in the course of illegal transportation or trade.
   (5) Tapes, records, discs or other similar devices used with audio, visual or data electronic equipment.

Any coverage provided by this Provision is excess over any other insurance coverage available for the same "loss".

J. Tapes, Records and Discs Coverage

1. The Exclusion in Paragraph B.4.a. of Section III – Physical Damage Coverage in the Business Auto Coverage Form and the Exclusion in Paragraph B.2.c. of Section IV – Physical Damage Coverage in the Motor Carrier Coverage Form does not apply.

2. The following is added to Paragraph 1.a. Comprehensive Coverage under the Coverage Provision of the Physical Damage Coverage Section:

   We will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

   (a) Are the property of an "insured"; and
   (b) Are in a covered "auto" at the time of "loss".

   The most we will pay for such "loss" to tapes, records, discs or other similar devices is $500. The Physical Damage Coverage Deductible Provision does not apply to such "loss".
K. Airbag Coverage

The Exclusion in Paragraph B.3.a. of Section III – Physical Damage Coverage in the Business Auto Coverage Form and the Exclusion in Paragraph B.4.a. of Section IV – Physical Damage Coverage in the Motor Carrier Coverage Form does not apply to the accidental discharge of an airbag.

L. Two or More Deductibles

The following is added to the Deductible Provision of the Physical Damage Coverage Section:

If an accident is covered both by this policy or Coverage Form and by another policy or Coverage Form issued to you by us, the following applies for each covered "auto" on a per vehicle basis:

1. If the deductible on this policy or Coverage Form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible on this policy or Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

M. Physical Damage – Comprehensive Coverage – Deductible

The following is added to the Deductible Provision of the Physical Damage Coverage Section:

Regardless of the number of covered "autos" damaged or stolen, the maximum deductible that will be applied to Comprehensive Coverage for all "loss" from any one cause is $5,000 or the deductible shown in the Declarations, whichever is greater.

N. Temporary Substitute Autos – Physical Damage

1. The following is added to Section I – Covered Autos:

   Temporary Substitute Autos – Physical Damage

   If Physical Damage Coverage is provided by this Coverage Form on your owned covered "autos", the following types of vehicles are also covered "autos" for Physical Damage Coverage:

   Any "auto" you do not own when used with the permission of its owner as a temporary substitute for a covered "auto" you do own but is out of service because of its:

   1. Breakdown;
   2. Repair;
   3. Servicing;
   4. "Loss"; or
   5. Destruction.

2. The following is added to the Paragraph A. Coverage Provision of the Physical Damage Coverage Section:

   Temporary Substitute Autos – Physical Damage

   We will pay the owner for "loss" to the temporary substitute "auto" unless the "loss" results from fraudulent acts or omissions on your part. If we make any payment to the owner, we will obtain the owner's rights against any other party.

   The deductible for the temporary substitute "auto" will be the same as the deductible for the covered "auto" it replaces.

O. Amended Duties In The Event Of Accident, Claim, Suit Or Loss

Paragraph a. of the Duties In The Event Of Accident, Claim, Suit Or Loss Condition is replaced by the following:

a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident", claim, "suit" or "loss". However, these duties only apply when the "accident", claim, "suit" or "loss" is known to you (if you are an individual), a partner (if you are a partnership), a member (if you are a limited liability company) or an executive officer or insurance manager (if you are a corporation). The failure of any
agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate
the insurance afforded by this policy.

Include, as soon as practicable:

(1) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written
notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";

(2) The "insured's" name and address; and

(3) To the extent possible, the names and addresses of any injured persons and witnesses.

If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your
failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon
as practicable after the fact of the delay becomes known to you.

P. Waiver of Transfer Of Rights Of Recovery Against Others To Us

The following is added to the Transfer Of Rights Of Recovery Against Others To Us Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or
"loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only
applies to the person or organization designated in the contract.

Q. Employee Hired Autos – Physical Damage

Paragraph b. of the Other Insurance Condition in the Business Auto Coverage Form and Paragraph f. of the Other
Insurance – Primary and Excess Insurance Provisions Condition in the Motor Carrier Coverage Form are replaced
by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

(1) Any covered "auto" you lease, hire, rent or borrow; and

(2) Any covered "auto" hired or rented under a written contract or written agreement entered into by an "employee" or
elected or appointed official with your permission while being operated within the course and scope of that
"employee's" employment by you or that elected or appointed official's duties as respect their obligations to you.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

R. Unintentional Failure to Disclose Hazards

The following is added to the Concealment, Misrepresentation Or Fraud Condition:

However, we will not deny coverage under this Coverage Form if you unintentionally:

(1) Fail to disclose any hazards existing at the inception date of this Coverage Form; or

(2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not
provided to us prior to the acceptance of this policy.

S. Hired Auto – World Wide Coverage

Paragraph 7a.(5) of the Policy Period, Coverage Territory Condition is replaced by the following:

(5) Anywhere in the world if a covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less,

T. Bodily Injury Redefined

The definition of "bodily injury" in the Definitions Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish,
resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.
U. Expected Or Intended Injury

The Expected Or Intended Injury Exclusion in Paragraph B. Exclusions under Section II – Covered Auto Liability Coverage is replaced by the following:

Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured". This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

V. Physical Damage – Additional Temporary Transportation Expense Coverage

Paragraph A.4.a. of Section III – Physical Damage Coverage is replaced by the following:

4. Coverage Extensions
   a. Transportation Expenses

   We will pay up to $50 per day to a maximum of $1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

W. Replacement of a Private Passenger Auto with a Hybrid or Alternative Fuel Source Auto

The following is added to Paragraph A. Coverage of the Physical Damage Coverage Section:

In the event of a total "loss" to a covered "auto" of the private passenger type that is replaced with a hybrid "auto" or "auto" powered by an alternative fuel source of the private passenger type, we will pay an additional 10% of the cost of the replacement "auto", excluding tax, title, license, other fees and any aftermarket vehicle upgrades, up to a maximum of $2500. The covered "auto" must be replaced by a hybrid "auto" or an "auto" powered by an alternative fuel source within 60 calendar days of the payment of the "loss" and evidenced by a bill of sale or new vehicle lease agreement.

To qualify as a hybrid "auto", the "auto" must be powered by a conventional gasoline engine and another source of propulsion power. The other source of propulsion power must be electric, hydrogen, propane, solar or natural gas, either compressed or liquefied. To qualify as an "auto" powered by an alternative fuel source, the "auto" must be powered by a source of propulsion power other than a conventional gasoline engine. An "auto" solely propelled by biofuel, gasoline or diesel fuel or any blend thereof is not an "auto" powered by an alternative fuel source.

X. Return of Stolen Automobile

The following is added to the Coverage Extension Provision of the Physical Damage Coverage Section:

If a covered "auto" is stolen and recovered, we will pay the cost of transport to return the "auto" to you. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.

All other terms, conditions, provisions and exclusions of this policy remain the same.

Includes copyrighted material of Insurance Services Office, Inc., with its permission.
WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY FOR WORK PERFORMED BY YOU FOR THAT PERSON AND/OR ORGANIZATION.
STATE OF NEBRASKA CONTRACT AMENDMENT

PAGE
1 of 2

ORDER DATE
02/12/19

BUSINESS UNIT
9000

BUYER
JULIE DABYDEEN (AS)

VENDOR NUMBER: 3165354

VENDOR ADDRESS:
UNIPRO FOODSERVICE INC
THE MULTI-UNIT GROUP
2500 CUMBERLAND PARKWAY SE STE 600
ATLANTA GA 30339-3924

THE CONTRACT PERIOD IS:
DECEMBER 01, 2018 THROUGH OCTOBER 22, 2022

THIS CONTRACT HAS BEEN AMENDED PER THE FOLLOWING INFORMATION:

NO ACTION ON THE PART OF THE CONTRACTOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE MATERIALS AND/OR SERVICES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE MATERIALS AND/OR SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR MATERIALS AND/OR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE CONTRACTOR AND THE STATE OF NEBRASKA.

Awarded from Sourcewell Contract #112917-MUG

Contract to supply and deliver Food Products and Distribution with Related Equipment, Supplies and Services to State of Nebraska agencies and political sub-divisions for the period of December 1, 2018 through October 22, 2022. The Participating Addendum may be extended for a fifth year at Sourcewell’s discretion.

Payment Terms: Net 45

For State Agencies:

CWD has a large selection of product categories including foodservice, fresh and frozen, meats and produce, dairy, supplies-disposables, chemicals-cleaning and sanitation, retail grocery products, beverage and healthcare products.

Submitting Purchase Orders - Cash-Wa Distributing (CWD) is Nebraska’s distributor for all products purchased through the Multi-Unit Group Participating Addendum. When generating the OG Purchase Order from this contract, change the vendor Address Book Number to "500555". The result is an OG Purchase Order showing Cash-Wa Distributing Company as the vendor. Cash-Wa Distributing will fill orders and provide invoices for purchases. Please contact the buyer if you have questions about this process in the Payroll and Finance Center (PFC) system.

(For the File - This RFP and Contract are bid and awarded by Sourcewell® (formerly NJPA). All Request For Proposal (RFP), evaluations, etc. are retained by Sourcewell®.)

Quote & Vendor Contact: Bob Kruse
Contact title: Director of Multi-Unit Accounts
Phone: 1-800-652-0010 Ext 4219
Email: bob.kruse@cashwa.com

(bb 11/08/18)

Participating Addendum Amendment One as Attached. (bb 12/18/18)

Participating Addendum Amendment Two as Attached. (bb 02/12/19)

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STATE OF NEBRASKA

PARTICIPATING ADDENDUM
AMENDMENT TWO

FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES AND SERVICES Contract 15060 OC

Between

THE MULTI-UNIT GROUP
[hereinafter "Contractor"]

And

State of Nebraska
[hereinafter "Participating State" or "Participating Entity"]

Sourcawell Contract #112917-MUG
State of Nebraska Contract Number: 15060 (OC)

THIS AMENDMENT is by and between the State of Nebraska ("Participating State/Entity"), and THE MULTI-UNIT GROUP (Contractor).

WHEREAS, the terms of the Contract specifically state that the contract may be amended per agreement by both parties. The State of Nebraska wishes to continue to take advantage of existing contract.

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

Effective upon execution by both parties, line 1 of the contract is hereby deleted and replaced with lines 1 through 5.

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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

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<th>Contractor: The Multi-Unit Group</th>
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<tr>
<td>Name:</td>
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</tr>
<tr>
<td>Doug Carlson</td>
<td>Jessica Moore</td>
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<tr>
<td>Title: Materiel Admin</td>
<td>Title: Director of Business Dev.</td>
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STATE OF NEBRASKA CONTRACT AMENDMENT

PAGE 1 of 2

ORDER DATE 12/12/18

BUSINESS UNIT 9000

BUYER JULIE DABYDEEN (AS)

VENDOR NUMBER: 3165354

VENDOR ADDRESS:

UNIPRO FOODSERVICE INC
THE MULTI-UNIT GROUP
2500 CUMBERLAND PARKWAY SE STE 600
ATLANTA GA 30339-3924

THE CONTRACT PERIOD IS:

DECEMBER 01, 2018 THROUGH OCTOBER 22, 2022

THIS CONTRACT HAS BEEN AMENDED PER THE FOLLOWING INFORMATION:

NO ACTION ON THE PART OF THE CONTRACTOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE MATERIALS AND/OR SERVICES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE MATERIALS AND/OR SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR MATERIALS AND/OR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE CONTRACTOR AND THE STATE OF NEBRASKA.

Awarded from Sourcewell Contract #112917-MUG

Contract to supply and deliver Food Products and Distribution with Related Equipment, Supplies and Services to State of Nebraska agencies and political sub-divisions for the period of December 1, 2018 through October 22, 2022. The Participating Addendum may be extended for a fifth year at Sourcewell’s discretion.

Payment Terms: Net 45

For State Agencies:

CWD has a large selection of product categories including foodservice, fresh and frozen, meats and produce, dairy, supplies-disposables, chemicals-cleaning and sanitation, retail grocery products, beverage and healthcare products.

Submitting Purchase Orders - Cash-Wa Distributing (CWD) is Nebraska’s distributor for all products purchased through the Multi-Unit Group Participating Addendum. When generating the OG Purchase Order from this contract, change the vendor Address Book Number to "500555". The result is an OG Purchase Order showing Cash-Wa Distributing Company as the vendor. Cash-Wa Distributing will fill orders and provide invoices for purchases. Please contact the buyer if you have questions about this process in the Payroll and Finance Center (PFC) system.

(For the File - This RFP and Contract are bid and awarded by Sourcewell® (formerly NJPA). All Request For Proposal (RFP), evaluations, etc. are retained by Sourcewell®.)

Quote & Vendor Contact: Bob Kruse
Contact title: Director of Multi-Unit Accounts
Phone: 1-800-652-0010 Ext 4219
Email: bob.kruse@cashwa.com

(bb 11/08/18)

Participating Addendum Amendment One as Attached. (bb 12/12/18)
<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Estimated Quantity</th>
<th>Unit of Measure</th>
<th>Unit Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT SUPPLIES AND SERVICES</td>
<td>1,000,000.0000</td>
<td>$</td>
<td>1.0000</td>
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</table>
STATE OF NEBRASKA

PARTICIPATING ADDENDUM

AMENDMENT ONE

FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES AND SERVICES Contract 15060 OC

Between

THE MULTI-UNIT GROUP

[hereinafter "Contractor"]

And

State of Nebraska

[hereinafter "Participating State" or "Participating" Entity]

Sourcewell Contract #112917-MUG

State of Nebraska Contract Number: 15060 (OC)

THIS AMENDMENT is by and between the State of Nebraska ("Participating State/Entity"), and THE MULTI-UNIT GROUP (Contractor).

WHEREAS, the terms of the Contract specifically state that the contract may be amended per agreement by both parties. The State of Nebraska wishes to continue to take advantage of existing contract.

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

Effective December 1, 2018, removing the current clause captioned PRICE ADJUSTMENTS DURING CONTRACT TERM and substituting the following paragraphs:

PRICE MARGIN ADJUSTMENTS DURING CONTRACT TERM

Prices quoted shall be net, including transportation and delivery charges fully prepaid by the Bidder, F. O. B. Destination. No additional charges will be allowed for packing, packages or partial delivery costs.

Contractor represents and warrants that all prices, now or subsequently specified, are as low as and no higher than prices which the Contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quality and quality for delivery or performance during the same periods of time. If, during the term of the contract, the Contractor shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, the Contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services.

Notifications for a price margin adjustment must be submitted in writing to the State Purchasing Bureau, a minimum of thirty (30) days prior to proposed effective date of change. The State further reserves the right to reject any proposed price margin increase(s), cancel the Participating Addendum and issue a solicitation if determined to be in the best interest of the State. The State will be given full proportionate benefit of any decrease for the term of the contract. No price margin increases are to be billed to any State Agencies without prior written approval by the State Purchasing Bureau.

Monthly State Facilities Drop Size Average Report and Schedule A pricing margin matrix report shall be provided to the State by the 1st business day of each month for the previous month’s purchases.

Effective December 1, 2018, SECTION III. PAYMENT I. ADMINISTRATIVE FEE/REBATE is amended as follows:

I. ADMINISTRATIVE FEE/REBATE

The Contractor agrees to provide a quarterly administrative fee in the form of a check. The fee will be payable to the State for an amount equal to one percent (1%) of the net sales (net of any returns, credits, or adjustments) under the contract for each period as shown below: The Contractor’s pricing to the State shall
be adjusted to offset for the equivalent fee amount. Payments shall be made in accordance with following schedule:

<table>
<thead>
<tr>
<th>Period Ending</th>
<th>Fee Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 31</td>
<td>January 31</td>
</tr>
<tr>
<td>March 31</td>
<td>April 30</td>
</tr>
<tr>
<td>June 30</td>
<td>July 31</td>
</tr>
<tr>
<td>September 30</td>
<td>October 31</td>
</tr>
</tbody>
</table>

All other clauses shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

<table>
<thead>
<tr>
<th>Participating Entity:</th>
<th>Contractor:</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>The Multi-Unit Group</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Signature:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Jessica Moore</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name:</th>
<th>Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td>David Zwart</td>
<td>Jessica Moore</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Title:</th>
<th>Title:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Materiel Administrator</td>
<td>Director of Business Development</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date:</th>
<th>Date:</th>
</tr>
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<tr>
<td>12/14/18</td>
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STATE OF NEBRASKA CONTRACT AWARD

STATE OF NEBRASKA CONTRACT AWARD

PAGE 1 of 1

ORDER DATE 11/08/18

BUSINESS UNIT 9000

BUYER JULIE DABYDEEN (AS)

VENDOR NUMBER: 3165354

VENDOR ADDRESS:
UNIPRO FOODSERVICE INC
THE MULTI-UNIT GROUP
2500 CUMBERLAND PARKWAY SE STE 600
ATLANTA GA 30339-3924

AN AWARD HAS BEEN MADE TO THE CONTRACTOR NAMED ABOVE FOR THE FURNISHING OF MATERIALS AND/OR SERVICES AS LISTED BELOW FOR THE PERIOD:

DECEMBER 01, 2018 THROUGH OCTOBER 22, 2022

NO ACTION ON THE PART OF THE CONTRACTOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE MATERIALS AND/OR SERVICES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

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THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE CONTRACTOR AND THE STATE OF NEBRASKA.

Awarded from Sourcewell Contract #112917-MUG

Contract to supply and deliver Food Products and Distribution with Related Equipment, Supplies and Services to State of Nebraska agencies and political sub-divisions for the period of December 1, 2018 through October 22, 2022. The Participating Addendum may be extended for a fifth year at Sourcewell’s discretion.

Payment Terms: Net 45

For State Agencies:

CWD has a large selection of product categories including foodservice, fresh and frozen, meats and produce, dairy, supplies-disposables, chemicals-cleaning and sanitation, retail grocery products, beverage and healthcare products.

Submitting Purchase Orders - Cash-Wa Distributing (CWD) is Nebraska’s distributor for all products purchased through the Multi-Unit Group Participating Addendum. When generating the OG Purchase Order from this contract, change the vendor Address Book Number to "500555". The result is an OG Purchase Order showing Cash-Wa Distributing Company as the vendor. Cash-Wa Distributing will fill orders and provide invoices for purchases. Please contact the buyer if you have questions about this process in the Payroll and Finance Center (PFC) system.

(For the File - This RFP and Contract are bid and awarded by Sourcewell® (formerly NJPA). All Request For Proposal (RFP), evaluations, etc. are retained by Sourcewell®.)

Quote & Vendor Contact: Bob Kruse
Contact title: Director of Multi-Unit Accounts
Phone: 1-800-652-0010 Ext 4219
Email: bob.kruse@cashwa.com

(bb 11/08/18)

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<td>1.0000</td>
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MATERIAL ADMINISTRATOR

State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508
Telephone: (402) 471-6500
Fax: (402) 471-2089

CONTRACT NUMBER
15060 OC

#300806NISD001/NISD001 20100801
STATE OF NEBRASKA

PARTICIPATING ADDENDUM

FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES AND SERVICES Contract 15060 OC

Between
THE MULTI-UNIT GROUP
[hereinafter "Contractor"]

And
State of Nebraska
[hereinafter "Participating State" or "Participating" Entity]

Sourcewell Contract #112917-MUG
State of Nebraska Contract Number: 15060 (OC)

SCOPE
This addendum covers the purchase of Food Products and Distribution with Related Equipment, Supplies and Services and maintenance of the equipment for use by state agencies and other entities located in the Participating State/Entity authorized by that state's statutes to utilize state/entity contracts with the prior approval of the state's chief procurement official.

CONTRACT PERIOD
The initial term of the Participating Addendum is December 1, 2018 through January 22, 2022. The Participating Addendum may be extended for a fifth year at Sourcewell's discretion.

PRICE ADJUSTMENTS DURING CONTRACT TERM
Prices quoted shall be net, including transportation and delivery charges fully prepaid by the Bidder, F. O. B. Destination. No additional charges will be allowed for packing, packages or partial delivery costs.

Contractor represents and warrants that all prices, now or subsequently specified, are as low as and no higher than prices which the Contractor has charged or intends to charge customers other than the State for the same or similar products and services of the same or equivalent quantity and quality for delivery or performance during the same periods of time. If, during the term of the contract, the Contractor shall reduce any and/or all prices charged to any customers other than the State for the same or similar products or services specified herein, the Contractor shall make an equal or equivalent reduction in corresponding prices for said specified products or services.

Notifications for a price adjustment must be submitted in writing to the State Purchasing Bureau, a minimum of thirty (30) days prior to proposed effective date of change. The State further reserves the right to reject any proposed price increase(s), cancel the Participating Addendum and issue a solicitation if determined to be in the best interest of the State. The State will be given full proportionate benefit of any decrease for the term of the contract. No price increases are to be billed to any State Agencies without prior written approval by the State Purchasing Bureau.
PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT

State of Nebraska

TERMS AND CONDITIONS

IMPORTANT NOTICE: Pursuant to Neb. Rev. Stat. § 84-602.04, State contracts in effect as of January 1, 2014, and contracts entered into thereafter, must be posted to a public website. The resulting Participating Addendum will be posted to a public website managed by DAS, which can be found at http://statecontracts.nebraska.gov.

Contractor may request that proprietary information be excluded from the posting. The Contractor must identify the proprietary information, mark the proprietary information according to state law, and submit the proprietary information in a separate container or envelope marked conspicuously in black ink with the words "PROPRIETARY INFORMATION". The Contractor must submit a detailed written document showing that the release of the proprietary information would give a business advantage to named business competitor(s) and explain how the named business competitor(s) will gain an actual business advantage by disclosure of information. The mere assertion that information is proprietary or that a speculative business advantage might be gained is not sufficient. (See Attorney General Opinion No. 92068, April 27, 1992) THE CONTRACTOR MAY NOT ASSERT THAT THE ENTIRE PARTICIPATING ADDENDUM IS PROPRIETARY. COSTS WILL NOT BE CONSIDERED PROPRIETARY AND ARE A PUBLIC RECORD IN THE STATE OF NEBRASKA. The State will then determine, in its discretion, if the interests served by nondisclosure outweighs any public purpose served by disclosure. (See Neb. Rev. Stat. § 84-712.05(3)). The Contractor will be notified of the agency's decision. Absent a State determination that information is proprietary, the State will consider all information a public record subject to release regardless of any assertion that the information is proprietary.

If the agency determines it is required to release proprietary information, the Contractor will be informed. It will be the Contractor's responsibility to defend the Contractor's asserted interest in non-disclosure.

To facilitate such public postings, with the exception of proprietary information, the State of Nebraska reserves a royalty-free, nonexclusive, and irrevocable right to copy, reproduce, publish, post to a website, and authorize others to use the documents, or otherwise use the Participating Addendum or other documents received with regard to the Participating Addendum. Contractor specifically waives any copyright or other protection the Participating Addendum or other documents may have. This reservation and waiver is a prerequisite for entering into this Participating Addendum.

Contractor agrees not to sue, file a claim, or make a demand of any kind, and will indemnify and hold harmless the State and its employees, volunteers, agents, and its elected and appointed officials from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses, sustained or asserted against the State, arising out of, resulting from, or attributable to the posting of the Participating Addendum or documents.
I. GENERAL

A. NEGOTIATIONS

Supplier is expected to read the Terms and Conditions and either accept or provide alternative language for each clause using "Track Changes". The Supplier should also provide an explanation of why the Supplier provided alternate language using "Comments". The State reserves the right to negotiate proposed alternative language. If the State and Supplier fail to agree on the final Terms and Conditions, the State reserves the right to withdraw the offer.

The Supplier should submit any license, user agreement, service level agreement, or similar documents that the Supplier wants incorporated in the Participating Addendum. The Supplier must submit a copy of these documents in an editable Word format. The State will not consider incorporation of any document not submitted prior to signing the Participating Addendum. These documents shall be subject to negotiation and will be incorporated as addendums if agreed to by the Parties.

