NOTICE TO BIDDERS

Please submit quotations on the item(s) listed below. The right is reserved to reject any or all bids. If substitutions are offered, give full particulars. There will be a public opening of this bid no later than 

May 27th @ 11:00 a.m., 2014.

The Shelby County Schools reserves the right to accept or reject any or all bids, or any part thereof, and to waive any informalities and/or technicalities that are deemed to be in the best interest of the Shelby County Schools. Successful vendor shall be paid only when delivery is complete.

Material safety data sheets (MSDS) must accompany all shipments covered under the Tennessee Hazardous Chemical Right To Know Law: Tennessee Public Chapter #417 - House bill #731

We propose to furnish the item(s) listed below at prices quoted and guarantee safe delivery F.O.B. delivered and as specified. These prices are submitted with a declaration that no Shelby County Schools Board of Education Commissioner or employee has a financial or beneficial interest in this transaction.

INVOICES WILL BE PAID ACCORDING TO TERMS BID

NAME OF FIRM

ADDRESS

CITY STATE ZIP

E-MAIL ADDRESS

TIME REQUIRED FOR DELIVERY

NAME OF FIRM

ADDRESS

CITY STATE ZIP

E-MAIL ADDRESS

PRINT AUTHORIZED REPRESENTATIVE NAME

CHECK HERE IF YOU ATTACHED A COPY OF A VALID SHELBY COUNTY BUSINESS LICENSE.
REQUEST FOR DIRECT FROM MANUFACTURER BID  
2014-2015 DIRECT FROM MANUFACTURER

Shelby County Schools is requesting your firm’s participation in our bid for end products processed utilizing USDA commodities as raw ingredients. Shelby County Schools is interested in:

1. Creating strong partnerships with vendors, distributors and direct suppliers of goods
2. Taking advantage of economies of scale to help reduce operating costs
3. Driving revenues through increased participation

Shelby County Schools serves approximately 92,000 reimbursable lunches’ daily and 53,000 reimbursable breakfasts. The district is allocated over 4.7 million dollars in USDA commodity entitlement. We intend to directly ship as many USDA commodities to manufacturers for processing as economies allow.

As indicated on the pricing sheet and bid instructions, Shelby County Schools will use a “geographical preference” of 5% to lowest responsive and responsible bidder for “bid evaluation purposes only when bidding local items”. (see Bid Instructions, pages 14-15)

Shelby County Schools reserves the right to make selection of manufacturers in the best interest of its/their school systems. Shelby County Schools reserves the right to reject any and all bids or to award the bid either in whole or in part to the manufacturers whose bids in their opinion meet all the established criteria and are the lowest in cost per serving, lowest in cost per pound, or preference weighted bid amount.

If you have any questions regarding this Request for Bid, contact:

Anthony Geraci, Director, 901- 416-5561 or
David Williams, Procurement Analyst, (901) 416-5451.
1. The undersigned agrees that if all or any part of this bid is accepted and a purchase order is issued by July 1, 2014, they will supply any or all of the items upon which prices have been quoted in accordance with the specifications applying at the price set opposite each item.

2. Purchase Orders: Items will be ordered on an “OPEN PURCHASE ORDER” or as specified on the attached specifications. Releases on each open purchase order, which should reflect the “Ship Lot” quantity specified and delivery date, will be issued by the Division of Procurement Services as these items are required. First delivery on selected items will be July 15, 2014. The last shipment required on each item may be less than the ship lot quantity specified. Prices quoted, however, must be firm for the bid quantities specified.

Pre-numbered purchase orders with firm fixed prices will be used after formal bidding. All purchase orders must remain good for quantities bid until the entire order has been received. Any shipment arriving without a purchase order may be refused at vendor’s expense.

3. Purchase orders will be emailed, transmitted by facsimile or mailed. Please provide the following information:
   - Company Name: ____________________________
   - Contact Person: ____________________________
   - Address: __________________________________
   - Phone Number: _____________________________
   - Fax Number: _______________________________
   - E-Mail Address: _____________________________

4. Bid Sheets: Bids must be submitted in Microsoft Office Excel 2007 Workbook format. A template worksheet will be provided by the Shelby County Schools. No other form will be considered. Bidders must submit Microsoft Office Excel 2007 Workbook file on CD, DVD, or USB flash drive (readable by Microsoft Windows 7 version) and a hard copy worksheet handwritten, in ink or typewritten as a backup. In case of errors in extensions, the unit price shall prevail.