If a conflict or ambiguity arises after the documents are negotiated and agreed to, the documents shall be interpreted as follows:

If only one (1) Party's document has a particular clause then that clause shall control;
If both Party's documents have a similar clause, but the clauses do not conflict, the clauses shall be read together;
If both Party's documents have a similar clause, but the clauses conflict, the State's clause shall control.

B. DOCUMENTS/ORDER OF PRECEDENCE

The Participating Addendum shall incorporate the following documents:

1. Participating Addendum
2. Master Agreement
3. Amendments/Addendums.
4. The Solicitation
5. Contractor's Response to the Solicitation

These documents constitute the entirety of the Participating Addendum.

By incorporation of the Master Agreement in the Participating Addendum, the Master Agreement shall be read as being entered into by the State of Nebraska and interpreted consistent with Nebraska state law. These documents constitute the entirety of the Participating Addendum.

Unless otherwise specifically stated in a future Participating Addendum amendment, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference with number one (1) receiving preference over all other documents and with each lower numbered document having preference over any higher numbered document: 1) Amendment to the executed Participating Addendum or Master Agreement with the most recent dated amendment having the highest priority, 2) executed Participating Addendum and any attached Addenda, 3) executed Master Agreement and any Addendum, 4) Statement of Work, 5) the Solicitation, and 6) Contractor's Response to the Solicitation.

Any ambiguity or conflict in the Participating Addendum discovered after execution, not otherwise addressed herein, shall be resolved in accordance with the rules of Participating Addendum interpretation as established in the State of Nebraska.

C. NOTIFICATION

Contractor and State shall identify the Participating Addendum manager who shall serve as the point of contact for the executed Participating Addendum.

Communications regarding the executed Participating Addendum shall be in writing and shall be deemed to have been given if delivered personally or mailed, by U.S. Mail, postage prepaid, return receipt requested, to the parties at their respective addresses set forth below, or at such other addresses as may be specified in writing by either of the parties. All notices, requests, or communications shall be deemed effective upon personal delivery or five (5) calendar days following deposit in the mail.

<table>
<thead>
<tr>
<th>Participating Addendum Manager</th>
<th>Agency Contract/Participating Addendum Manager</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jessica Moore</td>
<td>Julie Dabydeen</td>
</tr>
<tr>
<td>Vendor</td>
<td>Agency Department of Administrative Services, State Purchasing Bureau</td>
</tr>
</tbody>
</table>
Either party may change its address for notification purposes by giving notice of the change, and setting forth the new address and an effective date.

D. GOVERNING LAW
Notwithstanding any other provision of this Participating Addendum, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and its authority to Contract/Participating Addendum is therefore subject to limitation by the State’s Constitution, statutes, common law, and regulation; (2) this Contract/Participating Addendum will be interpreted and enforced under the laws of the State of Nebraska; (3) any action to enforce the provisions of this agreement must be brought in the State of Nebraska per state law; (4) the person signing this Contract/Participating Addendum on behalf of the State of Nebraska does not have the authority to waive the State’s sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final Contract/Participating Addendum, if any, are entered into subject to the State’s Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms and conditions of the final Contract/Participating Addendum, including but not limited to the clauses concerning third-party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy or other similar provisions of the final Contract/Participating Addendum are entered into specifically subject to the State’s Constitution, statutes, common law, regulations, and sovereign immunity.

E. AMENDMENT
This Participating Addendum may be amended in writing, within scope, upon the agreement of both parties.

F. CHANGE ORDERS OR SUBSTITUTIONS
The State and the Contractor, upon the written agreement, may make changes to the Participating Addendum within the general scope of the ITB. Changes may involve specifications, the quantity of work, or such other items as the State may find necessary or desirable. Corrections of any deliverable, service, or work required pursuant to the Participating Addendum shall not be deemed a change. The Contractor may not claim forfeiture of the Participating Addendum by reasons of such changes.

The State or Contractor may prepare a written description of the work required due to the change and the Contractor shall prepare an itemized cost sheet for the change. Changes in work and the amount of compensation to be paid to the Contractor shall be determined in accordance with applicable unit prices if any, a pro-rated value, or through negotiations. The State shall not incur a price increase for changes that should have been included in the Contractor’s bid, were foreseeable, or result from difficulties with or failure of the Contractor’s bid or performance.

No change shall be implemented by the Contractor until approved by the State, and the Participating Addendum is amended to reflect the change and associated costs, if any. If there is a dispute regarding the cost, but both parties agree that immediate implementation is necessary, the change may be implemented, and cost negotiations may continue with both Parties retaining all remedies under the Participating Addendum and law.

In the event any product is discontinued or replaced upon mutual consent during the contract period, the State reserves the right to amend this contract to include the alternate product at the same price.

***Supplier will not substitute any item that has been awarded without prior written approval of SPB***

G. NOTICE OF POTENTIAL CONTRACTOR BREACH
If Contractor breaches the Participating Addendum or anticipates breaching the Participating Addendum, the Contractor shall immediately give written notice to the State. The notice shall explain the breach or potential breach, a proposed cure, and may include a request for a waiver of the breach if so desired. The State may, in its discretion, temporarily or permanently waive the breach. By granting a waiver, the State does not forfeit any rights or remedies to which the State is entitled by law or equity, or pursuant to the provisions of the Participating Addendum. Failure to give immediate notice, however, may be grounds for denial of any request for a waiver of a breach.

H. BREACH
Either Party may terminate the Contract/Participating Addendum, in whole or in part, if the other Party breaches its duty to perform its obligations under the Contract/Participating Addendum in a timely and proper manner. Termination requires written notice of default and a thirty (30) calendar day (or longer at the non-breaching Party’s discretion
considering the gravity and nature of the default) cure period. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing time to cure a failure or breach of Contract/Participating Addendum does not waive the right to immediately terminate the Contract/Participating Addendum for the same or different Contract/Participating Addendum breach which may occur at a different time.

In case of breach by the Contractor, the State may, without unreasonable delay, make a good faith effort to make a reasonable purchase or Contract/Participating Addendum to purchased goods in substitution of those due from the contractor. The State may recover from the Contractor as damages the difference between the costs of covering the breach. Notwithstanding any clause to the contrary, the State may also recover the Contract/Participating Addendum price together with any incidental or consequential damages defined in UCC Section 2-715, but less expenses saved in consequence of Contractor’s breach.

The State’s failure to make payment shall not be a breach, and the Contractor shall retain all available statutory remedies. (See Indemnity - Self-insurance and Payment)

I. SELF-INSURANCE

1. SELF-INSURANCE (Statutory)

The State is self-insured for any loss and purchases excess insurance coverage pursuant to Neb. Rev. Stat. § 81-8,239.01 (Reissue 2008). If there is a presumed loss under the provisions of this agreement, Contractor may file a claim with the Office of Risk Management pursuant to Neb. Rev. Stat. §§ 81-8,829 through 81-8,306 for review by the State Claims Board. The State retains all rights and immunities under the State Miscellaneous (Section 81-8,294), Tort (Section 81-8,209), and Contract Claim Acts (Section 81-8,302), as outlined in Neb. Rev. Stat. § 81-8,209 et seq. and under any other provisions of law and accepts liability under this agreement to the extent provided by law.

2. ATTORNEY GENERAL’S AUTHORITY

The Parties acknowledge that Attorney General for the State is required by statute to represent the legal interests of the State, and that any provision of this Participating Addendum is subject to the statutory authority of the Attorney General.

J. CONTRACTING WITH OTHER POLITICAL SUB-DIVISIONS OF THE STATE OR ANOTHER STATE

The Contractor may, but shall not be required to, allow agencies, as defined in Neb. Rev. Stat. § 81-145, to use this Participating Addendum. The terms and conditions, including price, of the Participating Addendum may not be amended. The State shall not be contractually obligated or liable for any Participating Addendum entered into pursuant to this clause.
II. CONTRACTOR DUTIES

A. INDEPENDENT CONTRACTOR / OBLIGATIONS
The Contractor is solely responsible for fulfilling the Participating Addendum. The Contractor or the Contractor’s representative shall be the sole point of contact regarding all contractual matters.

The Contractor shall secure, at its own expense, all personnel required to perform the services under the Participating Addendum. The personnel the Contractor uses to fulfill the Participating Addendum shall have no contractual or other legal relationship with the State; they shall not be considered employees of the State and shall not be entitled to any compensation, rights or benefits from the State, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, severance pay, or retirement benefits.

With respect to its employees, the Contractor agrees to be solely responsible for the following:

- Any and all pay, benefits, and employment taxes and/or other payroll withholding;
- Any and all vehicles used by the Contractor’s employees, including all insurance required by state law;
- Damages incurred by Contractor’s employees within the scope of their duties under the Participating Addendum;
- Maintaining Workers’ Compensation and health insurance that complies with state and federal law and submitting any reports on such insurance to the extent required by governing law;
- Determining the hours to be worked and the duties to be performed by the Contractor’s employees; and,
- All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination alleged against the Contractor, its officers, agents, or subcontractors or subcontractor’s employees).

The State reserves the right to require the Contractor to reassign or remove from the project any Contractor or Subcontractor employee.

B. INSURANCE REQUIREMENTS
WORKERS’ COMPENSATION INSURANCE
The Contractor shall take out and maintain during the life of this contract the statutory Workers’ Compensation and Employer’s Liability Insurance for all of the contractors’ employees to be engaged in work on the project under this contract and, in case any such work is sublet, the Contractor shall require the Subcontractor similarly to provide Worker’s Compensation and Employer’s Liability Insurance for all of the Subcontractor’s employees to be engaged in such work. This policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including Occupational Disease. The policy shall include a waiver of subrogation in favor of the State. The COI shall contain the mandatory COI subrogation waiver language found hereinafter. The amounts of such insurance shall not be less than the limits stated hereinafter. For employees working in the State, the policy must be written by an entity authorized by the State of Nebraska Department of Insurance to write Workers’ Compensation and Employer’s Liability Insurance for Nebraska employees.

<table>
<thead>
<tr>
<th>MANDATORY COI SUBROGATION WAIVER LANGUAGE</th>
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<tr>
<td>&quot;Workers’ Compensation policy shall include a waiver of subrogation in favor of the State of Nebraska.&quot;</td>
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If the mandatory COI subrogation waiver language states that the waiver is subject to, condition upon, or otherwise limit by the insurance policy a copy of the relevant sections of the policy must be submitted with the COI so the State can review the limitations imposed by the insurance policy.

EVIDENCE OF COVERAGE
The Contractor shall furnish the State, prior to beginning work, a certificate of insurance coverage complying with the above requirements to the attention of:

Julie Dabydeen
1526 K Street, Suite 130
Lincoln, NE 68508

These certificates or the cover sheet shall reference the Participating Addendum number, and the certificates shall include the name of the company, policy numbers, effective dates, dates of expiration, and amounts and types of coverage afforded. If the State is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall be responsible for all reasonable costs properly attributable thereto.
Reasonable notice of cancellation of any required insurance policy must be submitted to Administrative Services State Purchasing Bureau when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

C. ANTITRUST
The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

D. CONFLICT OF INTEREST
The Contractor certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the delivery of its goods hereunder or which creates an actual or an appearance of conflict of interest.

The Contractor certifies that it will not employ any individual known by Contractor to have a conflict of interest.

E. SITE RULES AND REGULATIONS
The Contractor shall use its best efforts to ensure that its employees, agents, and Subcontractors comply with site rules and regulations while on State premises. If the Contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to in writing between the State and the Contractor.

1. GENERAL SECURITY CONCERNs/SITE RULES and REGULATIONS
Vendor’s delivery personnel will abide in general by all using agency and facility delivery location requirements, including driver and/or delivery personnel carrying proper identification upon their person. Delivery personnel shall comply with all Department of Correctional Services (NDCS) and Department of Health and Human Services (DHHS) and Nebraska Department of Veterans Affairs (NDVA) rules and regulations related to delivery security.

Contraband shall not be introduced into any state facility; such items include but are not limited to firearms, ammunition, drugs, tobacco, alcohol, etc. Vehicles, drivers and other delivery personnel may be subject to search upon entering and exiting facility grounds.

2. AGENCY SPECIFIC SECURITY REQUIREMENTS:
DEPARTMENT OF CORRECTIONAL SERVICES (NDCS) SECURITY and TOBACCO POLICY
The Contractor and all Contractors’ employees shall abide by security requirements of the Department of Correctional Services necessary for the safety, security, and good order of the facility in the performance of duties. These include, but are not limited to appropriate dress, conduct, and the confidentiality of inmates/personnel encountered during the performance of the Contract.

Contractor shall make his/her employees aware of the provisions §28-322.01 of the State of Nebraska Revised Statutes that states it shall be a felony for individuals working for or under contract to the Department of Correctional Services to engage in sexual contact or relations with an inmate or parolee within the State correctional system, and that no inmate nor parolee is legally capable of giving consent to any such relationship.

Contractor’s personnel shall be subject to departmental security checks prior to their arrival on site, and will carry proper identification with them at all times while on facility grounds.

Contractor shall inform his/her personnel of the Nebraska Department of Correctional Services Tobacco Policy, which states that tobacco and tobacco-related products are contraband and must not be carried into any NDCS-owned or controlled property. Such products must remain in Contractor’s locked vehicle while on NDCS-owned or controlled property.

Contractor’s personnel shall be aware that they, their vehicles and items being delivered may be subject to searches upon entering and leaving each facility. Cell phones, pagers and any other item as dictated by the safety, security and good order of the facility will be left with the officer processing the vehicle and will not be allowed into secure institutions. Contractor’s personnel should be aware that these checks upon entry and exit can take time, depending upon availability of NDCS staff to provide such checks.

The Department of Correctional Services may require the successful completion of a background check on all employees at any facility maintained by the Department of Correctional Services.
3. **AGENCY SPECIFIC SECURITY REQUIREMENTS: DEPARTMENT OF HEALTH AND HUMAN SERVICES & DEPARTMENT OF VETERANS’ AFFAIRS**

Contractors are prohibited from using or distributing tobacco materials anywhere on facility campuses/grounds. This No-Tobacco Policy applies seven (7) days a week, 24 hours a day. Tobacco materials may include, but are not limited to, cigarettes, pipes, pipe tobacco, tobacco substitutes, electronic cigarettes, chewing tobacco, cigars, matches, clove cigarettes, cigarette lighters, and other smoking and tobacco-related paraphernalia.

**F. ADVERTISING**

The Contractor agrees not to refer to the contract award in advertising in such a manner as to state or imply that the company or its goods are endorsed or preferred by the State. Any publicity releases pertaining to the project shall not be issued without prior written approval from the State.

**G. DISASTER RECOVERY/BACK UP PLAN**

The Contractor shall have a disaster recovery and back-up plan, of which a copy should be provided upon request to the State, which includes, but is not limited to equipment, personnel, facilities, and transportation, in order to continue delivery of goods as specified under the specifications in the contract in the event of a disaster.

**H. DRUG POLICY**

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.
III. PAYMENT

A. PROHIBITION AGAINST ADVANCE PAYMENT
Neb. Rev. Stat. §§ 73-501 through 73-509 states, "... payments shall not be made until contractual deliverable(s) are received and accepted by the State".

B. TAXES
The State is not required to pay taxes and assumes no such liability as a result of this solicitation. The Contractor may request a copy of the Nebraska Department of Revenue, Nebraska Resale or Exempt Sale Certificate for Sales Tax Exemption, Form 13 for their records. Any property tax payable on the Contractor's equipment which may be installed in a state-owned facility is the responsibility of the Contractor.

C. INVOICES
Invoices for payments must be submitted by the Contractor to the agency requesting the services with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

D. INSPECTION AND APPROVAL
Final inspection and approval of all work required under the contract shall be performed by the designated State officials.

E. PAYMENT (Statutory)
State will render payment to Contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the State. (Neb. Rev. Stat. Section § 73-506(1)). The State may require the Contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.

F. LATE PAYMENT (Statutory)
The Contractor may charge the responsible agency interest for late payment in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §§ 81-2401 through 81-2408).

G. SUBJECT TO FUNDING / FUNDING OUT CLAUSE FOR LOSS OF APPROPRIATIONS (Statutory)
The State's obligation to pay amounts due on the Contract for a fiscal years following the current fiscal year is contingent upon legislative appropriation of funds. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal year(s) for which such funds are not appropriated. The State will give the Contractor written notice thirty (30) calendar days prior to the effective date of termination. All obligations of the State to make payments after the termination date will cease. The Contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the Contractor be paid for a loss of anticipated profit.

H. RIGHT TO AUDIT (First Paragraph is Statutory)
The State may audit and the Contractor shall maintain the information during the term of the contract and for a period of five (5) years after the completion of this contract or until all issues or litigation are resolved, whichever is later. The Contractor shall make the Information available to the State at Contractor's place of business or a location acceptable to both Parties during normal business hours. If this is not practical or the Contractor so elects, the Contractor may provide electronic or paper copies of the Information. The State reserves the right to examine, make copies of, and take notes on any Information relevant to this contract, regardless of the form or the Information, how it is stored, or who possesses the Information. In no circumstances will contractor be required to create or maintain documents not kept in the ordinary course of contractor's business operations, nor will contractor be required to disclose any information, including but not limited to product cost data, which is confidential or proprietary to contractor.

I. ADMINISTRATIVE FEE/REBATE
The Contractor agrees to provide a quarterly administrative fee in the form of a check. The fee will be payable to the State for an amount equal to one percent (1%) of the net sales (net of any returns, credits, or adjustments) under the contract for each period as shown below. The Contractor's pricing to the State shall not be adjusted to offset for the equivalent fee amount. Payments shall be made in accordance with following schedule:

<table>
<thead>
<tr>
<th>Period Ending</th>
<th>Fee Due</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

9
December 31  January 31
March 31  April 30
June 30  July 31
September 30  October 31

The Contractor agrees to provide a quarterly utilization report, reflecting new sales to the State during the associated fee period. The report shall be in the format developed by the Lead State and as agreed to by the Contractor. The report will be provided in secure electronic format and/or submitted electronically to the State contact listed in the Addendum.

J. REPORTS
The Contractor agrees to provide a quarterly utilization report, reflecting new sales to the State during the associated quarterly period, less any credits. The report will be provided in secure electronic format and/or submitted electronically to the State as listed below. The reports shall contain at a minimum the following information pertaining to State of Nebraska agencies, boards, commissions, and political subdivisions utilization:

Ordering Entity
Purchase order number;
Description;
Quantity; and
Price.

These reports will be provided in Excel format and sent via email on a quarterly basis as follows:

<table>
<thead>
<tr>
<th>Period End</th>
<th>Report Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 31</td>
<td>January 31</td>
</tr>
<tr>
<td>March 31</td>
<td>April 30</td>
</tr>
<tr>
<td>June 30</td>
<td>July 31</td>
</tr>
<tr>
<td>September 30</td>
<td>October 31</td>
</tr>
</tbody>
</table>

Reports shall be sent to: as.materielpurchasing@nebraska.gov, to the attention of the Participating Entity’s primary contact. Please include the contract number, 15060 OC in the subject line of the e-mail.

Should the contractor consider any portion of any requested reports proprietary in nature, the Contractor shall identify such upon submission of said reports.

K. ADMINISTRATIVE FEE/REBATE REMITTANCE LOCATION
All Administrative Fees/Rebates will be sent to the following address:

State Purchasing Bureau
c/o Central Finance, Administrative Services
1526 K Street, Suite 240
Lincoln, NE  68508

OR
Contact the Nebraska State Treasurer’s Office to set up electronic funds transfer.
Below is the address:
State Capitol, Room 2005
PO Box 94788
Lincoln, NE 78509-4788
Phone (402) 471-2455
IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

<table>
<thead>
<tr>
<th>Participating Entity:</th>
<th>Contractor: The Multi-Unit Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature:</td>
<td>Signature:</td>
</tr>
<tr>
<td></td>
<td>Jessica Moore</td>
</tr>
<tr>
<td>Name:</td>
<td>Name:</td>
</tr>
<tr>
<td>David Zwart</td>
<td>Jessica Moore</td>
</tr>
<tr>
<td>Title:</td>
<td>Title:</td>
</tr>
<tr>
<td>Materiel Administrator</td>
<td>Director of Business Dev.</td>
</tr>
<tr>
<td>Date:</td>
<td>Date:</td>
</tr>
<tr>
<td>11/13/18</td>
<td>11/16/18</td>
</tr>
</tbody>
</table>
15060 OC, Multi-Unit Group: Contract Instructions

Description

Contract Summary
This is a Statewide Contract in participation with (Sourcewell) Cooperative Contract for the purchase of Food Products and Distribution with Related Equipment, Supplies and Services.

- CWD is a Nebraska Company and employer providing products and services
- CWD offers an extensive breadth of 25,000-line items in our inventory
- CWD has a large selection of product categories including foodservice, fresh and frozen, meats and produce, dairy, supplies-disposables, chemicals-cleaning and sanitation, retail grocery products, beverage and healthcare products.
- Services include certified dietitians and nutritional analysis, certified food safety instructor, corporate chef, beverage and chemical specialists, equipment and design specialists, marketing, merchandizing, graphic design department.

Contract Manager/Email
julie.dabydeen@nebraska.gov

Order Instructions

1. **Request a Quote:**
   By utilizing the CWD online Portal order entry system our 25,000 stocked items can be accessed 24/7. For quotes on medium and large equipment we engage our equipment specialists, they use auto-quotes program that outlines the precise specifications of equipment with pricing. These quotes are typically replied within 1 day of the request. For non-stock foodservice and retail products Bob Kruse your CWD contact can respond to your needs with pricing and eta for the special orders.

2. **Purchase Orders:**
   The preferred method is online through our Portal internet ordering program or our mobile app. Our online ordering system provides a space online to input the purchase order number for your reference which will appear on your invoice.
   CWD does have available E-mail, fax, or phone call purchase order submission. This is coordinated by your CWD assigned customer service representative.

3. **Online Accounts:**
   Online accounts are currently set up in the CWD system. If a new account set up is needed, a request would be submitted to Bob Kruse who coordinates the new online account set up. Typically, new online accounts are completed within 3 business days.

4. **List of distributors:** Cash-Wa Distributing (CWD)

5. **Additional ways to procure:** In addition to delivery by our modern fleet of tractor/trailers product can be picked up at the CWD Will-Call located at our distribution Center 401 W 4th Street, Kearney NE or at CWD Lincoln NE Will Call located at 5905 W O St.
Contract pricing is conducted by our contract compliance team. This team of experienced professionals assure pricing accuracy on our entire catalog of products at the contracted margin rate. All products are loaded into our pricing system and monitored by the assigned contract compliance associate and is overseen by our Contract Compliance Manager.

Vendor Contact information

➢ Supplier Contact: Bob Kruse
   Contact title: Director of Multi-Unit Accounts
   Phone: 1-800-652-0010 Ext 4219
   Email: bob.kruse@cashwa.com
FORM E
CONTRACT ACCEPTANCE AND AWARD

(Top portion of this form will be completed by NJPA if the vendor is awarded a contract. The vendor should complete the vendor authorized signatures as part of the RFP response.)

NJPA Contract #: 112917-MUG

Proposer's full legal name: The Multi-Unit Group

Based on NJPA's evaluation of your proposal, you have been awarded a contract. As an awarded vendor, you agree to provide the products and services contained in your proposal and to meet all of the terms and conditions set forth in this RFP, in any amendments to this RFP, and in any exceptions that are accepted by NJPA.

The effective date of the Contract will be January 22, 2018 and will expire on January 22, 2022 (no later than the later of four years from the expiration date of the currently awarded contract or four years from the date that the NJPA Chief Procurement Officer awards the Contract). This Contract may be extended for a fifth year at NJPA's discretion.

NJPA Authorized Signatures:

Jeremy Schwartz
(NAME PRINTED OR TYPED)

Chad Coauette
(NAME PRINTED OR TYPED)

Awarded on January 16, 2018

NJPA Contract # 112917-MUG

Vendor Authorized Signatures:

The Vendor hereby accepts this Contract award, including all accepted exceptions and amendments.