5. Bid as specified. Please see Bid Instructions (page 14-15). Failure to supply this information may be cause for rejection of the item(s).

6. Delivery of Bids: Each bidder shall complete and return the following items in a sealed bid envelope no later than 11:00 a.m. C.S.T. on Tuesday, May 27, 2014:
   - Properly executed Notice to Bidders form
   - Certification Regarding Lobbying
   - Debarment/Suspension Certificate for purchases over $25,000
   - Fully completed Bid Sheet on each item bid
   - Nutrient analysis of each item bid and End Product Data Sheets
   - CN label for each item bid (if applicable)
   - Second Tier Purchasing
   - Buy American Certification/Waiver
   - Promise of Non-Discrimination Statement
7. The sealed bid envelope should indicate the bid due date, time and nature of bid.

8. To request a bid tabulation by E-mail, please contact LaJuanna Jones-Sulton, Buyer: EMAIL ADDRESS – jonessultonlm@scsk12.org.

9. Should any vendor fail to respond with a bid or no bid on three (3) consecutive invitations to bid, the vendor may be removed from the mailing list.

10. The Board of Education of Shelby County Schools encourages the participation of minority-owned businesses as prime supplier second tier supplier or as part of a joint venture or any other relationship.

11. Items on this bid will be awarded on a “line item” and “all or none” bottom line group basis, unless stated differently in the bid instructions and specifications. As indicated on the pricing sheet, Shelby County Schools will award this bid on the basis of lowest cost per serving, or lowest cost per pound, or preferred weighted bid amount.

12. Shelby County Schools encourages all bidders to submit a bid worksheet electronically to LaJuanna Jones-Sulton, Buyer: EMAIL ADDRESS – jonessultonlm@scsk12.org. Also, return/address all Bid Packets to the following address:

   Shelby County Schools
   Central Nutrition Center
   3176 Jackson Avenue
   Memphis, TN 38112
   Attn: LaJuanna Jones-Sulton, Buyer

Request for Bid – Direct From Manufacturer Bid Items

Page 4 of 21
Specific Conditions

SHELBY COUNTY SCHOOLS IS REQUESTING BIDS FOR BREAKFAST, LUNCH AND SNACK FOOD ITEMS TO BE PURCHASED FOR THE 2014-2015 SCHOOL YEAR.

1. **Bid Period:** The prices in this bid shall be effective for all purchases made by Shelby County Schools beginning July 1, 2014 – June 30, 2015.

2. **Option to Extend at Initial Term Pricing:** Shelby County Schools reserves the right to extend the initial term of this agreement/contract (July 1, 2014 – June 30, 2015), at initial term pricing, for one (1) additional year (July 1, 2015 – June 30, 2016) by giving the awarded vendor written notice prior to the expiration of the current term. The awarded vendor and Shelby County Schools must be in mutual agreement to renew. If the option to renew is exercised, the agreement will continue under the same terms and conditions set forth herein. **The total duration of this agreement, including the exercise of any options under this clause, shall not exceed two (2) years.**

3. **Contact Information:** If the distributor/manufacturer plans to use local representation to function as the service arm to Shelby County Schools, said manufacturer must provide the name, address, email, telephone and fax numbers of the representatives in the spaces below.

   COMPANY NAME: _______________________________

   REPRESENTATIVE(S) NAME:______________________

   ADDRESS________________________________________

   EMAIL___________________________________________

   PHONE NUMBER_________________________________

   FAX NUMBER____________________________________

4. **Prices:** All prices are fixed for the duration of the contract period. Shelby County Schools is exempt from state sales and use taxes and Federal excise taxes. Each item shall be quoted separately. Prices quoted must be net, including the reduction of all discounts, commodity allowances and manufacturer’s rebates.

5. **Decimals:** The unit price offered may contain four points (.0000) beyond the decimal.

6. **Line Item Corrections (Hard Copy Backup):** All prices and quotations should be shown in ink or typewritten. The use of correction fluid or erasures to correct line item bid prices and/or quantities are not acceptable. Corrections must be by strikethrough (strikethrough) of the incorrect figures, writing in of correct figures and initialing of the corrections by the originator.
7. **Bottom Line Corrections (Hard Copy Backup):** All prices and quotations should be shown in ink or typewritten. The use of correction fluid or erasures to correct Bottom Line bid pricing totals and/or quantities are not acceptable. Corrections must be by strikethrough (strikethrough) of the incorrect figures, writing in of correct figures and initialing of the corrections by the originator.

8. **Preference Weighted Bid Amount Corrections (Hard Copy Backup):** All prices and quotations should be shown in ink or typewritten. The use of correction fluid or erasures to correct Bottom Line bid pricing totals and/or quantities are not acceptable. Corrections must be by strikethrough (strikethrough) of the incorrect figures, writing in of correct figures and initialing of the corrections by the originator.

9. **Summary End Product Data Schedules (SEPDS):** (APPLIES TO COMMODITY PROCESSED ITEMS ONLY) Summary End Product Data Schedules must be included for all commodity processed items. The schedule must include detailed description of product, portion size, number of portions per case, raw ingredients with donated food marked by DF, quantity of each ingredient, number of cases per batch, guaranteed yield percentage, pounds of DF per case, value of DF, and total fee for service per case of finished product.

10. **Standards of Identity:** All products must conform to U.S. minimum standards of identity as authorized by the Food, Drug and Cosmetic Act and the supporting regulations in 21 CFR. Failure to comply places the contractor in violation of the agreement with the school district as well as Federal Law.

11. **Delivery:** All Products are to be delivered to the Central Nutrition Center Food Warehouse, 3176 Jackson Ave., Memphis, TN 38112. Prices shall include freight, packing, and insurance at the manufacturer’s expense on all items delivered to Central Nutrition Center Food Warehouse. Shelby County Schools shall have the power and authority to reject any and all materials furnished which, in its opinion, are not in strict compliance and conformity with the requirements of the specifications or equal in every respect to the bid or to the sample submitted by the manufacturer. All articles so rejected shall be promptly removed from the premises of the school at the manufacturer’s expense. No brand substitutions will be accepted unless written approval is obtained from Shelby County Schools or its authorized representative.

12. **Delivery Scheduling:** ALL DELIVERIES REQUIRE 48 HOUR NOTICE PRIOR TO DELIVERY. Any shipment arriving at the Central Nutrition Center warehouse without a purchase order or scheduled delivery time may be refused at vendor’s expense. The receiving hours of the Central Nutrition Center Food Warehouse for all incoming freight are Monday through Friday, 7:00AM to 12:30PM. Receiving times can be arranged by contacting: Kevin O’Brien at 901-416-0050.

13. **Pallets:** All orders are to be shipped on wooden pallets, stacked and secured in such a manner as to prevent the product from being crushed or from shifting or falling from the pallet; i.e.: banded, wrapped, or plastic shrink wrapped.

   Wooden pallets are to be four-way pallets 40” x 48”. **No pallet swap out offered.** Product is to be loaded on pallets to facilitate forklift unloading.
Pallets containing cases of six number ten (#10) cans shall have no more than forty-nine (49) cases per pallet to eliminate overhang.

All products shall not be stacked on pallets any higher than sixty inches (60”) high. Any loaded stacked higher will be required to be broken down by the driver or his/her helper. Extra pallets will be provided, if needed, by this warehouse for stacking sixty-inch (60”) pallets. Case weight for each product shall not exceed fifty (50) pounds.

14. **Quantities:** The quantities given are the approximate amounts expected to be ordered by Shelby County Schools during the bid period. Inclusion of an item on the bid form does not necessarily constitute an offer to buy nor does it obligate Shelby County Schools to purchase any quantity of the product. It is hereby agreed and understood that the District has the right to increase/reduce the quantities ordered in conjunction with this request based on budgetary restriction, the receipt of government commodities, or unanticipated usage.