Vendor Name THE MULTI-UNIT GROUP

Authorized Signatory's Title PRESIDENT

Spencer H. Peterson
VENDOR AUTHORIZED SIGNATURE

Spencer H. Peterson
(NAME PRINTED OR TYPED)

Executed on JAN. 18, 2018

NJPA Contract # 112917-MUG
Company Name: The Multi-Unit Group

Any exceptions to the terms, conditions, specifications, or proposal forms contained in this RFP must be noted in writing and included with the Proposer’s response. The Proposer acknowledges that the exceptions listed may or may not be accepted by NJPA or included in the final contract. NJPA will make reasonable efforts to accommodate the listed exceptions and may clarify the exceptions in the appropriate section below.

<table>
<thead>
<tr>
<th>Section/Page</th>
<th>Term, Condition, or Specification</th>
<th>Exception</th>
<th>NJPA Accepts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No exceptions</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Proposer’s Signature: [Signature]
Date: 12/6/17

NJPA’s clarification on exceptions listed above:

Review and Approved:
NJPA Legal Department
FORM D

**Contract Award**
RFP #112917

**Formal Offering of Proposal**
(To be completed only by the Proposer)

**FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES**

In compliance with the Request for Proposal (RFP) for FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES, the undersigned warrants that the Proposer has examined this RFP and, being familiar with all of the instructions, terms and conditions, general and technical specifications, sales and service expectations, and any special terms, agrees to furnish the defined products and related services in full compliance with all terms and conditions of this RFP, any applicable amendments of this RFP, and all Proposer’s response documentation. The Proposer further understands that it accepts the full responsibility as the sole source of solutions proposed in this RFP response and that the Proposer accepts responsibility for any subcontractors used to fulfill this proposal.

Company Name: **The Multi-Unit Group**
Date: 12/6/17

Company Address: 2800 Cumberland Pkwy

City: **Atlanta**
State: **GA**
Zip: 30337

Contact Person: **Jessica Moore**
Title: **Director, Business Development**

Authorized Signature: **Jessica W Moore**

(Name printed or typed)
Form F

PROPOSER ASSURANCE OF COMPLIANCE

Proposal Affidavit Signature Page

PROPOSER'S AFFIDAVIT

The undersigned, authorized representative of the entity submitting the foregoing proposal (the "Proposer"), swears that the following statements are true to the best of his or her knowledge.

1. The Proposer is submitting its proposal under its true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, the Proposer possesses, or will possess before delivering any products and related services, all applicable licenses necessary for such delivery to NJPA members agencies. The undersigned affirms that he or she is authorized to act on behalf of, and to legally bind the Proposer to the terms in this Contract.

2. The Proposer, or any person representing the Proposer, has not directly or indirectly entered into any agreement or arrangement with any other vendor or supplier, any official or employee of NJPA, or any person, firm, or corporation under contract with NJPA, in an effort to influence the pricing, terms, or conditions relating to this RFP in any way that adversely affects the free and open competition for a Contract award under this RFP.

3. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request, and other documents in this solicitation and affirms that any and all exceptions have been noted in writing and have been included with the Proposer’s RFP response.

4. The Proposer will, if awarded a Contract, provide to NJPA Members the products and services in accordance with the terms, conditions, and scope of this RFP, with the Proposer-offered specifications, and with the other documents in this solicitation.

5. The Proposer agrees to deliver products and services through valid contracts, purchase orders, or means that are acceptable to NJPA Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to NJPA Members under an awarded Contract.

6. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.

7. The Proposer understands that NJPA will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statute §13.591, Subd. 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals generally become public data. Minnesota Statute §13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota’s Data Practices Act.

8. The Proposer understands that it is the Proposer’s duty to protect information that it considers nonpublic, and it agrees to defend and indemnify NJPA for reasonable measures that NJPA takes to uphold such a data designation.

[The rest of this page has been left intentionally blank. Signature page below]
By signing below, Proposer is acknowledging that he or she has read, understands, and agrees to comply with the terms and conditions specified above.

**Company Name:** The Mult-unit Group

**Address:** 2500 Cumberland Pkwy

**City/State/Zip:** Atlanta, GA 30339

**Telephone Number:** (770) 299-7499

**E-mail Address:** jessica@mult-unit.com

**Authorized Signature:**

**Authorized Name (printed):** Jessica Moore

**Title:** Director, Business Development

**Date:** 12/10/17

**Notarized**

Subscribed and sworn to before me this 6th day of December, 2017

Notary Public in and for the County of Cobb State of Georgia

My commission expires: 4-17-18

Signature: Rebecca L. Guhl

Rebecca L. Guhl, Notary Public
Cobb County, Georgia
My Commission Expires
April 17, 2018
Form P

PROPOSER QUESTIONNAIRE
Payment Terms, Warranty, Products and Services, Pricing and Delivery, and Industry-Specific Questions

Proposer Name: The Multi-Unit Group

Questionnaire completed by: Jessica Moore, Director of Business Development
Rebekah DeJarlais, K12 Specialist

Payment Terms and Financing Options

1) What are your payment terms (e.g., net 10, net 30)? The Multi-Unit Group has payment terms of Net 30.

2) Do you provide leasing or financing options, especially those options that schools and governmental entities may need to use in order to make certain acquisitions? At this time, the Multi-Unit Group does not have any leasing or financing options.

3) Briefly describe your proposed order process. Please include enough detail to support your ability to report quarterly sales to NJPA. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the NJPA Members’ purchase orders.

   The Multi-Unit Group distributors offer web-based order entry systems for NJPA members to use for order processing and reporting on multiple data points. Each distributor will process orders for the NJPA members it serves.

   At a higher level, the Multi-Unit Group has a consolidated, web-based reporting system that will provide NJPA the necessary tools for various analyses and sales tracking, both in totality and individually by distributor. Comprehensive training will be provided.

4) Do you accept the P-card procurement and payment process? If so, is there any additional cost to NJPA Members for using this process?

   Due to the low-cost structure of our program, we will be unable to accept this method of payment.

Warranty

5) Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may include in your response a copy of your warranties, but at a minimum please also answer the following questions.

   Our Agreement will state,

   "Seller represents and warrants to Buyer that Seller will not adulterate or misbrand any Products as prohibited by the Federal Food, Drug, and Cosmetic Act ("FDA") and Seller will store and transport the Products in full compliance with all applicable federal, state and local statutes, rules and regulations. Seller undertakes its reasonable best efforts to ensure that Seller is supplied with beef, pork, and poultry products from processors under inspection from the USDA and demand that such processors meet appropriate quality and yield grading requirements set forth by the USDA. Other than the warranties expressly provided herein, the seller makes no other warranties with respect to the products and explicitly disclaim all other warranties, express or implied, including the implied
warranties of merchantability and fitness for a particular purpose. The Sellers’ sole obligation is limited to replacing defective goods; provided however, that Buyer shall assume all risk of loss of such refunded Products until actual receipt by a Seller. Seller’s obligations under this warranty shall not extend to Products subjected to misuse, abuse, neglect, accident, incorrect handling, or goods which have been altered or adulterated by Buyer. Buyer will inform Seller in writing of any claim which Buyer has within thirty (30) days after Buyer learns, or should have reasonably learned, of the claim, or the claim is waived.”

- Do your warranties cover all products, parts, and labor? Our warranties covers the negligent mishandling of products while in the Seller’s control. The manufacturer assumes liability on product quality and any manufacturing/packing issues.
- Do your warranties impose usage restrictions or other limitations that adversely affect coverage? Our warranties only require that Buyers handle and store products in the appropriate manner until actual receipt by a Seller.
- Do your warranties cover the expense of technicians’ travel time and mileage to perform warranty repairs? Warranty repairs will only apply whenever a distributor provides equipment, and will be covered individually between the involved parties.
- Are there any geographic regions of the United States for which you cannot provide a certified technician to perform warranty repairs? How will NJPA Members in these regions be provided service for warranty repair? Repair of equipment will be offered anywhere that equipment is made available, or the school will be informed of any limitations at the time of order.
- Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer? Any items offered during our contract period will be warranted by the original manufacturer unless stated otherwise.
- What are your proposed exchange and return programs and policies? Products, except special orders, can be returned if they are unopened and in resalable condition. Requests should be submitted within 24 hours of delivery, unless they are presented with concealed damage or are a manufacturer’s mispack.

6) Describe any service contract options for the items included in your proposal. Individual distributors may offer beverage and/or chemical programs and can be pursued on a case-by-case basis.

**Pricing, Delivery, Audits, and Administrative Fee**

7) Provide a general narrative description of the equipment/products and related services you are offering in your proposal.

Our proposal encompasses all foodservice products, as listed below, and the delivery thereof:

- Grocery, Dry, Refrigerated, and Frozen
- Meats, Seafood, and Poultry
- Paper and Disposables
- Small Wares
- Dairy Products
- Produce
- Beverage
- Chemical and Janitorial

In addition, we offer an exclusive partnership with NutriStudents K-12®, and administrative support of the Multi-Unit Group and its value-added services.

8) Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the NJPA discounted price) on all of the items that you want NJPA to consider
as part of your RFP response. Provide a SKU for each item in your proposal. (Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract. See the body of the RFP and the Price and Product Change Request Form for more detail.)

Our pricing model for K-12 business is based upon a fee-per-case determined by the delivery size, with a ceiling price applied. All Multi-Unit Group distributors will provide weekly pricing including the SKU numbers assigned to various products in each region. In addition to volume discounts, we also drive value by offering product rebates, bookings, and manufacturer discounts resulting from our collaboration with our suppliers. Multi-Unit Group has a focus on brand-name products that are at the highest tier for school specifications. All distributors will provide weekly pricing to our members.

**K-12 Pricing**

Also see attachment "7 - K12 Pricing"

<table>
<thead>
<tr>
<th>Case Drop</th>
<th>Range per Drop</th>
<th>Fixed Fee per Case</th>
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</thead>
<tbody>
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<tr>
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<td>$0.58</td>
</tr>
</tbody>
</table>
The Multi-Unit Group is also offering non-K12 pricing for other members.

**Non-K-12 Pricing**

<table>
<thead>
<tr>
<th>Number of Cases</th>
<th>Margin%</th>
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<td>40-64</td>
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<td>65-105</td>
<td>10.0%</td>
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<td>105+</td>
<td>8.0%</td>
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*No deliveries under 40 cases

**Out to 250 miles**
No mileage delivery fee

**251 to 300 miles**
Mileage delivery fee $71.50

**301 to 350 miles**
Mileage delivery fee $143.00

*Margin category will be reviewed quarterly*
9) Please quantify the discount range presented in this response. For example, indicate that the pricing in your response represents a 50% percent discount from the MSRP or your published list.

   The Multi-Unit Group is a whole sale distribution network and therefore we do not have any MSRP listings.

10) The pricing offered in this proposal is

        a. the same as the Proposer typically offers to an individual municipality, university, or school district.

        b. the same as the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.

              x  c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.

        d. other than what the Proposer typically offers (please describe).

11) Describe any quantity or volume discounts or rebate programs that you offer.

   The Multi-Unit Group offers quantity discounts based on the number of cases purchased. The more volume purchased, the lower the fixed fee will be for the member. We closely track and maintain manufacturer rebates to offer additional value to our customers.

12) Propose a method of facilitating "sourced" products or related services, which may be referred to as "open market" items or "nonstandard options". For example, you may supply such items "at cost" or "at cost plus a percentage," or you may supply a quote for each such request.

   All Multi-Unit Group distributors will provide weekly pricing. Distributor/SKU numbers will be assigned to each product specific to the region.

13) Identify any total cost of acquisition costs that are NOT included in the pricing submitted with your response. This cost includes all additional charges that are not directly identified as freight or shipping charges. For example, list costs for items like installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.

   The Multi-Unit Group does not have any costs to identify. Our pricing model is very transparent and easy to understand.

14) If delivery or shipping is an additional cost to the NJPA Member, describe in detail the complete shipping and delivery program.

   The Multi-Unit Group does not have any additional cost to NJPA members for standard shipping and deliveries.

15) Specifically describe those shipping and delivery programs for Alaska, Hawaii, Canada, or any offshore delivery.

   While there are no specific shipping and delivery programs that apply to NJPA members in Hawaii, Alaska, or other U.S. Territories, defined costs may vary due to fluctuations in continental tariffs. These would be handled on an individual basis for NJPA members by distributors in that region.

16) Describe any unique distribution and/or delivery methods or options offered in your proposal.

   Our uniqueness is our impeccable service. Every member will be partnering with the local, independent distributor within the area, whose reputation within the community is vital to their success. Our family owned, and operated businesses are flexible, service-oriented, and have decision makers on site.

17) Please specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with NJPA. This process includes ensuring that NJPA Members obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to NJPA.
The Multi-Unit Group has a web-based reporting system that has a price verification feature allowing the Multi-Unit Group staff, or the customer, to verify pricing by item. Regularly scheduled business reviews, inclusive of detailed analyses, measure performance on behalf of both parties.

18) Identify a proposed administrative fee that you will pay to NJPA for facilitating, managing, and promoting the NJPA Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor’s sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member’s cost of goods. (See RFP Section 6.29 and following for details.)

We are currently submitting $.05 per case to NJPA as an administrative fee and suggest that we continue this into our next contract.

Industry-Specific Questions

19) Describe your company’s experience with multi-unit customers including K-12 schools.

Multi-unit customers ARE our business! With vast experience in restaurants, health care, K-12 schools and B&I, we understand the needs and desires of the multi-unit customer, and we know how to satisfy those needs. We understand the hardships big, medium, and small districts deal with on a daily basis and we strive to be the easiest supplier to work with. We stay on top of current, and ever-changing, requirements in the National School Lunch/Breakfast Program, USDA procurement process, USDA commodities, Buy American Act, and much more. We maintain our industry partnerships with K-12 brokers and manufacturers to be notified of new offerings, limited-time offers, and any potential production issues. We are always looking for ways to educate our customers to help them succeed! As we mentioned, we have a large market share of K-12 business in the United States.

20) Describe how your company proposes to distribute products.

NJPA members’ products will be stocked and delivered by their local Multi-Unit Group distributor, from their respective warehouses across the country, in compliance with the partnership agreement.

21) Provide the number and locations of your company’s distribution facilities/warehouses.

The following are full Multi-Unit Group Members:

- Avalon Foodservice, Inc.
- Bassham Foods
- Brown Foodservice
- Cash-Wa Distributing Co.
- Cheney Brothers, Inc.
- DiCarlo Distributors, Inc.
- Feesers, Inc.
- FoodPRO
- Harbor Wholesale Foods
- Jake’s, Inc.
- Renzi Foodservice
- SGC Foodservice
- Tapia Brothers
- Thurston Foods, Inc.
- Upper Lakes Foods, Inc.
- Van Eerden Distribution Company

Canal Fulton, OH
Fort Worth, TX
Louisa, KY
Kearney, NE
Riviera Beach, FL
Holtsville, NY
Harrisburg, PA
Frederick, MD
Lacey, WA
Houston, TX
Watertown, NY
Springfield, MO
Maywood, CA
Wallingford, CT
Cloquet, MN
Grand Rapids, MI

An additional 500 UniPro members and other distribution companies serve as affiliates as needed.
22) Identify all other companies that will be involved in processing, handling or shipping the products to the end user.
   An additional 500 UniPro members and other distribution companies serve as affiliates as needed.
23) Demonstrate the ability of your fleet to handle distribution.
   Our membership currently has approximately 1,336 trucks, which is an extensive fleet to meet the needs of NJPA members. Additional trucks will be available if and when UniPro affiliates are engaged to meet the needs of NJPA members.
24) Describe how your company will handle a member that already has manufacturer agreements in place.
   The Multi-Unit Group will honor the manufacturers agreements and apply the agreed upon mark-up to the contracted prices provided the contracts are assigned to Multi-Unit Group and the manufacturer will allow the distributors to bill back.
25) Detail your out-of-stock/backorder and product substitution policies.
   If a product is out of stock, we will notify the facility and give them the option of a suitable substitution. Given the timeliness of food orders and the need for specific ingredients, products are not back-ordered and need to be added to the next order. If there is a critical need, we will make every effort to re-deliver the products in an expedited manner.
26) Describe your recall policies and processes.
   In the event of a product recall, the following procedures have been established to assure that the Multi-Unit Group and customers are notified in a proficient and timely manner.

**Supplier Responsibilities**

- Supplier initiates recall or market withdrawal with notice to
  - All UniPro/Multi-Unit Group distributors directly

**Distributor Responsibilities**

- Distributor notified of a recall by a Supplier must contact
  - The Multi-Unit Group
- Individual customer locations within four (4) hours
- Notify suppliers when ALL recall requirements have been completed

**The Multi-Unit Group**

- The Multi-Unit Group notified of a recall by
  - Distributor(s)
  - Food Tracks
  - USDA website (via alert)
  - FSIS website (via alert)
- E-mails ALL Distributors servicing a Multi-Unit account requesting information within 4 hours of specific products delivered to all customers’ locations
- 1. Distributor contacts notified
- Recall Contacts
- Multi-Unit Group Account Executive
- E-mails customer’s corporate office notifying of the recall
- E-mails customer’s with the identification of locations receiving product OR that no product was distributed
- Recaps status daily to customers until recall is complete
Distributors Servicing Multi-Unit Group Accounts

- Distributors respond to Multi-Unit Group request within four (4) hours of notification
- Carry out recall strategy with individual units as directed by supplier
- Each distributor reports status to Multi-Unit Group daily until recall is complete
- Notify suppliers when ALL recall requirements have been completed

Customers

- Confirms receipt of Recall Notification via e-mail to MUGRecall@unprofoodservice.com
- Corporate office notifies individual locations
- Customers’ units respond directly to servicing Distributors to carry out manufacturer’s instructions for disposition
- Corporate office notifies Multi-Unit Group of any issues

27) Describe how your company will handle special order products.
   Special orders are ordered by the customer and given to the sales representatives. Sales submits these special orders with the purchasing team and they are procured on the next scheduled ordering date. Due to the subjective times of entering special orders, the lead time can vary between 4-6 weeks. Once they arrive in a distribution house, we then include in the customer’s next delivery. Generally, special orders cannot be returned, but if one is returned, the customer will incur a restocking fee from the manufacturer.

28) Describe your company’s position on fuel surcharges.
   Given current conditions, we are not applying a fuel surcharge. However, we would like to leave this open for discussions should the current conditions change.

29) State your fill rate for products.
   The overall fill rate for the Multi-Unit Group is 98.9%

30) Describe the beverage dispensing services at your company. What vendors are you aligned with? Who provides maintenance? Are there any additional costs to members?
   The beverage dispensing services will vary by distributor. For instance, some distributors have their own service department and will build the cost into the pricing. If the distributor does not have their own service department, the cost will be separate, and the district will be responsible.

31) Describe your company’s capabilities with fresh produce. How are local produce sources identified?
   The Multi-Unit Group has several opportunities with fresh produce vendors. Local produce sources are identified as vendors who are in a 350-mile radius of the distribution center. We work with local vendors to procure produce for our Farm to School program. We start near the end of the school year and provide a list of locally sourced produce offerings for the fall. We then setup a booking to allow the local farms to plan ahead for this program. This is a win for everyone involved!

32) Describe how K-12 members will access nutritional and product information in an electronic and searchable format.
   The Multi-Unit Group distributors have online ordering systems that allow K-12 customers access to nutritional information along with the product information. If they are in need of further information, they can contact customer service representatives, account executives, and K12 specialists, who are all available to assist.

33) Describe your company’s ability track and accommodate pick up, warehousing and delivery of USDA Foods.
   The Multi-Unit Group distributors have very similar processes on tracking, picking up, warehousing, and delivery of USDA Foods. For example, the distributor places an order with the USDA-appointed cold-storage facility for the USDA-donated foods that become available. The cold-storage facility creates a PO and a dock appointment for the distributor to schedule a pickup of the USDA product. The USDA-donated foods are then either brought back to the distributor's warehouse or delivered directly to a school
customer. This may vary depending on the size of the order and the trucking capabilities. If delivered directly to a school, the school receives an invoice from the distributor for the shipping and handling fee as well as cold-storage fees. When the USDA-donated foods are received at the distributor’s warehouse, the product is counted to verify correct quantity and inspected for damage. The USDA-donated foods are assigned a specific SKU stock number and placed in an allocated bin location. The night before the scheduled delivery to a sponsor, the product is pulled from the warehouse and loaded in a delivery truck for delivery the next day. The customer receives an invoice from the distributor for the shipping and handling fee as well as the cold-storage charges.

34) Describe the electronic ordering and reporting systems available to members.

Each Multi-Unit Group distributor uses powerful ecommerce technology to help customers find products, nutritionals, pictures, FAQs, support videos, and more to assist with their buying decisions. They can find prices, new products, and order information at their fingertips 24/7, and search the product catalog to locate any product quicker and easier.

Members have access to online reporting for velocity reports, past order history, and credit/invoice information.

Our partner, NutriStudents K-12® incorporates extensive web analytics as well as proven online and SEO tactics into its online and expanding social media presence to reach and nurture key demographics for optimal lead generation and conversion.

The NutriStudents K-12® proprietary Product Order Guide allows school foodservice directors to place complete distributor orders in a few clicks. They simply choose their NutriStudents K-12® menu week, enter the number of students who participate in school lunch, and the system automatically populates their distributor order with appropriate products and quantities based on the ingredients needed for their chosen menu week.

35) Provide a market basket (in the following table format) of your most commonly purchased K-12 food products include SKU’s for each item, minimum 100 items, by case count. A spreadsheet template is attached to the forms package for your use.

See the attached market basket of Multi-Unit distributors in various regions.

- “8-ULF FINAL MB Food RFP”
- “9-Feesers FINAL MB Food RFP”
- “10-CWD FINAL MB Food RFP”
- “11-GoldStar FINAL MB Food RFP”

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<th>Vendor Product #</th>
<th>Product Description</th>
<th>MFR Name</th>
<th>MFR Product# (SKU)</th>
<th>Pack Size</th>
<th>Price</th>
<th>Comments</th>
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Signature: _______________________________ Date: ____________________________
30) Describe the beverage dispensing services at your company. What vendors are you aligned with? Who provides maintenance? Are there any additional costs to members?
31) Describe your company’s capabilities with fresh produce. How are local produce sources identified?
32) Describe how K-12 members will access nutritional and product information in an electronic and searchable format.
33) Describe your company’s ability to track and accommodate pick up, warehousing and delivery of USDA Foods.
34) Describe the electronic ordering and reporting systems available to members.
35) Provide a market basket (in the following table format) of your most commonly purchased K-12 food products include SKU’s for each item, minimum 100 items, by case count. A spreadsheet template is attached to the forms package for your use.

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Signature: [Signature]

Date: 12/10/17
National Joint Powers Alliance®

REQUEST FOR PROPOSAL

for the procurement of

FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES

RFP Opening

NOVEMBER 30, 2017

8:30 a.m. Central Time

At the offices of the

National Joint Powers Alliance®

202 12th Street Northeast, Staples, MN 56479

RFP #112917

The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential member agencies, which includes all governmental, higher education, K-12 education, not-for-profit, tribal government, and all other public agencies located in all fifty states, Canada, and internationally, issues this Request For Proposal (RFP) to result in a national and/or regional contract solution(s) for the procurement of #112917 FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES. Details of this RFP are available beginning October 12, 2017. Details may be obtained by letter of request to Chris Robinson, NJPA, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479, or by e-mail at RFP@njpacoop.org. Proposals will be received until November 29, 2017 at 4:30 p.m. Central Time at the above address and opened November 30, 2017 at 8:30 a.m. Central Time.