15. **Specifications:** All items offered must be in accordance with specifications. When applicable, all products shall carry evidence of Underwriters’ Laboratory (UL) listing and comply with the requirement of the Occupational Safety and Health Act, (OSHA). When applicable, delivered items must be accompanied by the Material Safety Data Sheet (MSDS). If product packing or packaging is to be different than specified in the bid, the Bidder must state the deviation. Delivery of items not meeting specifications is cause for removal from the list of acceptable Bidders and no payment will be made for the entire delivery. **NO PRODUCT WILL BE CONSIDERED FOR AN AWARD IF AN APPROVED NUTRITIONAL ANALYSIS SHEET, CN LABEL (IF APPLICABLE) AND SPECIFICATION SHEET DOES NOT ACCOMPANY THE BID PRICE. NO COMMODITY PROCESSED PRODUCT WILL BE CONSIDERED IF AN APPROVED END PRODUCT DATA SCHEDULE DOES NOT ACCOMPANY THE BIDDERS PRICE.**

16. **Material Priced Incorrectly:** At any time during the term of this agreement, the contractor’s or any subcontractor’s books and records shall be subject to audit by the school district, state, or Federal government to the extent that the books and records relate to the performance of the contractor or subcontractor. As part of any award resulting from this process, Vendor (s) will discount all transactions as agreed. In the event the Shelby County Schools discovers, through its contract monitoring process or formal audit process, that material was priced incorrectly, Vendor(s) agree to promptly refund all overpayments and to pay all reasonable audit expenses incurred as a result of non-compliance.

17. **Ability to Deliver Product:** Quote prices only if merchandise can be processed and delivered within the requested bid period. Each item bid shall be considered binding. Shelby County Schools shall work with the vendor to determine a delivery schedule prior to school opening. The schedule for delivery is expected to be for the convenience and efficiency of the school system.

18. **Age and Condition of Items:** Stocks shall be fresh and sound, prepared in properly equipped plants under modern sanitary conditions in accordance with the best commercial practice, and free from decay, discolorations or foreign matter. Containers are to be sound, clean, sturdy, and sealed. Opened or damaged packages will not be
accepted. All frozen foods are to be delivered hard frozen at 0 degrees Fahrenheit or below. Partially thawed goods will be rejected. Shelby County Schools will not refreeze partially thawed deliveries. Packages are to have uniform identification codes stamped on the sides or ends. Brand, item, production code, and count are to be clearly identified on master cases and boxes within master cases.

19. **Inspection and Acceptance:** Inspection and acceptance of all items shall be upon delivery. Items found to be defective or not in accordance with the bid specifications shall be replaced by the Manufacturer at no cost to Shelby County Schools. If inspection cannot be reasonably conducted upon delivery, but subsequent inspection indicates defective or damaged product, or products not meeting bid specifications, SCS shall notify Vendor and Vendor shall either replace all non-conforming items or credit SCS the cost of the non-conforming items. Failures to replace items not meeting the bid specification and/or defective items shall be considered sufficient cause for default action under the DEFAULT provision of the agreement.

20. **Product Recall:** Vendor(s) awarded agreement(s) under this solicitation shall be required to notify Shelby County Schools of any manufacturer’s recalls regarding items ordered under said agreements. The Vendor shall contact the Director of Nutrition Services within 24 hours. Failure to comply with this requirement may be cause for termination of any existing agreements between the Vendor and the District and for removal from the District’s approved vendor list(s).

21. **Default:** Shelby County Schools may, by written notice of default to the awarded vendor, terminate the whole or any part of their order under this agreement. Contract default shall make the vendor liable for any differences in cost between agreed price and price paid to an alternate Manufacturer, including expenses incurred to make alternate purchases. Should Shelby County Schools bring suit against defaulter and prevail in such action, defaulter shall pay all reasonable attorney fees and other expenses for such litigation. Acts of God and similar causes not under the control of the manufacturer will be considered exempt from this default provision. This is intended only as a last recourse and not as a deterrent to bidders.