Direct questions regarding this RFP to: Chris Robinson at chris.robinson@njpacoop.org or (218) 895-4168.
TABLE OF CONTENTS

1. DEFINITIONS
   A. Contract
   B. Proposer
   C. Sourced Good of Open Market Item
   D. Vendor

2. ADVERTISEMENT OF RFP

3. INTRODUCTION
   A. About NJPA
   B. Joint Exercise of Powers Laws
   C. Why Respond to a National Cooperative Procurement Contract
   D. The Intent of This RFP
   E. Scope of This RFP
   F. Expectations for Equipment/Products and Services Being Proposed
   G. Solutions Based Solicitation

4. INSTRUCTIONS FOR PREPARING YOUR PROPOSAL
   A. Inquiry Period
   B. Pre-Proposal Conference
   C. Identification of Key Personnel
   D. Proposer’s Exceptions to Terms and Conditions
   E. Proposal Format
   F. Questions & Answers About This RFP
   G. Modification or Withdrawal of a Submitted Proposal
   H. Proposal Opening Procedure
   I. NJPA’s Rights Reserved

5. PRICING
   A. Line-Item Pricing
   B. Percentage Discount From Catalog or Category
   C. Cost Plus a Percentage of Cost
   D. Hot List Pricing
   E. Ceiling Price
   F. Fixed Fee Per Case Pricing
   G. Volume Price Discounts/Additional Quantities
   H. Total Cost of Acquisition
   I. Sourced Equipment/Products/Open Market Items
   J. Price and Product Changes
   K. Sales Tax
   L. Shipping

6. EVALUATION OF PROPOSALS
   A. Proposal Evaluation Process
   B. Proposer Responsiveness
   C. Proposal Evaluation Criteria
   D. Other Consideration
   E. Cost Comparison
   F. Marketing Plan
   G. Certificate Of Insurance
   H. Order Process and/or Funds Flow
   I. Administrative Fees
   J. Value Added
   K. Waiver of Formalities

7. POST AWARD OPERATING ISSUES
   A. Subsequent Agreements
   B. NJPA Member Sign-up Procedure
   C. Reporting of Sales Activity
   D. Audits
   E. Hub Partner
   F. Trade-Ins
   G. Out of Stock Notification
   H. Contract Termination for Cause and Without Cause

8. GENERAL TERMS AND CONDITIONS
   A. Advertising a Contract Resulting From This RFP
   B. Applicable Law
   C. Assignment of Contract
   D. List of Proposers
   E. Captions, Headings, and Illustrations
   F. Data Practices
   G. Entire Agreement
   H. Force Majeure
   I. Licenses
   J. Material Suppliers and Sub-Contractors
   K. Non-Wavier of Rights
   L. Protests of Awards Made
   M. Suspension or Disbarment Status
   N. Affirmative Action and Immigration Status Certification
   O. Severability
   P. Relationship of Parties
   Q. Provisions for Non-Federal Entity Procurements under Federal Awards or Other Awards

9. FORMS

10. PRE-SUBMISSION CHECKLIST

11. PRICE & PRODUCT CHANGE REQUEST FORM

12. APPENDIX A

13. APPENDIX B – HI, ID, UT, SC, OR, WA Political Subdivisions (SEPARATE ATTACHMENT)
1 DEFINITIONS

A. CONTRACT
Contract means this RFP, current pricing information, fully executed Forms C, D, F, & P from the Proposer’s response pursuant to this RFP, and a fully executed Form E (“Acceptance and Award”) with final terms and conditions. Form E will be executed after a formal award and will provide final clarification of terms and conditions of the award.

B. PROPOSER
A Proposer is a company, person, or entity delivering a timely response to this RFP. This RFP may also use the terms “respondent” or “proposed Vendor,” which is interchangeable with Proposer as the context allows.

C. SOURCED GOOD or OPEN MARKET ITEM
A Sourced Good or Open Market Item is a product within the RFP’s scope 1) that is not currently available under the Vendor’s NJPA contract, 2) that a member wants to buy under contract from an awarded Vendor, and 3) that is generally deemed incidental to the total transaction or purchase of contract items.

D. VENDOR
A Proposer whose response has been awarded a contract pursuant to this RFP.
2 ADVERTISEMENT OF RFP

2.1 NJPA advertises this solicitation: 1) in the hard copy print and online editions of the USA Today; 2) once each in Oregon’s Daily Journal of Commerce, South Carolina’s The State and Utah’s Salt Lake Tribune; 3) on NJPA’s website; and 4) on other third-party websites deemed appropriate by NJPA. Other third-party advertisers may include Onvia, PublicPurchase.com, MERX, and Biddingo.

2.2 NJPA also notifies and provides solicitation documentation to each state-level procurement departments for possible re-posting of the solicitation within their systems and at their option for future use and to meet specific state requirements.

3 INTRODUCTION

A. ABOUT NJPA

3.1 The National Joint Powers Alliance® (NJPA) is a public agency serving as a national municipal contracting agency established under the Service Cooperative statute by Minnesota Legislative Statute §123A.21 with the authority to develop and offer, among other services, cooperative procurement services to its membership. Eligible membership and participation includes states, cities, counties, all government agencies, both public and non-public educational agencies, colleges, universities and non-profit organizations.

3.2 Under the authority of Minnesota state laws and enabling legislation, NJPA facilitates a competitive solicitation and contracting process on behalf of the needs of itself and the needs of current and potential member agencies nationally. This process results in national procurement contracts with various Vendors of products/equipment and services which NJPA Member agencies desire to procure. These procurement contracts are created in compliance with applicable Minnesota Municipal Contracting Laws. A complete listing of NJPA cooperative procurement contracts can be found at www.njpacoop.org.

3.3 NJPA is a public agency governed by publicly elected officials that serve as the NJPA Board of Directors. NJPA’s Board of Directors oversees and authorizes the calls for all new proposals and holds those resulting Contracts for the benefit of its own and its Members use.

3.4 NJPA currently serves over 50,000 member agencies nationally. Both membership and utilization of NJPA contracts continue to expand, due in part to the increasing acceptance of Cooperative Purchasing throughout the government and education communities nationally.

3.5 NJPA is an intergovernmental entity comprised of member school districts and governments joining through an intergovernmental agreement. Membership eligibility is available for all public school districts and nonprofit schools through operation of an intergovernmental agreement at no cost. Member responsibilities and obligations are defined in the intergovernmental agreement. NJPA does not procure goods and services on behalf of its Membership. This solicitation and resulting awarded cooperative purchasing Contract(s) contain explicit language allowing eligible Members to “piggyback” of the terms and conditions of the agreement without creation of a material change. Procurements by NJPA Members are done directly from Vendors under the terms and conditions of this RFP and resulting awarded Contract(s).

B. JOINT EXERCISE OF POWERS LAWS

3.6 NJPA cooperatively shares those contracts with its Members nationwide through various Joint Exercise of Powers Laws or Cooperative Purchasing Statutes established in Minnesota, other states and Canadian provinces. The Minnesota Joint Exercise of Powers Law is Minnesota Statute §471.59 which states “Two or more governmental units…may jointly or cooperatively exercise any power common to the contracting parties…” This Minnesota Statute allows NJPA to serve Member agencies located in all other states.
C. WHY RESPOND TO A NATIONAL COOPERATIVE PROCUREMENT CONTRACT

3.7 National Cooperative Procurement Contracts create value for Municipal and Public Agencies, as well as for Vendors of products/equipment and services in a variety of ways:

3.7.1 National cooperative contracts potentially save time and effort for municipal and public agencies, who otherwise would have to solicit vendor responses to individual RFPs, resulting in individual contracts, to meet the procurement needs of their respective agencies. Considerable time and effort is also potentially saved by the Vendors who would have had to otherwise respond to each of those individual RFPs. A single, nationally advertised RFP, resulting in a single, national cooperative contract can potentially replace thousands of individual RFPs for the same equipment/products/services that might have been otherwise advertised by individual NJPA member agencies.

3.7.2 NJPA contracts offer our Members nationally leveraged volume purchasing discounts. Our contract terms and conditions offer the opportunity for Vendors to recognize individual member procurement volume commitment through additional volume based contract discounts.

3.8 State laws that permit or encourage cooperative purchasing contracts do so with the belief that cooperative efficiencies will result in lower prices, better overall value, and considerable time savings.

3.9 The collective purchasing power of thousands of NJPA Member agencies nationwide offers the opportunity for volume pricing discounts. Although no sales or sales volume is guaranteed by an NJPA Contract resulting from this RFP, substantial volume is anticipated and volume pricing is requested and justified.

3.10 NJPA and its Members desire the best value for their procurement dollar as well as a competitive price. Vendors have the opportunity to display and highlight value-added attributes of their company, equipment/products and services without constraints of a typical individual proposal process.

D. THE INTENT OF THIS RFP

3.11 National and Regional contracts awarded by NJPA: NJPA seeks the most responsive and responsible Vendor relationship(s) to reflect the best interests of NJPA and its Member agencies. Through a competitive proposal and evaluation process, the NJPA Proposal Evaluation Committee recommends vendors for a national or regional contract awarded by the action of the NJPA Chief Procurement Officer. NJPA’s primary intent is to establish and provide a national or regional cooperative procurement contract(s) that offer opportunities for NJPA and our current and potential Member agencies throughout the United States and Canada to procure quality product/equipment and services as desired and needed. The contracts will be marketed nationally through a cooperative effort between the awarded vendor(s) and NJPA. Contracts are expected to offer price levels reflective of the potential and collective volume of NJPA and the nationally established NJPA membership base.

3.12 Beyond our primary intent, NJPA further desires to:

3.12.1 Award a four-year contract with a fifth-year contract option resulting from this RFP. Any fifth-year extension is exercised at NJPA’s discretion and results from NJPA’s contracting needs or from Member requests; this extension is not intended merely to accommodate an awarded Vendor’s request. If NJPA grants a fifth-year extension, it may also terminate the contract (or cause it to expire) within the fifth year if the extended contract is replaced by
a resolicited or newly solicited contract. In exigent circumstances, NJPA may petition NJPA’s Board of Directors to extend the contract term beyond five years. This rarely used procedure should be employed only to avoid a gap in contract coverage while a replacement contract is being solicited;

3.12.2 Offer and apply any applicable technological advances throughout the term of a contract resulting from this RFP;

3.12.3 Deliver “Value Added” aspects of the company, equipment/products and services as defined in the “Proposer’s Response”;

3.12.4 Deliver a wide spectrum of solutions to meet the needs and requirements of NJPA and NJPA Member agencies; and

3.12.5 Award an exclusive contract to the most responsive and responsible vendor when it is deemed to be in the best interest of NJPA and the NJPA Member agencies.

3.13 Exclusive or Multiple Awards: Based on the scope of this RFP and on the responses received, NJPA may award either an exclusive contract or multiple contracts. In some circumstances, a single national supplier may best meet the needs of NJPA Members; in other situations, multiple vendors may be in the best interests of NJPA and the NJPA Members and preferred by NJPA to provide the widest array of solutions to meet the member agency’s needs. NJPA retains sole discretion to determine which approach is in the best interests of NJPA Member agencies.

3.14 Non-Manufacturer Awards: NJPA reserves the right to make an award under this RFP to a non-manufacturer or dealer/distributor if such action is in the best interests of NJPA and its Members.

3.15 Manufacturer as a Proposer: If the Proposer is a manufacturer or wholesale distributor, the response received will be evaluated on the basis of a response made in conjunction with that manufacturer’s authorized dealer network. Unless stated otherwise, a manufacturer or wholesale distributor Proposer is assumed to have a documented relationship with their dealer network where that dealer network is informed of, and authorized to accept, purchase orders pursuant to any Contract resulting from this RFP on behalf of the manufacturer or wholesale distributor Proposer. Any such dealer will be considered a sub-contractor of the Proposer/Vendor. The relationship between the manufacturer and wholesale distributor Proposer and its dealer network may be proposed at the time of the submission if that fact is properly identified.

3.16 Dealer/Reseller as a Proposer: If the Proposer is a dealer or reseller of the products and/or services being proposed, the response will be evaluated based on the Proposer’s authorization to provide those products and services from their manufacturer. When requested by NJPA, Proposers must document their authority to offer those products and/or services.

E. SCOPE OF THIS RFP

3.17 Scope: The scope of this RFP is to award a contract to a qualifying vendor defined as a manufacturer, provider, or dealer/distributor, established as a Proposer, and deemed responsive and responsible through our open and competitive proposal process. This RFP may result in local, regional, and/or national awards to meet the needs of NJPA and all eligible NJPA Members nationwide. Vendors will be awarded contracts based on the proposal and responder’s demonstrated ability to meet the expectations of the RFP and demonstrate the overall highest valued solutions which meet and/or exceed the current and future needs and requirements of NJPA and its Member agencies nationally within the scope of FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES. Respondents must be classified as a broadline food distributor.

3.18 Additional Scope Definitions: In addition to FOOD PRODUCTS AND DISTRIBUTION WITH
RELATED EQUIPMENT, SUPPLIES, AND SERVICES, this solicitation should be read to include, but not to be limited to the following:

**3.18.1 Food Products:** Grocery – Dry, Refrigerated, Frozen; Beverages; Dairy; Meat/Poultry; and, Fresh Produce.

**3.18.2 Supplies and Equipment:** Related paper products and disposables; related janitorial and chemical supplies; small wares, serving equipment and tabletop items; and, kitchen equipment.

**3.18.3 Technology:** Food service related software or technology solutions and services.

**3.18.4** NJPA reserves the right to limit the scope of this solicitation for NJPA and current and potential NJPA member agencies.

**3.18.4.1 Omitted.**

**3.19 Overlap of Scope:** When considering equipment/products/services, or groups of equipment/products/services submitted as a part of your response, and whether inclusion of such will fall within a “Scope of Proposal,” please consider the validity of an inverse statement.

**3.19.1** For example, pencils and post-it-notes can generally be classified as office supplies and office supplies generally include pencils and post-it-notes.

**3.19.2** In contrast, computers (PCs and peripherals) can generally be considered office supplies; however, the scope of office supplies does not generally include computer servers and infrastructure.

**3.19.3** In conclusion: With this in mind, individual products and services must be examined individually by NJPA, from time to time and in its sole discretion, to determine their compliance and fall within the original “Scope” as intended by NJPA.

**3.20 Best and Most Responsive – Responsible Proposer:** It is the intent of NJPA to award a Contract to the best and most responsible and responsive Proposer(s) offering the best overall quality and selection of equipment/products and services meeting the commonly requested specifications of the NJPA and NJPA Members, provided the Proposer’s Response has been submitted in accordance with the requirements of this RFP. Qualifying Proposers who are able to anticipate the current and future needs and requirements of NJPA and NJPA member agencies; demonstrate the knowledge of any and all applicable industry standards, laws and regulations; and possess the willingness and ability to distribute, market to and service NJPA Members in all 50 states are preferred. NJPA requests proposers submit their entire product line as it applies and relates to the scope of this RFP.

**3.21 Sealed Proposals:** NJPA will receive sealed proposal responses to this RFP in accordance with accepted standards set forth in the Minnesota Procurement Code and Uniform Municipal Contracting Law. Awards may be made to responsible and responsive Proposers whose proposals are determined in writing to be the most advantageous to NJPA and its current or qualifying future NJPA Member agencies.

**3.22 Use of Contract:** Any Contract resulting from this solicitation shall be awarded with the understanding that it is for the sole convenience of NJPA and its Members. NJPA and/or its members reserve the right to obtain like equipment/products and services solely from this contract or from another contract source of their choice or from a contract resulting from their own procurement process.

**3.23 Awarded Vendor’s interest in a contract resulting from this RFP:** Awarded Vendors will be able to offer to NJPA, and current and potential NJPA Members, only those products/equipment and services specifically awarded on their NJPA Awarded Contract(s). Awarded Vendors may not offer as “contract
compliant,” products/equipment and services which are not specifically identified and priced in their NJPA Awarded Contract.

**3.24 Sole Source of Responsibility**- NJPA desires a “Sole Source of Responsibility” Vendor. This means that the Vendor will take sole responsibility for the performance of delivered equipment/products/services. NJPA also desires sole responsibility with regard to:

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**3.24.1 Scope of Equipment/Products/Services:** NJPA desires a provider for the broadest possible scope of products/equipment and services being proposed over the largest possible geographic area and to the largest possible cross-section of NJPA current and potential Members.

**3.24.2 Vendor use of sub-contractors in sourcing or delivering equipment/product/services:** NJPA desires a single source of responsibility for equipment/products and services proposed. Proposers are assumed to have sub-contractor relationships with all organizations and individuals whom are external to the Proposer and are involved in providing or delivering the equipment/products/services being proposed. Vendor assumes all responsibility for the equipment/products/services and actions of any such Sub-Contractor. Suggested Solutions Options include:

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**3.24.3 Multiple solutions to the needs of NJPA and NJPA Members are possible. Examples could include:**

**3.24.3.1 Equipment/Products Only Solution:** Equipment/Products Only Solution may be appropriate for situations where NJPA or NJPA Members possess the ability, either in-house or through local third party contractors, to properly install and bring to operation those equipment/products being proposed.

**3.24.3.2 Turn-Key Solutions:** A Turn-Key Solution is a combination of equipment/products and services that provides a single price for equipment/products, delivery, and installation to a properly operating status. Generally this is the most desirable solution because NJPA and NJPA Members may not possess, or desire to engage, personnel with the necessary expertise to complete these tasks internally or through other independent contractors.

**3.24.3.3 Good, Better, Best:** Where appropriate and properly identified, Proposers may offer the choice “of good, better, best” multiple-grade solutions to meet NJPA Members’ needs.

**3.24.3.4 Proven – Accepted – Leading-Edge Technology:** Where appropriate and properly identified, Proposers may provide a spectrum of technology solutions to complement or enhance the proposed solutions to meet NJPA Members’ needs.

**3.24.4** If applicable, Contracts will be awarded to Proposer(s) able to deliver a proposal meeting the entire needs of NJPA and its Members within the scope of this RFP. NJPA prefers Proposers submit their complete product line of products and services described in the scope of this RFP. NJPA reserves the right to reject individual, or groupings of specific equipment/products and services proposals as a part of the award.

**3.25 Geographic Area to be Proposed:** This RFP invites proposals to provide FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES to NJPA and NJPA Members throughout the entire United States and possibly internationally. Proposers will be expected to express willingness to explore service to NJPA Members located abroad; however the lack of ability to serve Members outside of the United States will not be cause for non-award. The ability and willingness to serve Canada, for instance, will be viewed as a value-added attribute.
3.26 **Contract Term:** At NJPA’s option, a Contract resulting from this RFP will become effective either on the date awarded by the NJPA Board of Directors or on the day following the expiration date of an existing NJPA procurement contract for the same or similar product/equipment and services.

**3.26.1** NJPA is seeking a Contract base term of four years as allowed by Minnesota Contracting Law. Full term is expected. However, one additional one-year renewal/extension may be offered by NJPA to Vendor beyond the original four year term if NJPA deems such action to be in the best interests of NJPA and its Members. NJPA reserves the right to conduct periodic business reviews throughout the term of the contract.

3.27 **Minimum Contract Value:** NJPA anticipates considerable activity resulting from this RFP and subsequent award; however, no commitment of any kind is made concerning actual quantities to be acquired. NJPA does not guarantee usage. Usage will depend on the actual needs of the NJPA Members and the value of the awarded contract.

3.28 [This section is intentionally blank.]

3.29 **Contract Availability:** This Contract must be available to all current and potential NJPA Members who choose to utilize this NJPA Contract to include all governmental and public agencies, public and private primary and secondary education agencies, and all non-profit organizations nationally.

3.30 **Proposer’s Commitment Period:** In order to allow NJPA the opportunity to evaluate each proposal thoroughly, NJPA requires any response to this solicitation be valid and irrevocable for ninety (90) days after the date proposals are opened.

**F. EXPECTATIONS FOR EQUIPMENT/PRODUCTS AND SERVICES BEING PROPOSED**

3.31 **Industry Standards:** Except as contained herein, the specifications or solutions for this RFP shall be those accepted guidelines set forth by the FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES industry, as they are generally understood and accepted within that industry across the nation. Submitted products/equipment, related services and accessories, and their warranties and assurances are required to meet and/or exceed all current, traditional and anticipated standards, needs, expectations, and requirements of NJPA and its Members.

**3.31.1 Deviations from industry standards** must be identified by the Proposer and explained how, in their opinion, the equipment/products and services they propose will render equivalent functionality, coverage, performance, and/or related services. Failure to detail all such deviations may comprise sufficient grounds for rejection of the entire proposal.

**3.31.2 Technical Descriptions/Specifications.** Excessive technical descriptions and specifications that unduly enlarge the proposal response may cause NJPA to reduce the evaluation points awarded on Form G. Proposers must supply sufficient information to:

3.31.2.1 demonstrate the Proposer’s knowledge of industry standards and Member agency needs and expectations;

3.31.2.2 identify the equipment/products and services being proposed as applicable to the needs and expectations of NJPA Member agencies; and

3.31.2.3 differentiate equipment/products and services from other industry manufacturers and providers.
3.32 **New Current Model Equipment/Products:** Proposals submitted shall be for new, current model equipment/products and services with the exception of certain close-out products allowed to be offered on the Proposer’s “Hot List” described herein.

3.33 **Compliance with laws and standards:** All items supplied on this Contract shall comply with any current applicable safety or regulatory standards or codes.

3.34 **Delivered and operational:** Products/equipment offered herein are to be proposed based upon being delivered and operational at the NJPA Member’s site. Exceptions to “delivered and operational” must be clearly disclosed in the “Total Cost of Acquisition” section of the proposal.

3.35 **Warranty:** The Proposer warrants that all products, equipment, supplies, and services delivered under this Contract shall be covered by the industry standard or better warranty. All products and equipment should carry a minimum industry standard manufacturer’s warranty that includes materials and labor. The Proposer has the primary responsibility to submit product specific warranty as required and accepted by industry standards. Dealer/Distributors agree to assist the purchaser in reaching a solution in a dispute over warranty’s terms with the manufacturer. Any manufacturer’s warranty that is effective past the expiration of the warranty will be passed on to the NJPA member. Failure to submit a minimum warranty may result in non-award.

3.36 **Additional Warrants:** The Proposer warrants that all products/equipment and related services furnished hereunder will be free from liens and encumbrances; defects in design, materials, and workmanship; and will conform in all respects to the terms of this RFP including any specifications or standards. In addition, Proposer/Vendor warrants the products/equipment and related services are suitable for and will perform in accordance with the ordinary use for which they are intended.

3.37 **Local Growers.** Proposer acknowledges that NJPA and NJPA Members may support the use of local sources in procuring food items. Proposer agrees its shall make efforts to make local products available as part of any awarded contract.

3.38 **Product Recalls.** NJPA or NJPA Members have the right to recall any product which they have reason to believe may not comply with specifications contained in this RFP and/or of the Federal government. Proposer warrants that it possesses the means to enable it, or any product supplier or distributor it engages in the performance of this contract, to implement product recalls based upon lot numbers of products. Proposer shall immediately notify NJPA or NJPA Members of any product recalls contained within purchases made under the awarded contract. Proposer shall be responsible, at its own cost, for the removal and disposition of all recalled products that are defective on delivery to the relevant NJPA Member in compliance with all applicable laws, rules or regulations and NJPA or NJPA Members reasonable instructions. NJPA and NJPA Members shall assist Proposer in providing information needed to implement a product recall.

3.39 **Occupied School Buildings.** Proposer acknowledges work under a contract awarded from this solicitation may take place while schools are occupied by students and staff. Proposer’s employees, agents or contractor shall conduct themselves in a professional manner while on the premise in full accordance with the policies and procedures of NJPA or any NJPA Member.

3.40 **Tobacco and Alcohol Free Zone.** Proposer and any party conducting work onsite at NJPA or any NJPA Member location shall follow all policies and procedures relating to the prohibition of any tobacco or alcohol products in support of a tobacco and alcohol/drug free environments.

3.41 **School Food Program Compliance.** Proposer certifies that food products, processes, services and solutions proposed under this RFP meet State and Federal guidelines, regulations, and laws applicable to schools and institutions participating in the National School Lunch Program (NSLP), Child Nutrition Programs, the Nutrition Services Incentive Program or any other program. All applicable laws are deemed
to be incorporated as part of this RFP and shall be enforced as though they were included. All items offered in Proposers response must conform to the standards published in the USDA Food-Buying Guide for the School Lunch Program. All meats offered in this Response shall be USDA inspected. Proposers must follow the most current version of the FDA’s food security guidance.

3.42 Food Packaging Compliance. Proposer certifies all products offered under this RFP are packed under continuous USDA inspection where applicable, and all packaging is approved by the USDA and the Food and Drug Administration for contact with food and conforms to USDA labeling requirements. Where applicable, proposers must hold Hazard Analysis and Critical Control Program certification and must provide documentation of this certification as requested by NJPA or an NJPA Member.

3.43 Nutrition Information. Upon request of NJPA or NJPA Members, Proposers must make available nutritional information and ingredient statements for all market basket items included or offered under the response. Upon request of NJPA or NJPA Members, Proposers must provide nutritional information on additional items offered under an awarded contract within seven days. Upon request of NJPA or NJPA Members Proposers must provide certification of Child Nutrition Labeling and/or the equivalent meal USDA contribution within seven days.

3.44 Rebates. All rebates available through any applicable federal, state or supplier programs for any eligible food purchases are retained by NJPA Members making purchases utilizing this Contract. NJPA is not entitled to and does not receive or retain any rebate amount derived from eligible purchases made by an NJPA Member under this Contract.

G. SOLUTIONS-BASED SOLICITATION

3.45 The NJPA solicitation and contract award process is not based on detailed specifications. Instead, this RFP is a “Solutions-Based Solicitation.” NJPA expects respondents to understand and anticipate the current and future needs of NJPA and its members—within the scope of this RFP—and to propose solutions that are commonly desired or required by law or industry standards. Proposal will be evaluated in part on your demonstrated ability to meet or exceed the needs and requirements of NJPA and our member agencies within the defined scope of this RFP.

3.46 While NJPA does not typically provide product and service specifications, the RFP may contain scope refinements and industry-specific questions. Where specific items are specified, those items should be considered the minimum required, which the proposal can exceed in order to meet Members’ needs. NJPA may award all of the respondent’s proposal or may limit the award to a subset of the proposal.

4 INSTRUCTIONS FOR PREPARING YOUR PROPOSAL

A. INQUIRY PERIOD

4.1 The inquiry period begins on the date of first advertisement and continues until to the Deadline for Submission.” RFP packages will be distributed to potential Vendors during the inquiry period.

B. PRE-PROPOSAL CONFERENCE

4.2 A pre-proposal conference will be held at the date and time specified in the timeline on page one of this RFP. Conference information will be sent to all potential Proposers, and attendance is optional. The purpose of this conference is to allow potential Proposers to ask questions regarding this RFP and NJPA’s competitive contracting process. Only answers issued in writing by NJPA to questions asked before or during the pre-proposal conference are binding on the parties to an awarded contract.

C. IDENTIFICATION OF KEY PERSONNEL
4.3 Awarded Vendors will designate one senior staff member to represent the Vendor to NJPA. This contact person will correspond with members for technical assistance, questions, or concerns that may arise, including instructions regarding different contacts for different geographical areas or product lines.

4.4 These designated individuals should also act as the primary contact for marketing, sales, and any other area deemed essential by the Proposer and NJPA.

D. PROPOSER’S EXCEPTIONS TO TERMS AND CONDITIONS

4.5 Any exceptions, deviations, or contingencies regarding this RFP that a Proposer requests must be documented on Form C, Exceptions To Proposal, Terms, Conditions And Solutions Request.

4.6 Exceptions, deviations or contingencies requested in the Proposer’s response, while possibly necessary in the view of the Proposer, may result in lower scoring or disqualification of a proposal.

E. PROPOSAL FORMAT

4.7 All Proposers must examine the entire RFP package to seek clarification of any item or requirement that may not be clear and to check all responses for accuracy before submitting a proposal.

4.8 All proposals must be properly labeled and sent to “The National Joint Powers Alliance, 202 12th Street NE Staples, MN 56479.”

4.9 All proposals must be physically delivered to NJPA at the above address with all required hard copy documents and signature forms/pages inserted as loose pages at the front of the Vendor’s response. The proposal must include these items.

4.9.1 Hard copy original of completed, signed, and dated Forms C, D, F; hard copy of the signed signature-page only from Forms A and P from this RFP;

4.9.2 Signed hard copies of all addenda issued for the RFP;

4.9.3 Hard copy of Certificate of Insurance verifying the coverage identified in this RFP; and

4.9.4 A complete copy of your response on a flash drive (or other approved electronic means). The electronic copy must contain completed Forms A, B, C, D, F, and P, your statement of products and pricing (including apparent discount), and all appropriate attachments. In order to ensure that your full response is evaluated, you must provide an electronic version of any material that you provide in a hard copy format.

As a public agency, NJPA’s proposals, responses, and awarded contracts are a matter of public record, except for such data that is classified as nonpublic. Accordingly, public data is available for review through a properly submitted public records request. To redact nonpublic information from your proposal (under Minnesota Statute §13.37), you must make your request within thirty (30) days of the contract award or non-award date.

4.10 All Proposal forms must be submitted in English and must be legible. All appropriate forms must be executed by an authorized signatory of the Proposer. Blue ink is preferred for signatures.

4.11 Proposal submissions should be submitted using the electronic forms provided. Proposers that use alternative documents are responsible for ensuring that the content is substantially similar to the NJPA form and that the document is readable by NJPA.

4.12 The Proposer must ensure that the proposal is in the physical possession of NJPA before the submission deadline.
4.12.1 Proposals must be submitted in a sealed envelope or box properly addressed to NJPA and prominently identifying the proposal number, proposal category name, the message “Hold for Proposal Opening,” and the deadline for proposal submission. NJPA is not responsible for untimely proposals. Proposals received by the deadline for proposal submission will be opened and the name of each Proposer and other appropriate information will be publicly read.

4.13 Proposers are responsible for checking directly with the NJPA website for any addendums to this RFP. Addendums to this RFP can change the terms and conditions of the RFP, including the proposal submission deadline.

F. QUESTIONS AND ANSWERS ABOUT THIS RFP

4.14 Upon examination of this RFP document, Proposer should promptly notify NJPA of any ambiguity, inconsistency, or error they may discover. Interpretations, corrections, and changes to this RFP will be considered by NJPA through a written addendum. Interpretations, corrections, or changes that are made in any other manner are not binding, and Proposers must not rely on them.

4.15 Submit all questions about this RFP, in writing, referencing FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES to Chris Robinson at NJPA 202 12th Street NE, Staples, MN 56479 or to RFP@njpacoop.org. You may also call Chris Robinson at (218) 895-4168. NJPA urges potential Proposers to communicate all concerns well in advance of the submission deadline to avoid misunderstandings. Questions received within seven (7) days before the submission deadline generally cannot be answered. NJPA may, however, field purely procedural questions, questions about NJPA-issued addenda, or questions involving a Proposer withdrawing its response before the RFP submission deadline.

4.16 If NJPA deems that its answer to a question has a material impact on other potential Proposers or on the RFP itself, NJPA will create an addendum to this RFP.

4.17 If NJPA deems that its answer to a question merely clarifies the existing terms and conditions and does not have a material impact on other potential Proposers or the RFP itself, no further documentation of that question is required.

4.18 Addenda are written instruments issued by NJPA that modify or interpret the RFP. All addenda issued by NJPA become a part of the RFP. Addenda will be delivered to all Potential Proposers using the same method of delivery of the original RFP material. NJPA accepts no liability in connection with the delivery of any addenda. Copies of addenda will also be made available on the NJPA website at www.njpacoop.org (under “Current and Pending Solicitations”) and from the NJPA offices. All Proposers must acknowledge their receipt of all addenda in their proposal response.

4.19 Any amendment to a submitted proposal must be in writing and must be delivered to NJPA by the RFP submission deadline.

4.20 through 4.21 [These sections are intentionally blank.]

G. MODIFICATION OR WITHDRAWAL OF A SUBMITTED PROPOSAL

4.22 A submitted proposal must not be modified, withdrawn, or cancelled by the Proposer for a period of ninety (90) days following the date proposals were opened. Before the deadline for submission of proposals, any proposal submitted may be modified or withdrawn by notice to the NJPA Procurement Manager. Such notice must be submitted in writing and must include the signature of the Proposer. The notice must be delivered to NJPA before the deadline for submission of proposals and must be so worded as not to reveal the content of the original proposal. The original proposal will not be physically returned to the potential Proposer until after the official proposal opening. Withdrawn proposals may be
resubmitted up to the time designated for the receipt of the proposals if they fully conform with the proposal instructions.

H. PROPOSAL OPENING PROCEDURE

4.23 Sealed and properly identified responses for this RFP entitled FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES will be received by Chris Robinson, Procurement Manager, at NJPA Offices, 202 12th Street NE, Staples, MN 56479 until the deadline identified on page one of this RFP. All Proposal responses must be submitted in a sealed package. The outside of the package must plainly identify FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES and the RFP number. To avoid premature opening, the Proposer must label the Proposal response properly. NJPA documents the receipt of proposals by immediately time- and date-stamping them. At the time of the public opening, the NJPA Director of Procurement or a representative from the NJPA Proposal Evaluation Committee will read the Proposer’s names aloud and will determine whether each submission has met Level-1 responsiveness.

I. NJPA’S RIGHTS RESERVED

4.24 NJPA may exercise the following rights with regard to the RFP.

4.24.1 Reject any and all proposals received in response to this RFP;

4.24.2 Disqualify any Proposer whose conduct or proposal fails to conform to the requirements of this RFP;

4.24.3 Duplicate without limitation all materials submitted for purposes of RFP evaluation, and duplicate all public information in response to data requests regarding the proposal;

4.24.4 Consider and accept for evaluation a late modification of a proposal if 1) the proposal itself was submitted on time, 2) the modifications were requested by NJPA, and 3) the modifications make the terms of the proposal more favorable to NJPA or its members;

4.24.5 Waive any non-material deviations from the requirements and procedures of this RFP;

4.24.6 Extend the Contract, in increments determined by NJPA, not to exceed a total Contract term of five years;

4.24.7 Cancel the Request for Proposal at any time and for any reason with no cost or penalty to NJPA;

4.24.8 Correct or amend the RFP at any time with no cost or penalty to NJPA. If NJPA corrects or amends any segment of the RFP after submission of proposals and before the announcement of the awarded Vendor, all proposers will be afforded a reasonable opportunity to revise their proposals in order to accommodate the RFP amendment and the new submission dates. NJPA will not be liable for any errors in the RFP or other responses related to the RFP; and

4.24.9 Extend proposal due dates.

5 PRICING

5.1 NJPA requests that potential Proposers respond to this RFP only if they are able to offer a wide array of products and services at lower prices and with better value than what they would ordinarily offer to a single government agency, a school district, or a regional cooperative.

5.2 This RFP requests pricing for an indefinite quantity of products or related services with potential national sales distribution and service. While most RFP categories represent significant sales opportunities,
NJPA makes no guarantees about the quantity of products or services that members will purchase. The estimated annual value of this contract is $100 Million.

Vendors are expected to anticipate additional volume through potential government, educational, and not-for-profit agencies that would find value in a national contract awarded by NJPA.

5.3 Regardless of the payment method selected by NJPA or an NJPA member, the total cost associated with any purchase option of the products and services must always be disclosed in the proposal and at the time of purchase.

5.4 All proposers must submit “Primary Pricing” in the form of either “Line-Item Pricing,” or “Percentage Discount from Catalog Pricing,” or a combination of these pricing strategies. Proposers are also encouraged to offer optional pricing strategies such as “Hot List,” “Sourced Products,” and “Volume Discounts,” as well as financing options such as leasing. All pricing documents should include a clear effective date. In addition, for food item pricing, proposers must submit pricing for those items using the methods described in Subsection 5.4.2 below (and subparts).

5.4.1 Proposer may submit Regional or National pricing proposals. Proposers shall clearly indicate if pricing proposals are to be considered Regional or National. Regional price proposals should be accompanied by additional clarifying information, such as a map or other explanation of the geographic boundaries defining the Proposer’s regions.

5.4.2 Food Items Pricing. For all food items, Proposers are required to submit pricing as follows:

5.4.2.1 K-12 Education Pricing. Proposers are required to submit two prices as defined herein which will apply to all purchased food under this contract by NJPA Members providing pre-K through Grade 12 education: “Fixed Fee Per Case” and “Unit Market Basket Pricing”. The combined total of these price components shall result in the delivered product cost and is considered the Total Cost of Acquisition. For all food items, no other fees/charges will apply without express declaration in Proposer’s response. Proposers should include price proposals and associated information for the top 100 items sold within Proposer’s product offerings.

5.4.2.2 Non-K-12 Education Pricing. Proposers may elect to make the K-12 Education Pricing described above available to all NJPA Members, or may propose an alternative pricing method for non-K-12 education NJPA Members. For instance, any of the alternate pricing models described in this RFP, including a Percentage Mark-up or similar alternative model, may be proposed.

A. LINE-ITEM PRICING

5.5 Line-item pricing is a pricing format in which individual products or services are offered at specific Contract prices. Products or services are individually priced and described by characteristics such as manufacture name, stock or part number, size, or functionality. This method of pricing may offer the least amount of confusion, but Proposers with a large number of items may find this method cumbersome. In these situations, a percentage discount from catalog or category pricing model may make more sense and may increase the clarity of the contract pricing format.

5.6 All line-item pricing items must be numbered, organized, sectioned (including SKUs, when applicable), and prepared to be easily understood by the Evaluation Committee and members.

5.7 Submit Line-Item Pricing items in an Excel spreadsheet format and include all appropriate identification information necessary to discern the line item from other line items in each Responder’s proposal.
5.8 Line-item pricing must be submitted to NJPA in a searchable spreadsheet format (e.g., Microsoft® Excel®) in order to facilitate quickly finding any particular item of interest. For that reason, Proposers are responsible for providing the appropriate product and service identification information along with the pricing information that is typically found on an invoice or price quote for such product or services.

5.9 All products or services typically appearing on an invoice or price quote must be individually priced and identified on the line-item price sheet, including any and all ancillary costs.

5.10 Proposers should provide both a published “List Price” as well as a “Proposed Contract Price” in their pricing matrix. Published List Price will be the standard “quantity of one” price currently available to government and educational customers, excluding cooperative and volume discounts.

B. PERCENTAGE DISCOUNT FROM CATALOG OR CATEGORY

5.11 This pricing model involves a specific percentage discount from a catalog or list price, defined as a published Manufacturer’s Suggested Retail Price (MSRP) for the products or services being proposed.

5.12 Individualized percentage discounts can be applied to any number of defined product groupings.

5.13 A percentage discount from MSRP may be applied to all elements identified in MSRP, including all manufacturer options applicable to the products or services.

5.14 When a Proposer elects to use “Percentage Discount from Catalog or Category,” Proposer will be responsible for providing and maintaining current published MSRP with NJPA, and this pricing must be included in its proposal and provided throughout the term of any Contract resulting from this RFP.

C. COST PLUS A PERCENTAGE OF COST

5.15 “Cost plus a percentage of cost” as a primary pricing mechanism is not desirable. It is, however, acceptable for pricing sourced goods or services. **With respect to food item pricing, a “cost plus percentage of cost” or a “percentage mark-up” pricing model is allowable.**

D. HOT LIST PRICING

5.16 Where applicable, a Vendor may opt to offer a specific selection of products or services, defined as “Hot List” pricing, at greater discounts than those listed in the standard Contract pricing. All product and service pricing, including the Hot List Pricing, must be submitted electronically in a format that is acceptable to NJPA. Hot List pricing must be submitted in a line-item format. Products and services may be added or removed from the Hot List at any time through an NJPA Price and Product Change Form.

5.17 Hot List program and pricing may also be used to discount and liquidate close-out and discontinued products and services as long as those close-out and discontinued items are clearly labeled as such. Current ordering process and administrative fees apply. This option must be published and made available to all NJPA Members.

E. CEILING PRICE

5.18 **Except as otherwise provided in this RFP with respect to food item pricing,** Proposal pricing is to be established as a ceiling price. At no time may the proposed products or services be offered under this Contract at prices above this ceiling price without a specific request and approval by NJPA or as permitted in this RFP. Contract prices may be reduced at any time, for example, to reflect volume discounts or to meet the needs of an NJPA Member.

F. FIXED FEE PER CASE PRICE
5.19 Fixed Fee Per Case price encompasses all costs associated with providing and delivering the product under the terms and conditions of this Contract excluding the product itself. Fixed Fee Per Case pricing includes handling, delivery, overhead and profit. Fixed fee per case is the only acceptable method of pricing of delivery/handling of food products under this Proposal for NJPA Members in pre-K through Grade 12 education, and cost plus percentage fee proposals will not be accepted for that Member class. Fixed Fee Per Case pricing shall apply to all such food offerings in Proposer’s response.

5.19.1 The Fixed Fee Per Case price shall be stated in a dollars and cents format to two (2) decimal points (ex. $1.00) and shall be inclusive of all costs, delivery and profit. Additional charges will not be accepted by NJPA or NJPA Members.

5.19.2 The Fixed Fee Per Case price will remain fixed and firm throughout the term of the contract. Price Adjustments to the Fixed Fee Per Case price may be requested by Vendor if the request is justified based upon an independent market indicator and detailed data is provided. Vendors may request a price adjustment by submitting a Price and Product Change Request Form to NJPA.

5.19.3 NJPA or NJPA Members shall only be responsible for a prorated portion of the fee for broken cases based on the number of units ordered and damaged from the full case.

G. UNIT MARKET BASKET & EMERGENCY SITUATION PRICING

5.20 Unit Market Basket Pricing is for the product itself and includes any overhead/storage, profit or other costs associated with the product. Unit prices shall be provided by Proposer when required. Proposer must include “No Proposal” for any item where a unit price will not be offered in the response. The unit price shall prevail in any pricing discrepancy.

5.20.1 Unit Prices must be proposed at current market rates. Individual unit market prices are permitted to be changed at any time, however the overall market basket increase may not exceed the rate of inflation according to the BLS CPI for All Urban Consumers, US City Average, Food at Elementary and Secondary Schools Index per year as determined annually based upon the date of award of this Contract.

5.21 NJPA or NJPA Members may occasionally encounter an emergency situation necessitating a requirement for extra deliveries. Proposer may as part of the price proposal submit a per-mile, a per-stop fee, or an alternate method of charging for this service applicable only in emergency situations as determined by NJPA or NJPA Members. The proposal may include a minimum value for extra orders which avoids an extra fee.

5.22-5.23 [Sections omitted.]

H. TOTAL COST OF ACQUISITION

5.24 The Total Cost of Acquisition for the equipment/products and related services being proposed, including those payable by NJPA Members to either the Proposer or a third party, is the cost of the proposed equipment/products product/equipment and related services delivered and operational for its intended purpose in the end-user’s location. For example, if you are proposing equipment/products FOB Proposer’s dock, your proposal should reflect that the contract pricing does not provide for delivery beyond Proposer’s dock, nor any set-up activities or costs associated with those delivery or set-up activities. Any additional costs for delivery and set-up should be clearly disclosed. In contrast, a proposal could state that there are no additional costs of acquisition if the product is delivered to and operational at the end-user’s location.

I. SOURCED GOOD or OPEN MARKET ITEM
A Sourced Good or an Open Market Item is a product that a member wants to buy under contract that is not currently available under the Vendor’s NJPA contract. This method of procurement can be satisfied through a contract sourcing process. Sourcing options serve to provide a more complete contract solution to meet our members’ needs. Sourced items are generally deemed incidental to the total transaction or purchase of contract items.

NJPA or NJPA Members may request products, equipment, and related services that are within the related scope of this RFP, even if they are not included in an awarded Vendor’s line-item price list or catalog. These items are known as Sourced Goods or Open Market Items.

An awarded Vendor may source such items to the extent that the items are identified as “Sourced Products/Equipment” or “Open Market Items” on any quotation issued in reference to an NJPA awarded contract, and that this information is provided to either NJPA or an NJPA Member. NJPA is not responsible for determining whether a Sourced Good is an incidental portion of the overall purchase or whether a Member is able to consider a Sourced Good a purchase under an NJPA contract.

“Cost plus a percentage” pricing is an acceptable option in pricing of Sourced Goods.

J. PRODUCT & PRICE CHANGES

Except as it relates to “individual unit market prices” as described above, Awarded Vendors may request product or service changes, additions, or deletions at any time throughout the contract term. All requests must be made in written format by completing the NJPA Price and Product Change Request Form (located at the end of this RFP and on the NJPA website), signed by an authorized Vendor representative. All changes are subject to review and approval by NJPA. Submit your requests through email to your assigned Contract Manager and to PandP@njpacoop.org.

NJPA will determine whether the request is both within the scope of the original RFP and in the best interests of NJPA and NJPA Members. Approved Price and Product Change Request Forms will be returned to the Vendor contact through email.

The Vendor must 1) complete this change request form and individually list or attach all items subject to change, 2) provide a sufficiently detailed explanation and documentation for the change, and 3) include a complete restatement of pricing document in appropriate format (preferably Excel). The pricing document must identify all products and services being offered and must conform to the following NJPA product and price change naming convention: (Vendor Name) (NJPA Contract #) (effective pricing date); for example, “COMPANY 012411-CPY effective 02-12-2016.”

The new pricing restatement must include all products and services offered, even for those items whose pricing remains unchanged, and must include a new effective date on the pricing documents. This requirement reduces confusion by providing a single, current pricing sheet for each vendor and creates a historical record of pricing.

ADDITIONS. New products and related services may be added to a Contract resulting from this RFP at any time during that Contract term to the extent that those products and related services are within the scope of this RFP. Allowable new products and related services generally include updated models of products and enhanced services that reflect new technology and improved functionality.

DELETIONS. New products and related services may be deleted from a contract if an item is no longer available.

PRICE CHANGES. A Vendor may request pricing changes by providing reasonable justification for the change. For example, a request for a 3% increase in a product line that relies heavily on petroleum products may be reasonable if the raw cost of required petroleum products has increased substantially. Conversely, a request for a 3% increase in prices based only on a 3% increase in a cost-of-living index may
be considered unreasonable. Although NJPA is sensitive to the possibility of fluctuations in raw material costs, prospective Vendors should make every reasonable attempt to account for normal cost changes by proposing pricing that will be effective throughout the duration of the four-year Contract.

5.35.1 **Price decreases:** NJPA expects Vendors to propose their very best prices and anticipates price reductions that are due to advancement in technology and marketplace efficiencies.

5.35.2 **Price increases:** A Vendor must include reasonable documentation for price-increase requests, along with both current and proposed pricing. Appropriate documentation should be attached to the Price and Product Change Request Form, including letters from suppliers announcing price increases. Price increases must not exceed the industry standard.

5.36 through 5.37 [These sections are intentionally blank.]

5.38 Proposers representing multiple manufacturers, or carrying multiple related product lines may also request the addition of new manufacturers or product lines to their Contract to the extent they remain within the scope of this RFP.

5.39 through 5.43 [These sections are intentionally blank.]

K. SALES TAX

5.44 Sales and other taxes should not be included in the prices quoted. The Vendor will charge state and local sales and other applicable taxes on items for which a valid tax-exemption certification has not been provided. Each NJPA Member is responsible for providing verification of tax-exempt status to the Vendor. When ordering, NJPA Members must indicate that they are tax-exempt entities. Except as set forth herein, no party is responsible for taxes imposed on another party as a result of or arising from the transactions under a Contract resulting from this RFP.

L. SHIPPING

5.45 **For the controlling provision on shipping costs related to food items, see §5.4.2 Food Items Pricing.**

5.46 Shipping costs can constitute a significant portion of the overall cost of procurement. Consequently, significant weight will be given to the quality of a prospective Vendor’s shipping program. Shipping charges should reasonably reflect the actual cost of shipping. NJPA understands that Vendors may use other shipping cost methods for simplicity or for transparency. But to the extent that shipping costs are determined to disproportionately increase a Vendor’s profit, NJPA may reduce the points awarded in the “Pricing” criteria.