22. **Warranty:** The bidder/manufacturer agrees that all item(s) furnished under this Bid Agreement shall be covered by the most favorable warranties the manufacturer provides any customer for such items, and that the rights and remedies provided therein are in addition to any other provision of this Bid Agreement.

23. **CN Labels:** Products which carry Child Nutrition (CN) labels are preferred.

24. **HACCP Program:** Vendor must provide a letter with the offer stating that they have a HACCP program in place or documentation of manufacturing practices that follow current food safety compliance standards.

25. **Approved Brands:** Only those brands specified will be accepted on this bid, except on those items where OR APPROVED EQUAL is specified, or if the listed product specification has no APPROVED BRAND(S). If bidding an item that is not listed as an approved brand AND “or approved equal” is stated, samples are required. Samples must arrive prior to bid opening.
26. **Procedures for Submitting Samples:**

1. **Samples will only be accepted on this bid for products where the phrase “APPROVED EQUAL” appears in the listed product specification, OR if the listed product specification has no APPROVED BRAND(S).** Samples submitted to be considered for testing for the 2014-2015 school year must be received prior to the bid opening and coordinated with David Williams at 901.416.5451. If accepted, approved products will be included as **APPROVED BRANDS** on this and future bids.

2. Samples of any **APPROVED EQUAL** with complete specifications, nutrient analysis, including food allergen information and CN labels (if applicable) should be shipped to:
   
   Central Nutrition Center Warehouse  
   Attn: Kevin O’Brien  
   3176 Jackson Avenue  
   Memphis, TN 38112

3. Samples should be submitted in unopened cases with the manufacturer’s label intact. Product case pack should be exactly as the product case pack to be procured. Cases should contain the product name, brand, and the item code imprinted by the factory. **Exception: Canned goods packed 6/#10 cans/case do not require the submission of a full case of product.** It is the vendor’s responsibility to ensure that single cans are packed to avoid damage during shipping.

4. Failure to submit samples, with the manufacturer’s label intact, nutrient analysis information or child nutrition labels shall disqualify product.

**DO NOT SEND SAMPLES WITHOUT MAKING PRIOR ARRANGEMENTS TO ENSURE CONSIDERATION FOR THIS BID.**

27. **Nutritional Analysis and CN Labels:** Nutritional Analysis Data Sheets, including food allergen information, and CN labels (if applicable) MUST be included in each of the returned bid packets. Failure to include the requested information will result in disqualification of the bid quote for each item lacking the information. The Healthy Hunger Free Kids Act requires that food products and ingredients must contain zero grams of trans fat per serving. **All food products listed on the bid must be accompanied by the nutrition label or manufacturers specifications in order to ensure that no products containing trans fat are awarded.** Labels must also include **calories, saturated fat and sodium content per serving.** If the product is a meat item and includes a minimal amount of naturally occurring trans fat, the nutritional specifications must document the source of that trans fat.

28. **Buy American Requirement:** All food purchased on this bid must comply with public law #100-237, i.e., Buy American Provision. The “Buy American Requirement” requires that schools and institutions participating in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) in the contiguous United States are required by law to use school food service funds, to the maximum extent practicable, to buy domestic commodities or products for meals served under these programs. Please note this rule applies to “Private Labels” as well as other labels. The legislation defines “domestic
commodity or product” as one that is either produced or processed in the United States substantially using agricultural commodities that are produced in the United States. The report accompanying the legislation stipulated that “substantially” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. This system requests that vendors complete the attached Buy American Form. **If the supplier offers a Non-American product due to the fact that he/she feels the cost of the domestic product is significantly higher, then the supplier must list the price for the domestic product as well as the price for the Non-American product on the Certification Regarding “Buy American” Requirement. It will be up to the School Nutrition Program to decide to purchase the American or Non-American product. See attached waiver.**

29. **USDA Commodity Report:** (APPLIES TO COMMODITY PROCESSED ITEMS ONLY). A yearly summary report is required. The report will be due on May 30 of the bid year, showing the USDA commodities received on behalf of Shelby County Schools, the number of pounds processed into each product, and the dates of shipment back to Shelby County Schools.

30. **Assignment of Bid Agreement:** The successful bidder shall agree not to assign, transfer, convey, sublet, or otherwise dispose of the obligation to perform this Bid Agreement or any rights accruing there under, or any power to execute the same without prior consent in writing from Shelby County Schools. Notice is hereby given that Shelby County Schools will not honor any assignment made by the bidder/manufacturer unless consent in writing, as indicated above, has been given.

31. **Hold Harmless Clause:** The bidder/manufacturer shall hold harmless and indemnify Shelby County Schools, from every claim, demand, suit and award which may be made by reason of:

   a. Any injury to person or property sustained by the supplier or by any person, manufacturer or corporation employed directly or indirectly by him/her upon, or in connection with, his/her performance under the agreement, however caused;
   b. Any injury to person or property sustained by any person, manufacturer, or corporation caused by any act, neglect, default, or omission of the supplier or any person, manufacturer or corporation directly or indirectly employed by him/her upon, or in connection with, his/her performance under the agreement;
   c. Any liability that may arise from the furnishing or use of any copyrighted or non-copyrighted composition, secret process, or patented or unpatented invention in the performance of the services called for under the agreement; and
   d. The bidder/manufacturer, at his/her own expense and risk, shall defend any legal proceeding that may be brought against Shelby County Schools on any such claim or demand, and satisfy any judgment that may be rendered against any of them.

32. **Taxes:** Purchases made under provisions of any agreement established as a result of this invitation is exempt from federal, state, and local taxes. Bidders should quote prices which do not include such taxes.

33. **Early Pay Discount:** Unless otherwise agreed Shelby County Schools encourages bidders to offer payment discounts. In accordance with 7 CFR Section 3016.36, Shelby County Schools will use payment discounts to determine the low bid when the bidder provides evidence that Shelby County Schools has usually taken advantage of such
discounts in the past. Each bidder must clearly state in its bid its payment terms, including offered discounts. If it wishes Shelby County Schools to apply the discount to its bids when determining the low bid, the bidder also must provide evidence that Shelby County Schools has usually taken advantage of such discounts by submitting a list of invoices paid during the 12 months preceding the bid and indicate for which ones a discount was taken, unless otherwise agreed upon. Shelby County Schools will pay invoices within 30 days of the receipt of the invoice and product. Prices quoted should not reflect any early pay discount.

34. **Award of Bid:** Items on this bid will be awarded on a **Cost per Serving** basis, unless stated differently in the bid instructions and specifications. As indicated on the pricing sheet, **Shelby County Schools will award this bid on the basis of Cost per Serving.** All other items will be evaluated on a lowest cost per serving on pre-portioned items or indicated serving sizes cost per ounce, pound or case basis. Shelby County Schools reserve(s) the right to award or reject bids. Awards will be made by issuance of purchase orders from the Division of Procurement Services. Products must be tested and approved prior to bid opening to be considered for bid award.

35. **Protest of Bid Awards:** Disputes arising from the award of this bid must be submitted in writing to the Director of Procurement Services, Shelby County Schools, 160 South Hollywood Avenue, Memphis, TN 38112 no later than 10 business days after bid award. As required, Shelby County Schools will disclose the dispute to the Tennessee State Department of Education, School Nutrition office. The steps for dispute resolution include:
   a. A meeting with Shelby County Schools' representatives and the disputing party to discuss and resolve the complaint.
   b. If the complaint cannot be resolved following the meeting, a meeting will be scheduled with the legal counsels of both parties.
   c. No purchases will be made from bid in question as long as there are unresolved disputes or protests.
   d. In the event that purchases must be made for school meals before a final decisions rendered, the emergency purchase procedures established by the school system will be used.
   e. If consensus and resolution cannot be attained, further legal steps will be investigated.

36. **Right to Additional Competition:** Shelby County Schools occasionally purchases very large quantities of specific items and expressly reserves the right to purchase these and other similar items via other competitive methods if deemed in the best interest of SCS.