5.47 [Section omitted.]

5.48 All shipping and restocking fees must be identified in the price program. Certain industries providing made-to-order products may not allow returns. Proposals will be evaluated not only on the actual costs of shipping, but on the relative flexibility extended to NJPA Members relating to restocking fees, shipping errors, customized shipping requirements, the process for rejecting damaged or delayed shipments, and similar subjects.

5.49 through 5.50 [These sections are intentionally blank.]

5.51 Delivered products must be properly packaged. Damaged products may be rejected. If the damage is not readily apparent at the time of delivery, the Vendor must permit the products to be returned within a reasonable time at no cost to NJPA or NJPA Member. NJPA and NJPA Members reserve the right to inspect the products at a reasonable time subsequent to delivery where circumstances or conditions prevent effective inspection of the products at the time of delivery.
5.52 The Vendor must deliver Contract-conforming products in each shipment and may not substitute products without the express approval from NJPA or the NJPA Member.

5.53 NJPA reserves the right to declare a breach of Contract if the Vendor intentionally delivers substandard or inferior products that are not under Contract and described in its paper or electronic price lists or sourced upon request of any Member under this Contract. In the event of the delivery of nonconforming products, the NJPA Member will notify the Vendor as soon as possible and the Vendor will replace nonconforming products with conforming products that are acceptable to the NJPA member.

5.54 Throughout the term of the Contract, Proposer agrees to pay for return shipment on products that arrive in a defective or inoperable condition. Proposer must arrange for the return shipment of the damaged products.

6 EVALUATION OF PROPOSALS

A. PROPOSAL EVALUATION PROCESS

6.1 The NJPA proposal evaluation committee will evaluate proposals received based on a 1,000 point evaluation system. The committee establishes both the evaluation criteria and designates the relative weight of each criterion by assigning possible scores for each category on Form G of this RFP. The committee may adjust the relative weight of the criteria for each RFP. (For example, if the “Warranty” criterion does not apply to a particular RFP, the points normally awarded under “Warranty” may be used to increase the number of potential points in another evaluation category or categories.) The “Pricing” criterion will contain at least a plurality of points for every RFP.

6.2 NJPA uses a scoring system that gives primary importance to “Pricing.” But pricing includes more than just the absolute lowest initial cost of purchasing, for example, a particular product. Other considerations include the total cost of the acquisition and whether the Proposer’s offering represents the best value. The evaluation committee may consider such factors as life-cycle costs, total cost of ownership, quality, and the suitability of an offering in meeting NJPA Members’ needs. Pricing points may be awarded based on pricing clarity and ease of use. NJPA may also award points based on whether a response contains exceptions, exclusions, or limitations of liabilities.

6.3 The NJPA Board of Directors will consider making awards to the selected Proposer(s) based on the recommendations of the proposal evaluation committee. To qualify for the final evaluation, a Proposer must have been deemed responsive as a result of the criteria set forth under “Proposer Responsiveness,” found just below.

B. PROPOSER RESPONSIVENESS

6.4 All responses are evaluated for Level-One and Level-Two Responsiveness. If a response does not substantially conform to substantially all of the terms and conditions in the solicitation, or if it requires unreasonable exceptions, it may be considered nonresponsive.

6.5 All proposals must contain suitable responses to the questions in the proposal forms. The following requirements must be satisfied in order to meet Level-One Responsiveness, which is typically ascertained on the proposal opening date. If these standards are not met, your response may be disqualified as nonresponsive.

6.6 Level-One Responsiveness means that the response

6.6.1 is received before the deadline for submission or it will be returned unopened;
6.6.2 is properly addressed and identified as a sealed proposal with a specific RFP number and an opening date and time;

6.6.3 contains a pricing document (with apparent discounts) and all other forms fully completed, even if “not applicable” is the answer;

6.6.4 includes the original (hard copy) completed, dated, and signed RFP forms C, D, and F. In addition, the response must include the hard-copy signed signature page only from RFP Forms A and P and, if applicable, all signed addenda that have been issued in relation to this RFP;

6.6.5 contains an electronic (CD, flash drive, or other suitable) copy of the entire response; and

6.7 Level-Two Responsiveness (including whether the response is within the RFP’s scope) is determined while evaluating the remaining items listed under Proposal Evaluation Criteria below. These items are not arranged in order of importance. Each item draws from multiple questions, and a Proposer’s responses may affect scoring in multiple evaluation criteria. For example, the answers to Industry-Specific Questions may help determine scoring relative to a Proposer’s marketplace success, ability to sell and service nationwide, and financial strength. Any questions not answered without an explanation will likely result in a loss of points and may lead to a nonaward if the proposal evaluation committee cannot effectively review your response.

C. PROPOSAL EVALUATION CRITERIA

6.8 Forms A and P include a series of questions that address the following categories:

6.8.1 Company Information and Financial Strength
6.8.2 Industry Requirements and Marketplace Success
6.8.3 Ability to Sell and Deliver Service Nationwide
6.8.4 Marketing Plan
6.8.5 Other Cooperative Procurement Contracts
6.8.6 Value-Added Attributes
6.8.7 Payment Terms and Financing Options
6.8.8 Warranty
6.8.9 Equipment/Products/Services
6.8.10 Pricing and Delivery
6.8.11 Industry-Specific Questions

6.9 [This section is intentionally blank.]

D. OTHER CONSIDERATIONS

6.10 In evaluating RFP responses, NJPA has no obligation to consider information that is not provided in the Proposer’s response. NJPA may, however, consider additional information outside the Proposer’s response. This research may include such sources as the Proposer’s website, industry publications, listed references, and user interviews.

6.11 NJPA may organize RFP responses into separate classes or subcategories, depending on the range of responses. For example, NJPA might receive numerous submissions for “Widgets and Related Products and Services.” NJPA may organize these responses into subcategories, such as manufacturers of fully
operational Widgets, manufacturers of component parts for Widgets, and providers of parts and service for Widgets. NJPA reserves the right to award Proposers in some or all of such subcategories without regard to the evaluation score given to Proposers in another subcategory. This specifically allows NJPA to award Vendors that might not have, for instance, the breadth of products of Proposers in another subcategory, but that nonetheless meet a substantial and articulated need of NJPA Members.

6.12 [This section is intentionally blank.]

6.13 NJPA reserves the right to request and test equipment/products and related services and to seek clarification from Proposers. Before the Contract award, the Proposer must furnish the requested information within three (3) days (or within another agreed-to time frame) or provide an explanation for the delay along with a requested time frame for providing the requested information. Proposers must make reasonable efforts to supply test products promptly. All Proposer products remain the property of the Proposer, and NJPA will return such products after the evaluation process. NJPA may make provisional contract awards, subject to a Proposer’s proper response to a request for information or products.

6.14 A Proposer’s past performance under previously awarded contracts to schools, governmental agencies, and not-for-profit entities is relevant in evaluating a Proposer’s current response. Past performance includes the Proposer’s record of conforming to published specifications and to standards of good workmanship, as well as the Proposer’s history for reasonable and cooperative behavior and for commitment to Member satisfaction. Incumbency as an awarded Vendor does not, by itself, merit positive consideration for a future Contract award.

6.15 NJPA reserves the right to reject any or all proposals.

E. COST COMPARISON

6.16 NJPA may use a variety of evaluation methods, including cost comparisons of specific products. NJPA reserves the right to use this process when the proposal evaluation committee determines that this will help to make a final determination.

6.17 This direct cost comparison process will award points for being low to high Proposer for each cost evaluation item selected. A “Market Basket” of identical (or substantially similar) equipment/products and related services may be selected by the proposal evaluation committee, and the unit cost will be used as a basis for determining the point value. NJPA will select the “Market Basket” from all appropriate product categories as determined by NJPA.

F. MARKETING PLAN

6.18 A Proposer’s marketing plan is a critical component of the RFP response. An awarded Vendor’s sales force will likely be the primary source of communication with NJPA Members and will directly affect the contract’s success. Marketing success depends on communicating the contract’s value, knowing the contract thoroughly, and communicating the proper use of contracted products and services to the end user. Much of the success and sales reward is a direct result of the commitment to the contract by the awarded Vendor’s sales teams. NJPA reserves the right to deem a Proposer Level-Two nonresponsive or not to award a contract based on an unacceptable or incomplete marketing plan.

6.19 NJPA marketing expectations include the following components.

6.19.1 An awarded Vendor must demonstrate the ability to deploy a national or regional sales force or dealer network. The best RFP responses demonstrate the ability to sell, deliver, and service products through acceptable distribution channels to NJPA members in all 50 states (or in the states within a Proposer’s region, as applicable). Proposers’ responses should fully demonstrate their sales and service capabilities, should outline their sales force network (both numerically and geographically), and should describe their method of distribution of the offered products and related
services. Service may be independent of the product sales pricing, but NJPA encourages related services to be a part of Proposers’ response. NJPA reserves the right to award contracts that meet specific Member needs locally or regionally, or that demonstrate the ability to deliver nationwide sales and service.

6.19.2 Proposers are invited to demonstrate their ability to successfully market, promote, and communicate the benefits of an NJPA contract to current and potential Members nationwide. NJPA desires a marketing plan that communicates the value of the contract to as many Members as possible.

6.19.3 Proposers are expected to be receptive to NJPA trainings. Awarded Vendors must provide an appropriate training venue for both management and the sales force. NJPA commits to providing training on all aspects of communicating the value of the awarded contract, including the authority of NJPA to offer the contract to its Members, the value and utility the contract delivers to NJPA Members, the scope of NJPA Membership, the authority of Members to use NJPA procurement contracts, the preferred marketing and sales methods, and the successful use of specific business sector strategies.

6.19.4 Awarded Vendors are expected to demonstrate a commitment to fully embrace the NJPA contract. Proposers should identify both the appropriate levels of sales management and sales force that will need to understand the value of the NJPA contract, as well as the internal procedures needed to deliver the appropriate messaging to NJPA Members. NJPA will provide a general schedule and a variety of methods describing when and how those individuals should be trained.

6.19.5 Proposers should outline their proposed involvement in promoting an NJPA contract through applicable industry trade show exhibits and related customer meetings. Proposers are encouraged to consider participation with NJPA at NJPA-endorsed national trade shows.

6.19.6 Proposers must exhibit the willingness and ability to actively market and develop contract-specific marketing materials including the following items.

6.19.6.1 Complete Marketing Plan. Proposers must submit a marketing plan outlining how they will launch the NJPA contract to current and potential NJPA Members. NJPA requires awarded Vendors to embrace and actively promote the contract in cooperation with the NJPA.

6.19.6.2 Printed Marketing Materials. Awarded Vendors will produce and maintain full color print advertisements in camera-ready electronic format, including company logos and contact information to be used in the NJPA directory and other approved marketing publications.

6.19.6.3 Contract announcements and advertisements. Proposers should outline in the marketing plan their anticipated contract announcements, advertisements in industry periodicals, and other direct or indirect marketing activities promoting the awarded NJPA contract.

6.19.6.4 Proposer’s Website. Proposers should identify how an awarded Contract will be displayed and linked on the Proposer’s website. An online shopping experience for NJPA Members is desired whenever possible.

6.19.7 An NJPA Vendor contract launch will be scheduled during a reasonable time frame after the award and held at the NJPA office in Staples, MN unless the Vendor and NJPA agree to a different location.
6.20 Proposer shall identify their commitment to develop a sales/communication process to facilitate NJPA membership and establish status of current and potential agencies/members. Proposer should further express their commitment to capturing sufficient member information as is deemed necessary by NJPA.

G. CERTIFICATE OF INSURANCE

6.21 Proposers must provide evidence of liability insurance coverage identified below in the form of a Certificate of Insurance (COI) or an ACORD binder form with their proposal. Upon an award issued under this RFP and before the execution of any commerce relating to such award, the awarded Vendor must provide verification, in the form of a Certificate of Insurance, identifying the coverage required below and identifying NJPA as a “Certificate Holder.” The Vendor must maintain such insurance coverage at its own expense throughout the term of any contract resulting from this solicitation.

6.22 Any exceptions or assumptions to the insurance requirements must be identified on Form C of this RFP. Exceptions and assumptions will be considered as part of the evaluation process. Any exceptions or assumptions that Proposers submit must be specific. If a Proposer does not include specific exceptions or assumptions when submitting the proposal, NJPA will typically not consider any additional exceptions or assumptions during the evaluation process. Upon contract award, the awarded Vendor must provide the Certificate of Insurance identifying the coverage as specified.

6.23 Insurance Liability Limits. The awarded Vendor must maintain, for the duration of its contract, $1.5 million in general liability insurance coverage or general liability insurance in conjunction with an umbrella for a total combined coverage of $1.5 million. Work on the Contract will not begin until after the awarded Vendor has submitted acceptable evidence of the required insurance coverage. Failure to maintain any required insurance coverage or an acceptable alternative method of insurance will be deemed a breach of contract.

6.23.1 Minimum Scope and Limits of Insurance. An awarded Vendor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

6.23.1.1 Commercial General Liability—Occurrence Form
Policy shall include bodily injury, property damage and broad form contractual liability and XCU coverage.

6.23.1.2 Each Occurrence $1,500,000

6.24 Insurance Requirements: The limits listed in this RFP are minimum requirements for this Contract and in no way limit any indemnity covenants contained in this Contract. NJPA does not warrant that the minimum limits contained herein are sufficient to protect the Vendor from liabilities that might arise out of the performance of the work under this Contract by the Vendor, its agents, representatives, employees, or subcontractors, and the Vendor is free to purchase additional insurance as may be determined necessary.

6.25 Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Minnesota and with an “A.M. Best” rating of not less than A- VII. NJPA does not warrant that the above required minimum insurer rating is sufficient to protect the Vendor from potential insurer solvency.

6.26 Subcontractors: Vendors’ certificate(s) must include all subcontractors as additional insureds under its policies, or the Vendor must furnish to NJPA separate certificates for each subcontractor. All coverage for subcontractors are subject to the minimum requirements identified above.

H. ORDER PROCESS AND/OR FUNDS FLOW
6.27 NJPA Members typically issue a purchase order directly to a Vendor under a Contract resulting from this RFP. Alternatively, a separate contract may be created to facilitate acquiring products or services offered in response to this RFP. Nothing in this Contract restricts the Member and Vendor from agreeing to add terms or conditions to a purchase order or a separate contract provided that such terms or conditions must not be less favorable to NJPA’s Members.

6.28 [This section is intentionally blank.]

I. ADMINISTRATIVE FEES

6.29 Vendors will pay to NJPA an administrative fee in exchange for NJPA facilitating this Contract with its current and potential Members. NJPA may grant a conditional contract award to a Proposer if the proposed administrative fee is unclear, inadequate, or unduly burdensome for NJPA to administer. Sales under this Contract should not be processed until the parties resolve the administrative fee issue.

6.29.1 The administrative fee is typically calculated as a percentage of the dollar volume of all products and services by NJPA Members under this Contract, including anything represented to NJPA Members as falling under this Contract. The Proposer may propose an alternative method of calculation for food items, such as a fixed amount per case.

6.29.2 The administrative fee is included in, and not added to, the pricing included in Proposer’s response to the RFP. Awarded Vendors must not charge NJPA Members more that permitted in the then current price list in order to offset the administrative fee.

6.29.3 The administrative fee is designed to cover the costs of NJPA’s involvement in contract management, facilitating marketing efforts, Vendor training, and any order processing tasks relating to the Contract. Administrative fees may also be used for other purposes as allowed by Minnesota law.

6.29.4 The typical administrative fee under an NJPA Contract is two percent (2%). For this contract, a fixed amount per case of food items is also typical. While NJPA does not dictate the particular fee percentage or amount per case, we require that the Proposer articulate a specific fee in its response. For example, merely stating that “we agree to pay an administrative fee” is considered nonresponsive. NPJA acknowledges that the administrative fee may differ between vendors, industries, and responses.

6.29.5 NJPA awarded Vendors are responsible for paying the administrative fee at least quarterly and for generating all related reporting. Vendors agree to cooperate with NJPA in auditing these reports to ensure that the administrative fee is paid on all items purchased under the Contract.

6.30 through 6.32 [This section is intentionally blank.]

J. VALUE–ADDED ATTRIBUTES

6.33 Desirability of Value-Added Attributes: Value-added attributes in an RFP response will be given positive consideration in NJPA’s evaluation process. Such attributes may increase the benefit of a product or service by improving functionality, performance, maintenance, manufacturing, delivery, energy efficiency, ordering, or other items while remaining within the scope of this RFP.

6.34 Women and Minority Business Enterprise (WMBE), Small Business, and Other Favored Businesses: Some NJPA Members give formal preference to certain types of vendors or contractors. Proposers should document WMBE (or other) status for both their organization and for any affiliates (e.g., supplier networks) involved in fulfilling the terms of this RFP. The ability of a Proposer to provide preferred business entity “credits” to NJPA and NJPA Members under a Contract will be evaluated positively by NJPA and reflected in the “value added” area of the evaluation.
6.35 Environmentally Preferred Purchasing Opportunities: Many NJPA Members consider the environmental impact of the products and services they purchase. “Green” characteristics demonstrated by Proposers will be evaluated positively by NJPA and reflected in the “value added” area of the evaluation. Please identify any green characteristics of any offering in your proposal and identify the sanctioning body determining that characteristic. Where appropriate, please indicate which products have been certified as green and by which certifying agency.

6.36 Online Requisitioning Systems: When applicable, online requisitioning systems will be viewed as a value-added characteristic. Proposers should demonstrate how their system makes online ordering easier for NJPA Members, including how Members could integrate their current e-Procurement or enterprise resource planning (ERP) systems into the Proposer’s ordering process.

6.37 Financing: The ability of the Proposer to provide financing solutions to Members for the products and services being proposed will be viewed as a value-added attribute.

6.38 Technology: Technological advances that appreciably improve the proposed products or services will be considered value-added attributes.

K. WAIVER OF FORMALITIES

6.39 NJPA reserves the right to waive minor formalities (or to accept minor irregularities) in any proposal, when it determines that considering the proposal may be in the best interest of its Members.

7 POST-AWARD OPERATING ISSUES

A. SUBSEQUENT AGREEMENTS

7.1 Purchase Order. Purchase orders for products and services may be executed between NJPA Members and the awarded Vendor (or Vendor’s sub-contractors) under this Contract. NJPA Members and Vendors must indicate on the face of such purchase orders that “This purchase order is issued under NJPA contract #XXXXXXX” (insert the relevant contract number). Purchase order flow and procedure will be developed jointly between NJPA and an awarded Vendor after an award is made.

7.2 Governing Law. Purchase orders must be construed in accordance with, and governed by, the laws of a competent jurisdiction with respect to the Member. (See also Section 8.5 of this RFP.) All provisions required by law to be included in the purchase order should be read and enforced as if they were included. If through mistake or otherwise any such provision is not included, then upon application of either party the Contract shall be physically amended to make such inclusion or correction. The venue for any litigation arising out of disputes related to purchase order will be a court of competent jurisdiction with respect to the Member.

7.3 Additional Terms and Conditions. Additional terms and conditions to a purchase order may be proposed by NJPA, NJPA Members, or Vendors. Acceptance of these additional terms and conditions is optional to all parties to the purchase order. One purpose of these additional terms and conditions is to address job- or industry-specific requirements of law such as prevailing wage legislation. Additional terms and conditions may also include specific local policy requirements and standard business practices of the issuing Member or the Vendor. Such additional terms and conditions are not considered valid to the extent that they interfere with the general purpose, intent, or currently established terms and conditions contain in this RFP document. For example, a Vendor and Member may agree to add a “net 30” payment requirement to the purchase order instead of applying a “net 10” requirement. But the added terms and conditions must not be less favorable to the Member unless NJPA, the Member, and the Vendor agree to a Contract amendment or similar modification.

7.4 Specialized Service Requirements. In the event that the NJPA Member desires service requirements or specialized performance requirements (such as e-commerce specifications, specialized delivery
requirements, or other specifications and requirements) not addressed in the Contract resulting from this RFP, the NJPA Member and the Vendor may enter into a separate, standalone agreement, apart from a Contract resulting from this RFP. Any proposed service requirements or specialized performance requirements require pre-approval by the Vendor. Any separate agreement developed to address these specialized service or performance requirements is exclusively between the NJPA Member and Vendor. NJPA, its agents, and employees shall not be made a party to any claim for breach of such agreement. Product sourcing is not considered a service. NJPA Members will need to conduct procurements for any specialized services not identified as a part of or within the scope of the awarded Contract.

7.5 **Performance Bond.** At the request of the Member, a Vendor will provide all performance bonds typically and customarily required in their industry. These bonds will be issued pursuant to the requirements of purchase orders for products and services. If a purchase order is cancelled for lack of a required performance bond by the member agency, NJPA recommends that the current pending purchase order be canceled. Each Member has the final decision on purchase order continuation. Any performance bonding required by the Member, the Member’s state laws, or by local policy is to be mutually agreed upon and secured between the Vendor and the Member.

7.6 **Asset Management Contracts:** Asset Management-type Contracts can be initiated under a Contract resulting from this RFP at any time during the term of this Contract. Such a contract could involve, for example, picking up, storing, repairing, inventorying, salvaging, and delivery products falling within the scope of this Contract. The intention in using Asset Management Contracts is to promote the long-term efficiency of NJPA’s contracts by (among other things) extending the use and re-use of products. Asset Management Contracts cannot be created under this Contract unless they are executed within the authorized term of a Contract resulting from this RFP. The actual term of the Asset Management Contract may, however, extend beyond the expiration date of this Contract.

**B. NJPA MEMBER SIGN-UP PROCEDURE**

7.7 Awarded Vendors are responsible for familiarizing their sales and service forces with the various forms of NJPA membership documentation and will encourage and assist potential Members in establishing membership with NJPA. NJPA membership is available at no cost, obligation, or liability to the Member or the Vendor.

**C. REPORTING OF SALES ACTIVITY**

7.8 Awarded Vendors must report at least quarterly the total gross dollar volume of all products and services purchased by NJPA Members as it applies to this RFP and Contract. This report must include the name and address of the purchasing agency, Member number, amount of purchase, and a description of the items purchased.

7.8.1 **Zero sales reports:** Awarded Vendors must provide a quarterly Contract sales report regardless of the amount of sales.

**D. AUDITS**

7.9 NJPA relies substantially on the reasonable auditing efforts of both Members and awarded Vendors to ensure that Members are obtaining the products, services, pricing, and other benefits under all NJPA contracts. Nonetheless, the Vendor must retain and make available to NJPA all order and invoicing documentation related to purchases that Members make from the Vendor under the awarded Contract. NJPA must not request such information more than once per calendar year, and NJPA must make such requests in writing with at least fourteen (14) days’ notice. NJPA may employ an independent auditor at its own expense or conduct an audit on its own. In either event, the Vendor agrees to cooperate fully with NJPA or its agents in order to ensure compliance with this Contract.

**E. HUB PARTNER**
7.10 Hub Partner: NJPA Members may request special services through a “Hub Partner” for the purpose of complying with a law, regulation, or rule that an NJPA Member deems to apply in its jurisdiction. Hub Partners may bring value to the proposed transactions through consultancy, through qualifying for disadvantaged business entity credits, or through other means.

7.11 Hub Partner Fees: NJPA Members are responsible for any transaction fees, costs, or expenses that arise under this Contract for special service provided by the Hub Partner. The fees, costs, or expenses levied by the Hub Vendor must be clearly itemized in the transaction documentation. To the extent that the Vendor stands in the chain of title during a transaction resulting from this RFP, the documentation must clearly indicate that the transaction is “Executed for the Benefit of [NJPA Member name].”

F. TRADE-INS

7.12 The value in US Dollars for Trade-ins will be negotiated between NJPA or an NJPA Member, and an Awarded Vendor. That identified “Trade-In” value shall be viewed as a down payment and credited in full against the NJPA purchase price identified in a purchase order issued pursuant to any Awarded NJPA procurement contract. The full value of the trade-in will be consideration.

G. OUT OF STOCK NOTIFICATION

7.13 The Vendor must immediately notify NJPA Members when they order an out-of-stock item. The Vendor must also tell the Member when the item will be available and whether there are equivalent substitutes. The Member must have the option of accepting the suggested substitute or canceling the item from the order. Under no circumstance may the Vendor make unauthorized substitutions. Unfilled or substituted items must be indicated on the packing list.

H. CONTRACT TERMINATION FOR CAUSE AND WITHOUT CAUSE

7.14 NJPA reserves the right to cancel all or any part of this Contract if the Vendor fails to fulfill any material obligation, term, or condition as described in the following procedure. Before any such termination for cause, the NJPA will provide written notice to the Vendor, an opportunity to respond, and a reasonable opportunity to cure the breach. The following are some examples of material breaches.

7.14.1 The Vendor provides products or services that do not meet reasonable quality standards and that are not remedied under the warranty;

7.14.2 The Vendor fails to ship the products or to provide the services within a reasonable amount of time;

7.14.3 NJPA reasonably believes that the Vendor will not or cannot perform to the requirements or expectations of the Contract, NJPA issues a request for assurance, and the Vendor fails to respond;

7.14.4 The Vendor fails to fulfill any of the material terms and conditions of the Contract;

7.14.5 The Vendor fails to follow the established procedure for purchase orders, invoices, or receipt of funds as established by NJPA and the Vendor;

7.14.6 The Vendor fails to properly report quarterly sales;

7.14.7 The Vendor fails to actively market this Contract within the guidelines provided in this RFP and defined in the NJPA contract launch.
7.15 Upon receipt of the written notice of breach, the Vendor will have ten (10) business days to provide a satisfactory response to NJPA. If the Vendor fails to reasonably address all issues in the written notice, NJPA may terminate the Contract immediately. If NJPA allows the Vendor more time to remedy the breach, such forbearance does not limit NJPA’s authority to immediately terminate the Contract for continued breaches for which notice was given to the Vendor. Termination of the Contract for cause does not relieve either party of the financial, product, or service obligations incurred before the termination.

7.16 [This section is intentionally blank.]

7.17 NJPA may terminate the Contract if the Vendor files for bankruptcy protection or is acquired by an independent third party. The Vendor must disclose to NJPA any litigation, bankruptcy, or suspensions/disbarments that occur during the Contract period. Failure to disclose such information authorizes NJPA to immediately terminate the Contract.

7.18 NJPA may terminate the Contract without cause by giving the Vendor sixty (60) days’ written notice of termination. Termination of the Contract without cause does not relieve either party of the financial, product, or service obligations incurred before the termination.

7.19 NJPA may immediately terminate any Contract without further obligation if any NJPA employee significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of NJPA has colluded with any Proposer for personal gain. NJPA may also immediately cancel a Contract if it finds that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor, to any employee of NJPA. Such terminations are effective upon written notice from NJPA or at a later date designated in the notice. Termination of the Contract does not relieve either party of the financial, product, or service obligations incurred before the termination.

8  GENERAL TERMS AND CONDITIONS

8.1 Proposer/Vendor must not advertise or publish information concerning this Contract before the award is announced by NJPA. Once the award is made, a Vendor is expected to advertise the awarded Contract to both current and potential NJPA Members.

B. APPLICABLE LAW

8.2 [This section is intentionally blank.]

8.3 NJPA Compliance with Minnesota Procurement Law: NJPA has designed its procurement process to comply with best practices in the State of Minnesota. NJPA’s solicitation methods are also created to comply with many of the various requirements that our Members must satisfy in their own procurement processes. But these requirements may differ considerably and may change from time to time. So each NJPA Member must make its own determination whether NJPA’s solicitation process satisfies the procurement rules in the Member’s jurisdiction.

8.4 Governing law with respect to delivery and acceptance: All applicable portions of the Minnesota Uniform Commercial Code, all other applicable Minnesota laws, and the applicable laws and rules of delivery and inspection of the Federal Acquisition Regulations (FAR) laws will govern NJPA contracts resulting from this solicitation.

8.5 Jurisdiction: Any claims that arise against NJPA pertaining to this RFP, and any resulting contract that develops between NJPA and any other party, must be brought only in courts in Todd County in the State of Minnesota unless otherwise agreed to.
8.5.1 Purchase orders or other agreements created pursuant to a contract resulting from this solicitation must be construed in accordance with, and governed by, the laws of the issuing Member. Any claim arising from such a purchase order or agreement must be filed and vened in a court of competent jurisdiction of the Member unless otherwise agreed to.

8.6 through 8.7 [This section is intentionally blank.]

8.8 Indemnification: Each party is responsible for its own acts and is not responsible for the acts of the other party and the results thereof. NJPA’s liability is governed by the Minnesota Tort Claims Act (Minn. Stat. §3.736) and other applicable law.

8.9 Prevailing wage: The Vendor must comply with applicable prevailing wage legislation in effect in the jurisdiction of the NJPA Member. The Vendor must monitor the prevailing wage rates as established by the appropriate federal governmental entity during the term of this Contract and adjust wage rates accordingly.

8.10 Patent and copyright infringement: The Vendor agrees to indemnify and hold harmless NJPA and NJPA Members against any and all suits, claims, judgments, and costs instituted or recovered against the Vendor, NJPA, or NJPA Members by any person on account of the use or sale of any articles by NJPA or NJPA Members if the Vendor supplied such articles in violation of applicable patent or copyright laws.

C. ASSIGNMENT OF CONTRACT

8.11 No right or interest in this Contract may be assigned or transferred by the Vendor without prior written permission by the NJPA. No delegation of any duty of the Vendor under this Contract may be made without prior written permission of the NJPA. NJPA will notify Members by posting approved assignments on the NJPA website (www.njpacoop.org).

8.12 If the original Vendor sells or transfers all assets or the entire portion of the assets used to perform this Contract, a successor-in-interest must perform all obligations under this Contract. NJPA reserves the right to reject the acquiring entity as a Vendor. A change of name agreement will not change the contractual obligations of the Vendor.

D. LIST OF PROPOSERS

8.13 NJPA will not maintain a list of interested proposers, nor will it automatically send RFPs to them. All interested proposers must request the RFP as a result of NJPA’s national solicitation advertisements. Because of the wide scope of the potential Members and qualified national suppliers, NJPA has determined this to be the best method of fairly soliciting proposals.

E. CAPTIONS, HEADINGS, AND ILLUSTRATIONS

8.14 The captions, illustrations, headings, and subheadings in this RFP are for convenience and ease of understanding and in no way define or limit the scope or intent of this request.

F. DATA PRACTICES

8.15 All materials submitted in response to this RFP become NJPA’s property and become public records (under Minn. Stat. §13.591) after the evaluation process is completed. If the Proposer submits information in response to this RFP that it requests to be classified as nonpublic information (as defined by the Minnesota Government Data Practices Act, Minn. Stat. §13.37), the Proposer must meet the following requirements.

8.15.1 The Proposer must make the request within thirty (30) days of the award/nonaward notification, and include the appropriate statutory justification. Pricing, marketing plans, and
financial information is generally not redactable. The NJPA Legal Department will review the request to determine whether the information can be withheld or redacted. If NJPA determines that it must disclose the information upon a proper request for such information, NJPA will inform the Proposer of such determination.

8.15.2 The Proposer must defend any action seeking release of the materials that it believes to be nonpublic information, and it must indemnify and hold harmless NJPA, its agents, and employees, from any judgments or damages awarded against NJPA in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the term of any contract awarded under this RFP. In submitting a response to this RFP, the Proposer agrees that this indemnification survives as long as NJPA possesses the confidential information.

8.16 [This section is intentionally blank.]}

G. ENTIRE AGREEMENT

8.17 This Contract, as defined herein, constitutes the entire agreement between the parties to this Contract. A Contract resulting from this RFP is formed when the NJPA Board of Directors approves and signs the applicable Contract Award & Acceptance document (Form E).

H. FORCE MAJEURE

8.18 Except for payments of sums due, neither party is liable to the other nor deemed in default under this Contract if and to the extent that such party’s performance of this Contract is prevented due to force majeure. The term “force majeure” means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence including, but not limited to, the following: acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, flood, snow, earthquakes, tornadoes or violent wind, tsunamis, wind shears, squalls, Chinooks, blizzards, hail storms, volcanic eruptions, meteor strikes, famine, sink holes, avalanches, lockouts, injunctions-intervention-acts, terrorist events or failures or refusals to act by government authority and/or other similar occurrences where such party is unable to prevent by exercising reasonable diligence. The force majeure is deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and is deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with a Contract resulting from this RFP. Force majeure does not include late deliveries of products and services caused by congestion at a manufacturer’s plant or elsewhere, an oversold condition of the market, inefficiencies, or other similar occurrences. If either party is delayed at any time by force majeure, then the delayed party must (if possible) notify the other party of such delay within forty-eight (48) hours.

8.19 through 8.20 [These sections are intentionally blank.]}

I. LICENSES

8.21 The Vendor must maintain a valid status on all required federal, state, and local licenses, bonds, and permits required for the operation of the business that the Vendor conducts with NJPA and NJPA Members.

8.22 All responding Proposers must be licensed (where required) and must have the authority to sell and distribute the offered products and services to NJPA and NJPA Members. Documentation of the required licenses and authorities, if applicable, should be included in the Proposer’s response to this RFP.

J. MATERIAL SUPPLIERS AND SUB-CONTRACTORS

8.23 The awarded Vendor must supply the names and addresses of sourcing suppliers and sub-contractors as a part of the purchase order when requested by NJPA or an NJPA Member.
K. NON-WAIVER OF RIGHTS

8.24 No failure of either party to exercise any power given to it hereunder, nor a failure to insist upon strict compliance by the other party with its obligations hereunder, nor a custom or practice of the parties at variance with the terms hereof, nor any payment under a Contract resulting from this RFP constitutes a waiver of either party’s right to demand exact compliance with the terms hereof. Failure by NJPA to take action or to assert any right hereunder does not constitute a waiver of such right.

L. PROTESTS OF AWARDS MADE

8.25 And protests must be filed with NJPA’s Executive Director and must be resolved in accordance with appropriate Minnesota rules. Protests will only be accepted from Proposers. A protest of an award or nonaward must be filed in writing with NJPA within ten (10) calendar days after the public notice or announcement of the award or nonaward. A protest must include the following items.

8.25.1 The name, address, and telephone number of the protester;

8.25.2 The original signature of the protester or its representative (you must document the authority of the representative);

8.25.3 Identification of the solicitation by RFP number;

8.25.4 Identification of the statute or procedure that is alleged to have been violated;

8.25.5 A precise statement of the relevant facts;

8.25.6 Identification of the issues to be resolved;

8.25.7 The aggrieved party’s argument and supporting documentation;

8.25.8 The aggrieved party’s statement of potential financial damages; and

8.25.9 A protest bond in the name of NJPA and in the amount of 10% of the aggrieved party’s statement of potential financial damages.

M. SUSPENSION OR DISBARMENT STATUS

8.26 If within the past five (5) years, any firm, business, person or Proposer responding to an NJPA solicitation has been lawfully terminated, suspended, or precluded from participating in any public procurement activity with a federal, state, or local government or education agency, the Proposer must include a letter with its response setting forth the name and address of the public procurement unit, the effective date of the suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. Any failure to supply such a letter or to disclose pertinent information may result in the termination of a Contract. By signing the proposal affidavit, the Proposer certifies that no current suspension or debarment exists.

N. AFFIRMATIVE ACTION AND IMMIGRATION STATUS CERTIFICATION

8.27 An Affirmative Action Plan, Certificate of Affirmative Action, or other documentation regarding Affirmative Action may be required by NJPA or NJPA Members relating to a transaction from this RFP. Vendors must comply with any such requirements or requests.

8.28 Immigration Status Certification may be required by NJPA or NJPA Members relating to a transaction from this RFP. Vendors must comply with any such requirements or requests.

O. SEVERABILITY
8.29 In the event that any of the terms of a Contract resulting from this RFP are in conflict with any rule, law, or statutory provision, or are otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms will be deemed stricken from the Contract, but such invalidity or unenforceability shall not invalidate any of the other terms of an awarded Contract resulting from this RFP.

P. RELATIONSHIP OF PARTIES

8.30 No Contract resulting from this RFP may be considered a contract of employment. The relationship between NJPA and an awarded Vendor is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. The parties neither intend the proposed Contract to create, nor is to be construed as creating, a partnership, joint venture, master-servant, principal-agent, or any other, relationship. Except as provided elsewhere in this RFP, neither party may be held liable for acts of omission or commission of the other party and neither party is authorized or has the power to obligate the other party by contract, agreement, warranty, representation, or otherwise in any manner whatsoever except as may be expressly provided herein.

Q. PROVISIONS FOR NON-FEDERAL ENTITY PROCUREMENTS UNDER FEDERAL AWARDS OR OTHER AWARDS

8.31 Procurements by NJPA or NJPA Members utilizing funds under a federal grant or contract may be subject to specific federal laws, regulations, and requirements in addition to those under state and local laws. This may include, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR Part 200 (also referred to as the “Uniform Guidance” or “EDGAR”). The terms included in this section express Proposers willingness and ability to comply with certain requirements which may be applicable to specific NJPA Member purchases using federal grant or contract dollars. NJPA Members may also require Proposers to enter into ancillary agreements, in addition to the NJPA contract’s general terms and conditions, to address the Member’s specific contractual needs, including contract requirements for a procurement using federal grants or contracts. NJPA reserves the right at any time within a contract term to require an awarded Vendor to reaffirm or resubmit proper documentation relating to these requirements. The numbering and identification contained within this section is only for reference purposes and does not identify any actual Federal designation or location of the rule. Rules are located in 2 CFR Part 200.

8.32 Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

National Joint Powers Alliance reserves all rights and privileges under the applicable laws and regulations with respect to this procurement process in the event of breach of contract by either party.

8.33 Contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

National Joint Powers Alliance reserves the right to terminate any agreement resulting from this procurement process pursuant to National Joint Powers Alliance RFP sections 7.13 and 7.17. Prior to any termination for cause, the NJPA will provide written notice to the Proposer, opportunity to respond and opportunity to cure. National Joint Powers Alliance reserves the right to terminate any agreement resulting from this procurement process without cause with a required 60-day written notice of termination. Termination of Contract shall not relieve either party of financial, product or service obligations incurred or accrued prior to termination.

The equal opportunity clause is incorporated by reference herein.

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

Proposer shall be in compliance with all applicable Davis-Bacon Act provisions.

8.36 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into all applicable contracts.

Proposer certifies that during the term of an award for all contracts by National Joint Powers Alliance resulting from this procurement process, Proposer shall comply with applicable requirements as referenced above.

8.37 Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights
to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Proposer certifies that during the term of an award for all contracts by National Joint Powers Alliance resulting from this procurement process, Proposer shall comply with applicable requirements as referenced above.

8.38 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387). Contracts and subgrants of amounts in excess of $150,000 require the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Proposer certifies that during the term of an award for all contracts by National Joint Powers Alliance resulting from this procurement process, Proposer shall comply with applicable requirements as referenced above.

8.39 Debarment and Suspension (Executive Orders 12549 and 12689). 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.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Proposer nor its principals shall be presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.


Proposers shall file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).

8.41 Record Retention Requirements. To the extent applicable, Proposer shall comply with the record retention requirements detailed in 2 CFR § 200.333. The Vendor further certifies that Vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

8.42 Energy Policy and Conservation Act Compliance. To the extent applicable, Proposer shall comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

8.43 Food specific Buy American and Cost-reimbursable Provisions Compliance. To the extent applicable, Proposer shall comply with all applicable provisions of the Buy American Act as defined in 7 CFR § 210.21(d) and the cost-reimbursable required provisions as defined in 7 CFR § 210.21(f). Purchases made in accordance with the applicable Buy American and cost-
reimbursable provisions shall follow the applicable procurement rules calling for free and open competition. Non-food specific Buy American Provisions Compliance. To the extent applicable, Proposer shall comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act shall follow the applicable procurement rules calling for free and open competition.

8.44 Access to Records (2 CFR § 200.336). Proposer agrees that duly authorized representatives of an Agency shall have access to any books, documents, papers and records of Proposer that are directly pertinent to Proposer’s discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Proposer’s personnel for the purpose of interview and discussion relating to such documents.

9     FORMS

[THE REST OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK.]
Form A

PROPOSER QUESTIONNAIRE - General Business Information

(Products, Pricing, Sector Specific, Services, Terms and Warranty are addressed on Form P)

Proposer Name: ____________________________ Questionnaire completed by: ________________________________

Please identify the person NJPA should correspond with from now through the Award process:

Name: _____________________________________ E-Mail address: _______________________________________

Please answer the questions below using the Microsoft Word® version of this document. This allows NJPA evaluators to cut and paste your answers into a separate worksheet. Place your answer directly below each question. NJPA prefers a brief but thorough response to each question. Please do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; mark “NA” if the question does not apply to you (preferably with an explanation). Please create a response that is easy to read and understand. For example, you may consider using a different font and color to distinguish your answer from the questions.

Company Information & Financial Strength

1) Provide the full legal name, mailing and email addresses, tax identification number, and telephone number for your business.

2) Provide a brief history of your company, including your company’s core values, business philosophy, and longevity in the FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES industry.

3) Provide a detailed description of the products and services that you are offering in your proposal.

4) What are your company’s expectations in the event of an award?

5) Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters.

6) What is your US market share for the solutions that you are proposing? What is your Canadian market share, if any?

7) Has your business ever petitioned for bankruptcy protection? Please explain in detail.

8) How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization.
   a) If your company is best described as a distributor/dealer/reseller (or similar entity), please provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned?
   b) If your company is best described as a manufacturer or service provider, please describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?

9) If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.

10) Provide all “Suspension or Disbarment” information that has applied to your organization during the past ten years.

11) Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.
Industry Recognition & Marketplace Success

12) Describe any relevant industry awards or recognition that your company has received in the past five years.

13) Supply three references/testimonials from your customers who are eligible for NJPA membership. At a minimum, please include the entity’s name, contact person, and phone number.

14) Provide a list of your top five governmental or educational customers (entity name is optional), including entity type, the state the entity is located in, scope of the projects, size of transactions, and dollar volumes from the past three years.

15) Indicate separately what percentages of your sales are to the government and education sectors in the past three years?

16) List any state or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?

17) List any GSA contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?

Proposer’s Ability to Sell and Deliver Service Nationwide

18) Describe your company’s capability to meet NJPA Member’s needs across the country. Your response should address at least the following areas.
   a) Sales force.
   b) Dealer network or other distribution methods.
   c) Service force.

Please include details, such as the locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employers (or employees of a third party), and any overlap between the sales and service functions.

19) Describe in detail the process and procedure of your customer service program, if applicable. Please include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.

20) a) Identify any geographic areas of the United States that you will NOT be fully serving through the proposed contract.
   b) Identify any NJPA Member sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Please explain your answer. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?

21) Define any specific contract requirements or restrictions that would apply to our Members in Hawaii and Alaska and in US Territories.

Marketing Plan

22) If you are awarded a contract, how will you train your sales management, dealer network, and direct sales teams (whichever apply) to ensure maximum impact? Please include how you will communicate your NJPA pricing and other contract detail to your sales force nationally.

23) Describe your marketing strategy for promoting this contract opportunity. Please include representative samples of your marketing materials in electronic format.

24) Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.
25) In your view, what is NJPA’s role in promoting contracts arising out of this RFP? How will you integrate an NJPA-awarded contract into your sales process?

26) Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.

**Value-Added Attributes**

27) Describe any product, equipment, maintenance, or operator training programs that you offer to NJPA Members. Please include details, such as whether training is standard or optional, who provides training, and any costs that apply.

28) Describe any technological advances that your proposed products or services offer.

29) Describe any “green” initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.

30) Describe any Women or Minority Business Entity (WMBE) or Small Business Entity (SBE) accreditations that your company or hub partners have obtained.

31) What unique attributes does your company, your products, or your services offer to NJPA Members? What makes your proposed solutions unique in your industry as it applies to NJPA members?

32) Identify your ability and willingness to provide your products and services to NJPA member agencies in Canada.

**NOTE:** Questions regarding Payment Terms, Warranty, Products/Equipment/Services, Pricing and Delivery, and Industry Specific Items are addressed on Form P.

Signature: ___________________________ Date: ________________________
Form B

PROPOSER INFORMATION

Company Name: ________________________________________________________________

Address: ______________________________________________________________________

City/State/Zip: __________________________________________________________________

Phone: __________________________ Fax: _________________________________

Toll-Free Number: ____________________________________________________________________ E-mail: ________________________________

Website Address: ____________________________________________________________________

COMPANY PERSONNEL CONTACTS

Authorized signer for your organization

Name: _____________________________________________________________________________

Email: __________________________ Phone: _________________________________

The person identified here must have proper signing authority to sign the “Proposer’s Assurance of Compliance” on behalf of the Proposer.

Who prepared your RFP response?

Name: __________________________ Title: __________________________

Email: __________________________ Phone: _________________________________

Who is your company’s primary contact person for this proposal?

Name: __________________________ Title: __________________________

Email: __________________________ Phone: _________________________________

Other important contact information

Name: __________________________ Title: __________________________

Email: __________________________ Phone: _________________________________

Name: __________________________ Title: __________________________

Email: __________________________ Phone: _________________________________
Any exceptions to the terms, conditions, specifications, or proposal forms contained in this RFP must be noted in writing and included with the Proposer’s response. The Proposer acknowledges that the exceptions listed may or may not be accepted by NJPA or included in the final contract. NJPA will make reasonable efforts to accommodate the listed exceptions and may clarify the exceptions in the appropriate section below.

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<thead>
<tr>
<th>Section/page</th>
<th>Term, Condition, or Specification</th>
<th>Exception</th>
<th>NJPA ACCEPTS</th>
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</tbody>
</table>

Proposer’s Signature: ___________________________ Date: ______________

NJPA’s clarification on exceptions listed above:
In compliance with the Request for Proposal (RFP) for FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES, the undersigned warrants that the Proposer has examined this RFP and, being familiar with all of the instructions, terms and conditions, general and technical specifications, sales and service expectations, and any special terms, agrees to furnish the defined products and related services in full compliance with all terms and conditions of this RFP, any applicable amendments of this RFP, and all Proposer’s response documentation. The Proposer further understands that it accepts the full responsibility as the sole source of solutions proposed in this RFP response and that the Proposer accepts responsibility for any subcontractors used to fulfill this proposal.

Company Name: _______________________________ Date:  ________________

Company Address: ______________________________________________________________________________

City:_________________________________________ State:  ________ ____ Zip:  __________________________

Contact Person:  ________________________________ Title:  ______________________________________

Authorized Signature:   ____________________________________________________________________________

(Name printed or typed)
Your proposal is hereby accepted, and a Contract is awarded. As an awarded Proposer, you are now bound to provide the defined products and services contained in your proposal offering according to all terms, conditions, and pricing set forth in this RFP, any amendments to this RFP, your response, and any exceptions accepted by NJPA.

The effective start date of the Contract will be ______________ _____________, 20_________ and continue until-_________________________ (no later than the later of four years from the expiration date of the currently awarded contract or four years from the NJPA Board’s contract award date). This contract may be extended for a fifth year at NJPA’s discretion.

National Joint Powers Alliance® (NJPA)

NJPA Authorized signature: ________________________________   _______________________________________

NJPA Executive Director   (Name printed or typed)

Awarded this _______ day of_________________________, 20___________     NJPA Contract Number #112917

NJPA Authorized signature: ________________________________   _______________________________________

NJPA Board Member    ( Name printed or typed)

Executed this ______ day of __________________________, 20___________     NJPA Contract Number #112917

The Proposer hereby accepts this Contract award, including all accepted exceptions and NJPA clarifications.

Vendor Name ____________________________________________

Vendor Authorized signature: _______________________________    __________________________________

Title: _____________________________________________________________

Executed this _____________ day of ___________________, 20___________     NJPA Contract Number #112917
PROPOSER ASSURANCE OF COMPLIANCE

Proposal Affidavit Signature Page

PROPOSER’S AFFIDAVIT

The undersigned, authorized representative of the entity submitting the foregoing proposal (the “Proposer”), swears that the following statements are true to the best of his or her knowledge.

1. The Proposer is submitting its proposal under its true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, the Proposer possesses, or will possess before delivering any products and related services, all applicable licenses necessary for such delivery to NJPA members agencies. The undersigned affirms that he or she is authorized to act on behalf of, and to legally bind the Proposer to the terms in this Contract.

2. The Proposer, or any person representing the Proposer, has not directly or indirectly entered into any agreement or arrangement with any other vendor or supplier, any official or employee of NJPA, or any person, firm, or corporation under contract with NJPA, in an effort to influence the pricing, terms, or conditions relating to this RFP in any way that adversely affects the free and open competition for a Contract award under this RFP.

3. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request, and other documents in this solicitation and affirms that any and all exceptions have been noted in writing and have been included with the Proposer’s RFP response.

4. The Proposer will, if awarded a Contract, provide to NJPA Members the /products and services in accordance with the terms, conditions, and scope of this RFP, with the Proposer-offered specifications, and with the other documents in this solicitation.

5. The Proposer agrees to deliver products and services through valid contracts, purchase orders, or means that are acceptable to NJPA Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to NJPA Members under an awarded Contract.

6. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.

7. The Proposer understands that NJPA will reject RFP proposals that are marked “confidential” (or “nonpublic,” etc.), either substantially or in their entirety. Under Minnesota Statute §13.591, Subd. 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals generally become public data. Minnesota Statute §13.37 permits only certain narrowly defined data to be considered a “trade secret,” and thus nonpublic data under Minnesota’s Data Practices Act.

8. The Proposer understands that it is the Proposer’s duty to protect information that it considers nonpublic, and it agrees to defend and indemnify NJPA for reasonable measures that NJPA takes to uphold such a data designation.

[The rest of this page has been left intentionally blank. Signature page below]
By signing below, Proposer is acknowledging that he or she has read, understands, and agrees to comply with the terms and conditions specified above.

Company Name: ________________________________

Address: ______________________________________

City/State/Zip: ________________________________

Telephone Number: _____________________________

E-mail Address: ________________________________

Authorized Signature: __________________________

Authorized Name (printed): ______________________

Title: _________________________________________

Date: _________________________________________

Notarized

Subscribed and sworn to before me this _________ day of ________________, 20_________

Notary Public in and for the County of __________________________ State of __________

My commission expires: __________________________

Signature: ________________________________
### OVERALL EVALUATION AND CRITERIA

For the Proposed Subject FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES

<table>
<thead>
<tr>
<th>Objective</th>
<th>Points</th>
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<tbody>
<tr>
<td>Conformance to RFP Terms and Conditions</td>
<td>50</td>
</tr>
<tr>
<td>Financial Viability and Marketplace Success</td>
<td>75</td>
</tr>
<tr>
<td>Ability to Sell and Deliver Service Nationwide</td>
<td>100</td>
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<tr>
<td>Marketing Plan</td>
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<tr>
<td>Value-Added Attributes</td>
<td>75</td>
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<tr>
<td>Warranty</td>
<td>50</td>
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<tr>
<td>Depth and Breadth of Offered Products and Related Services</td>
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<tr>
<td>Pricing</td>
<td>400</td>
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<tr>
<td><strong>TOTAL POINTS</strong></td>
<td><strong>1000</strong></td>
</tr>
</tbody>
</table>

Reviewed by: _________________________________________ Its _______________________________________

_________________________________________ Its _____________________________________
Form P

PROPOSER QUESTIONNAIRE
Payment Terms, Warranty, Products and Services, Pricing and Delivery, and Industry-Specific Questions

Proposer Name: _______________________________________________________________________

Questionnaire completed by: _______________________________________________________________________

Payment Terms and Financing Options

1) What are your payment terms (e.g., net 10, net 30)?

2) Do you provide leasing or financing options, especially those options that schools and governmental entities may need to use in order to make certain acquisitions?

3) Briefly describe your proposed order process. Please include enough detail to support your ability to report quarterly sales to NJPA. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the NJPA Members’ purchase orders.

4) Do you accept the P-card procurement and payment process? If so, is there any additional cost to NJPA Members for using this process?

Warranty

5) Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may include in your response a copy of your warranties, but at a minimum please also answer the following questions.
   • Do your warranties cover all products, parts, and labor?
   • Do your warranties impose usage restrictions or other limitations that adversely affect coverage?
   • Do your warranties cover the expense of technicians’ travel time and mileage to perform warranty repairs?
   • Are there any geographic regions of the United States for which you cannot provide a certified technician to perform warranty repairs? How will NJPA Members in these regions be provided service for warranty repair?
   • Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?
   • What are your proposed exchange and return programs and policies?

6) Describe any service contract options for the items included in your proposal.

Pricing, Delivery, Audits, and Administrative Fee

7) Provide a general narrative description of the equipment/products and related services you are offering in your proposal.

8) Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the NJPA discounted price) on all of the items that you want NJPA to consider as part of your RFP response. Provide a SKU for each item in your proposal. (Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract. See the body of the RFP and the Price and Product Change Request Form for more detail.)
9) Please quantify the discount range presented in this response. For example, indicate that the pricing in your response represents a 50% percent discount from the MSRP or your published list.

10) The pricing offered in this proposal is

_______ a. the same as the Proposer typically offers to an individual municipality, university, or school district.

_______ b. the same as the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.

_______ c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.

_______ d. other than what the Proposer typically offers (please describe).

11) Describe any quantity or volume discounts or rebate programs that you offer.

12) Propose a method of facilitating “sourced” products or related services, which may be referred to as “open market” items or “nonstandard options”. For example, you may supply such items “at cost” or “at cost plus a percentage,” or you may supply a quote for each such request.

13) Identify any total cost of acquisition costs that are NOT included in the pricing submitted with your response. This cost includes all additional charges that are not directly identified as freight or shipping charges. For example, list costs for items like installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.

14) If delivery or shipping is an additional cost to the NJPA Member, describe in detail the complete shipping and delivery program.

15) Specifically describe those shipping and delivery programs for Alaska, Hawaii, Canada, or any offshore delivery.

16) Describe any unique distribution and/or delivery methods or options offered in your proposal.

17) Please specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with NJPA. This process includes ensuring that NJPA Members obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to NJPA.

18) Identify a proposed administrative fee that you will pay to NJPA for facilitating, managing, and promoting the NJPA Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor’s sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member’s cost of goods. (See RFP Section 6.29 and following for details.)

**Industry-Specific Questions**

19) Describe your company’s experience with multi-unit customers including k-12 schools.

20) Describe how your company proposes to distribute products.

21) Provide the number and locations of your company’s distribution facilities/warehouses.

22) Identify all other companies that will be involved in processing, handling or shipping the products to the end user.

23) Demonstrate the ability of your fleet to handle distribution.

24) Describe how your company will handle a member that already has manufacturer agreements in place.

25) Detail your out-of-stock/backorder and product substitution policies.

26) Describe your recall policies and processes.

27) Describe how your company will handle special order products.

28) Describe your company’s position on fuel surcharges.

29) State your fill rate for products.
30) Describe the beverage dispensing services at your company. What vendors are you aligned with? Who provides maintenance? Are there any additional costs to members?
31) Describe your company’s capabilities with fresh produce. How are local produce sources identified?
32) Describe how K-12 members will access nutritional and product information in an electronic and searchable format.
33) Describe your company’s ability track and accommodate pick up, warehousing and delivery of USDA Foods.
34) Describe the electronic ordering and reporting systems available to members.
35) Provide a market basket (in the following table format) of your most commonly purchased K-12 food products include SKU’s for each item, minimum 100 items, by case count. A spreadsheet template is attached to the forms package for your use.

<table>
<thead>
<tr>
<th>Vendor Product #</th>
<th>Product Description</th>
<th>MFR Name</th>
<th>MFR Product# (SKU)</th>
<th>Pack Size</th>
<th>Price</th>
<th>Comments</th>
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Signature: __________________________________________ Date: ______________________
# PRE-SUBMISSION CHECKLIST

<table>
<thead>
<tr>
<th>Check when Completed</th>
<th>Contents of Your Bid Proposal</th>
<th>Hard Copy Required Signed and Dated</th>
<th>Electronic Copy Required - CD or Flash Drive</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Form A: Proposer Questionnaire with all questions answered completely</td>
<td>X - signature page only</td>
<td>X</td>
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<td>Form B: Proposer Information</td>
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<td>X</td>
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<td></td>
<td>Form C: Exceptions to Proposal, Terms, Conditions, and Solutions Request</td>
<td>X</td>
<td>X</td>
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<td>Form D: Formal Offering of Proposal</td>
<td>X</td>
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<td>Form E. Contract Acceptance and Award</td>
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<td>Form F: Proposers Assurance of Compliance</td>
<td>X</td>
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</tr>
<tr>
<td></td>
<td>Form P: Proposer Questionnaire with all questions answered completely</td>
<td>X-signature page only</td>
<td>X</td>
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<td></td>
<td>Certificate of Insurance with $1.5 million coverage</td>
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<td>X</td>
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<td>Copy of all RFP Addendums issued by NJPA</td>
<td>X</td>
<td>X</td>
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<td></td>
<td>Pricing for all Products/Equipment/Services within the RFP being proposed</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Entire Proposal submittal including signed documents and forms.</td>
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<td>X</td>
</tr>
<tr>
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<td>All forms in the Hard Copy Required Signed and Dated should be inserted in the front of the submitted response, unbound.</td>
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<tr>
<td></td>
<td>Package containing your proposal labeled and sealed with the following language: &quot;Competitive Proposal Enclosed, Hold for Public Opening XX-XX-XXXX&quot;</td>
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<tr>
<td></td>
<td>Response Package mailed and delivered prior to deadline to: NJPA, 202 12th St NE, Staples, MN 56479</td>
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</tbody>
</table>
Section 1. Instructions for Vendor

Requests for product or service changes, additions, or deletions will be considered at any time throughout the awarded contract term. All requests must be made in writing by completing sections 2, 3, and 4 of this NJPA Price and Product Change Request Form and signed by an authorized Vendor representative in section 5. All changes are subject to review by the NJPA Contracts & Compliance Manager and to approval by NJPA’s Chief Procurement Officer. Submit request through email to your assigned NJPA Contract Administrator.

NJPA will determine whether the request is 1) within the scope of the original RFP, and 2) in the best interests of NJPA and NJPA Members. Approved Price and Product Change Request Forms will be signed and emailed to the Vendor contact.

The Vendor must complete this change request form and individually list or attach all items or services subject to change, must provide sufficiently detailed explanation and documentation for the change, and must include a complete restatement of pricing documentation in an appropriate format (preferably Microsoft® Excel®). The pricing document must identify all products and services being offered and must conform to the following NJPA product/price change naming convention: (Vendor Name) (NJPA Contract #) (effective pricing date); for example, “Acme Widget Company #012416-AWC eff. 01-01-2017.”

**NOTE:** New pricing restatements must include all products and services offered regardless of whether their prices have changed and must include a new “effective date” on the pricing documents. This requirement reduces confusion by providing a single, current pricing sheet for each Vendor and creates a historical record of pricing.

**ADDITIONS.** New products and related services may be added to a contract if such additions are within the scope of the original RFP.

**DELETIONS.** New products and related services may be deleted from a contract if, for example, they are no longer available or have been modified to a point where they are outside the scope of the RFP.

**PRICE CHANGES:** Vendors may request price changes if they provide sufficient rationale for the change. For example, a Vendor that manufactures products that require substantial petroleum-related material might request a 3% price increase because of a 20% increase in petroleum costs.

**Price decreases:** NJPA expects Vendors to propose their very best prices and anticipates that price reductions might occur because of improved technologies or marketplace efficiencies.

**Price increases:** Acceptable price increases typically result from specific Vendor cost increases. The Vendor must include reasonable justification for the price increase and must not, for example, offer merely generalized statements about an increase in a cost-of-living index. Appropriate documentation should be attached to this form, including such items as letters from suppliers announcing price increases.

Refer to the RFP for complete “Pricing” details.

Section 2. Vendor Name and Type of Change Request

<table>
<thead>
<tr>
<th>CHECK ALL CHANGES THAT APPLY:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Adding Products/Services</td>
</tr>
<tr>
<td>☐ Deleting Products/Services</td>
</tr>
<tr>
<td>☐ Price Increase</td>
</tr>
<tr>
<td>☐ Price Decrease</td>
</tr>
</tbody>
</table>

AWARDED VENDOR NAME: ____________________________

NJPA CONTRACT NUMBER: ___________________________
Section 3. Detailed Explanation of Need for Changes

List the products and/or services that are changing or being added or deleted from the previous contract price list, along with the percentage change for each item or category. (Attach a separate, detailed document if changing more than 10 items.)

Provide a general statement and documentation explaining the reasons for these price and/or product changes.

**EXAMPLES:**
1) “All pricing for paper products and services are increased 5% because of increased raw material and transportation costs (see attached documentation of fuel and raw materials increase).”
2) “The 6400 series floor polisher is being added to the product list as a new model, replacing the 5400 series. The 6400 series 3% increase reflects technological changes that improve the polisher’s efficiency and useful life. The 5400 series is now included in the “Hot List” at a 20% discount from the previous pricing until the remaining inventory is liquidated.”

If adding products, state how these are within the scope of the original RFP.

If changing prices or adding products or services, state how the pricing is consistent with existing NJPA contract pricing.
Section 4. Complete Restatement of Pricing Submitted

A COMPLETE restatement of the pricing, including all new and existing products and services is attached and has been emailed to the Vendor’s Contract Administrator.

☐ Yes  ☐ No

Section 5. Signatures

__________________________________________________________        ________________________
Vendor Authorized Signature                                 Date

Print Name and Title of Authorized Signer

__________________________________________________________        _________________________
Jeremy Schwartz, NJPA Director of Cooperative Contracts and Procurement/CPO  Date
Appendix A

NJPA The National Joint Powers Alliance® (NJPA), on behalf of NJPA and its current and potential Member agencies, which includes all governmental, higher education, K-12 education, not-for-profit, tribal governmental, and all other public agencies located in all fifty states, Canada, and internationally, issues this Request For Proposal (RFP) to result in a national contract solution.

For your reference, the links below include some, but not all, of the entities included in this proposal.

http://www.usa.gov/Agencies/Local_Government/Cities.shtml
http://nces.ed.gov/globallocator/
https://harvester.census.gov/imls/search/index.asp
http://nccsweb.urban.org/PubApps/search.php
http://www.nreca.coop/about-electric-cooperatives/member-directory/
Oregon
Hawaii
Washington
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<td>City of Parkrose</td>
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<td>Alaska</td>
<td>Anchorage Water and Wastewater Utility District</td>
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- Whitworth Water District No. 2
- Williams Valley Water District
- Williams Lake Sewer District No. 2
- Whatcom County Mosquito Control District
- Whidbey Island Public Hospital District
- Whatcom County Rural Library District
- Whatcom County Irrigation District

- North Seattle Community College
- Seattle Colleges
- State Of Washington
- Washington State Department of Enterprise Services
- Washington State Department of Health
- Washington State Department of Social and Health Services
- Washington State Health Care Authority

- Confederated Tribes of the Chehalis Reservation
- Confederated Tribes of the Colville Reservation
- Confederated Tribes of the Yakama Nation
- Cowichan Indian Tribe
- Coast Salish Tribe
- Jamestown S’Klallam Tribe
- Kalispel Tribe of Indians
- Lummi Indian Nation
- Lower Elwha Klallam Tribe
- Cowlitz Indian Tribe
- Lower Elwha Klallam Tribe
- Makah Tribe
- Lower Elwha Klallam Tribe
- Quinault Indian Tribe
- Lower Elwha Klallam Tribe
- Puyallup Tribe
- Lower Elwha Klallam Tribe
- Quinault Indian Tribe
- Lower Elwha Klallam Tribe
- Quinault Indian Tribe
- Lower Elwha Klallam Tribe
- Snohomish Tribe
- Lower Elwha Klallam Tribe
- Spokane Tribe
- Lower Elwha Klallam Tribe
- Swinomish Tribe
- Lower Elwha Klallam Tribe
- Tulalip Tribes
- Lower Elwha Klallam Tribe
- Upper Skagit Indian Tribe
- Lower Elwha Klallam Tribe
- Yakama Nation Land Enterprises

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Appendix B Page 14 of 14
ADDENDUM ONE (1) to that certain NJPA RFP #112917
Issued by National Joint Powers Alliance®
For the procurement of

FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES

Consider the following to be part of the above-titled RFP:

***

RFP Section 5.4.2 (and subsections) and RFP Form P, Question 35 have been revised to reflect the addition of an FOB destination for national market basket pricing and a market basket pricing determination date:

***

**5.4.2 Food Items Pricing.** For all food items, Proposers are required to submit pricing as follows:

**5.4.2.1 K-12 Education Pricing.** Proposers are required to submit two prices as defined herein which will apply to all purchased food under this contract by NJPA Members providing pre-K through Grade 12 education: “Fixed Fee Per Case” and “Unit Market Basket Pricing”. The combined total of these price components shall result in the delivered product cost and is considered the Total Cost of Acquisition. For all food items, no other fees/charges will apply without express declaration in Proposer’s response. Proposers should include price proposals and associated information for the top 100 items sold within Proposer’s product offerings as of November 15, 2017. For National pricing proposals, the pricing shall be specific to a destination in Minneapolis, Minnesota. For Regional pricing proposals, the proposal shall be specific to a stated destination in a Regional urban center city as identified by the Proposer.

**5.4.2.2 Non-K-12 Education Pricing.** Proposers may elect to make the K-12 Education Pricing described above available to all NJPA Members, or may propose an alternative pricing method for non-K-12 education NJPA Members. For instance, any of the alternate pricing models described in this RFP, including a Percentage Mark-up or similar alternative model, may be proposed.

***

**Form P, Industry Specific Questions:**

35) Provide a market basket (in the following table format) of your most commonly purchased K-12 food products include SKU’s for each item, minimum 100 items, by case count as of November 15, 2017. For National pricing proposals, the pricing shall be specific to a destination in Minneapolis, Minnesota. For Regional pricing proposals, the proposal shall be specific to a stated destination in a Regional urban center city as identified by the Proposer. A spreadsheet template is attached to the forms package for your use.
Acknowledgment of Addendum One (1) to RFP 112917 emailed on October 30, 2017.

COMPANY NAME: _________________________________________________
SIGNATURE: _________________________________________________
DATE:   ________________________________
Please include this signed Addendum with your RFP response.
ADDENDUM TWO (2)
To that certain
NJPA RFP #112917
Issued by
National Joint Powers Alliance®
For the procurement of

FOOD PRODUCTS AND DISTRIBUTION WITH RELATED EQUIPMENT, SUPPLIES, AND SERVICES

Consider the following to be part of the above-titled RFP: The RFP submission deadline (and other deadlines) has been extended until December 7, 2017.

RFP Timeline

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>October 12, 2017</td>
<td>Publication of RFP in the print and online version of USA Today, in the print and online version of the Salt Lake News within the State of Utah, in the print and online version of the Daily Journal of Commerce within the State of Oregon (note: OR entities this pertains to: <a href="http://www.njpacoop.org/oregon-advertising">http://www.njpacoop.org/oregon-advertising</a> and also RFP Appendix B), in the print and online version of The State within the State of South Carolina, the NJPA website, MERX, Noticetobidders.com, PublicPurchase.com, Biddingo, and Onvia.</td>
</tr>
<tr>
<td>November 9, 2017</td>
<td>Pre-Proposal Conference (the webcast/conference call. The connection information will be sent to all inquirers two business days before the conference).</td>
</tr>
<tr>
<td>November 29, 2017</td>
<td>Deadline for RFP questions.</td>
</tr>
<tr>
<td>December 7, 2017</td>
<td>Deadline for Submission of Proposals. Late responses will be returned unopened.</td>
</tr>
<tr>
<td>December 8, 2017</td>
<td>Opening of Proposals.</td>
</tr>
</tbody>
</table>

Acknowledgment of Addendum Two (2) to RFP 112917 emailed on November 16, 2017.

COMPANY NAME: ________________________________________________

SIGNATURE: ________________________________________________

DATE: ________________________________

Please include this signed Addendum with your RFP response.
CITY OF LINCON

FEDERAL GRANT CONTRACT PROVISIONS

If a non-Federal entity (state or non-state) wants to use federal funds to pay or reimburse their expenses for equipment or services under a contract, that contract must contain the applicable clauses described in Appendix II to the Uniform Rules (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) under 2 C.F.R. § 200.326.

This document outlines the federally required contract provisions for City of Lincoln Federal Grant procurements. Vendors who take exception to these requirements may be considered non-responsive and their bid/proposal rejected and will not be considered for award.

Terms listed in this document take precedence over those listed in other documents attached to the bid or the contract.

I hereby acknowledge reading, understanding and accepting the terms listed herein for the applicable project:

Company Name: Cash Wa Ditrributing Co.

Signature: Bob Kruse

NOTE: ALL CONTRACTORS MUST SIGN THE LOBBYING CERTIFICATION ON PAGE 8
1. **REMEDIES.**

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

2. **TERMINATION FOR CAUSE AND CONVENIENCE.**

**Termination.** This Contract may be terminated by the following:

**Termination for Convenience.** Either party may terminate this Contract upon thirty (30) days written notice to the other party for any reason without penalty.

**Termination for Cause.** The City may terminate the Contractor for cause if the Contractor:
1) Refuses or fails to supply the proper labor, materials and equipment necessary to provide the services outlined in the Contract
2) Disregards Federal, State or local laws, ordinances, regulations, resolution or orders
3) Otherwise commits a substantial breach or default of any provision of the Contract Document.

In the event of a substantial breach or default the City will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the contract shall terminate.

3. **EQUAL EMPLOYMENT OPPORTUNITY.**


b. **Key Definitions.**

i. **Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 601.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.
Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

   - Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

4. **DAVIS-BACON ACT.**
   Not Applicable – Public Assistance Grant

5. **COPELAND ANTI-KICKBACK ACT.**
   Not Applicable – Public Assistance Grant
6. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.**

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) **Withholding for unpaid wages and liquidated damages.** The City of Lincoln shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.**

   Not Applicable – Public Assistance Grant

8. **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.**

   **Clean Air Act**

   1. The contractor 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.

   2. The contractor agrees to report each violation to the City of Lincoln and understands and agrees that the City of Lincoln will, in turn, report each violation as required to assure notification to the Federal Emergency
3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the City of Lincoln and understands and agrees that the City of Lincoln will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

9. DEBARMENT AND SUSPENSION.

Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by City of Lincoln. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to City of Lincoln, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C 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.
10. **BYRD ANTI-LOBBYING AMENDMENT.**


Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence 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. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

a. **Contractors must sign and submit to the City of Lincoln the following certification.**

**APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, 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 Form to Report Lobbying,” in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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.

The Contractor, ____________, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and
agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor’s Authorized Official

Name and Title of Contractor’s Authorized Official

11. PROCUREMENT OF RECOVERED MATERIALS.

(i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

• Competitively within a timeframe providing for compliance with the contract performance schedule; • Meeting contract performance requirements; or

• At a reasonable price.

(ii) Information about this requirement, along with the list of EPA designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

(iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.” Additional FEMA Requirements/Recommendations.

12. ACCESS TO RECORDS.

(1) The Contractor agrees to provide City of Lincoln, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives’ access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the City of Lincoln, and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.
13. **CHANGES.**

b. The City of Lincoln may make changes to the contract upon written request by the contractor and approval by the City of Lincoln. Such change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. A written amendment will be issued by the City and executed by both parties upon approval of the change by the City.

14. **DHS SEAL, LOGO, AND FLAGS.**

“The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.”

15. **COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS.**

“This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

16. **NO OBLIGATION BY FEDERAL GOVERNMENT.**

“The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

17. **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.**

“The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this contract.”