37. **Ethics:** Shelby County Schools adheres to strict laws, rules, and ethical practices when purchasing goods and services. SCS Procurement Services subscribes to the standards set forth by the National Association of Purchasing Management and the National Institute of Governmental Purchasing. Ethics in SCS Procurement promote efficiency and honesty in the Purchasing function; create a business atmosphere where honesty and integrity prevail; portray a wholesome approach to conducting business transactions in order to dispel negative views; discourage attempts by suppliers to engage in unacceptable conduct; provide a guide for good business conduct for any Procurement officer.
38. The bidder represents and warrants to SCS that no gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the bidder, or any agent or representative of the bidder, to any elected official or employee of SCS with a view toward securing the bid or securing favorable treatment with respect to any determinations concerning the performance of the bid. For breach or violation of this representation and warranty, SCS shall have the right to terminate the bid or agreement, either in whole or in part, and any loss or damage sustained by SCS in procuring on the open market any items which the bidder agreed to supply shall be borne and paid for by the bidder. The rights and remedies of SCS provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or equity.

39. The bidder covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of this bid. The bidder warrants that no part of the total contract fee shall be paid directly or indirectly to any officer or employee of SCS as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the bidder in connection with any work contemplated or performed relative to this bid.

40. **Penalties for Non-Compliance:** Should any vendor fail to complete delivery or meet delivery date(s); fail to supply products as specified; and or fail to supply the quality that the samples represented, then the Board of Education reserves the right to purchase in the open market at prevailing prices a quality equal to or better than specified and in the quantity needed to complete the bid. The vendor agrees to pay for any difference in purchase cost between original bid and replacement bid. This is a part of the Shelby County Schools agreement. Poor vendor performance may result in removal from the eligible vendor’s list for a period of one year.

41. **Piggy Back Clause:** Shelby County Board of Education reserves the right to extend the terms, conditions, and prices of this contract to other Institutions (such as State, Local and/or Public Educational Agencies) who express an interest in participating in any contract that results from this Bid. Each of the piggyback Institutions will issue their own purchasing documents for purchasing of the goods. By bidding of this service, Proposer agrees that the Shelby County Board of Education shall bear no responsibility or liability for any agreements between Proposer and the other Institution(s) who desire to exercise this option.

42. **Contract Termination:** Shelby County Schools reserves the right to terminate all or any part of this agreement prior to expiration with written notice. Termination may result from default, for delay or nonperformance by the vendor. The District also reserves the right to terminate if it is deemed in the best interest of Shelby County Schools.

43. **Regulation Compliance:** All agreements awarded in excess of $10,000.00 by grantees and their contractors or sub-grantees shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and supplemented in Department of Labor regulations (41CFP, Part 60).
All agreements over $100,000.00 will require compliance with the Clean Air Act issued under Section 306, Executive Order 11738.

Bidders must comply with mandatory standards and policies related to energy efficiency which are contained in the State Energy Plan issued in compliance with the Energy Policy and Conservation Act (PL 94-165).

A Certificate of Lobbying for agreements over $100,000.00 must be submitted as well as a Debarment/Suspension Certificate for all agreements over $25,000.00.

Bidders must comply with the “Buy American” provision as outlined in Policy Memorandum 210.21-14.

The bidder hereby acknowledges that it is aware of the provisions of Tennessee Code Annotated §49-5-413 requiring the background check of any employee or subcontractor that works on school grounds at any time when students are present, and prohibiting any person with a history of criminal offenses cited in the statute from working on a school campus during such times unless an exemption exists under the statute. The bidder hereby certifies that it has, and will, at all times during the Term, comply with the provisions of this statute and will provide to SCS, upon request, proof of its compliance with this provision. A default by the bidder of this provision shall be automatic grounds for termination.

44. Records: All vendors are required to keep records for three (3) years after Shelby County Schools has/have made final payment and all other pending matters are closed. Vendors must agree that each School Food Authority, the State Agency, the United States Department of Agriculture, or the Comptroller General may review any books, documents, papers, and records of the vendor which are directly pertinent to all negotiated contracts.

45. Master Processing Agreement for Commodity Processed Items: (APPLIES TO COMMODITY PROCESSED ITEMS ONLY). Manufacturer must be on current USDA’s approved Commodity Processor list. Manufacturer must agree to enter into a Master Processing Agreement with Tennessee Department of Agriculture if one is not already in place.

“In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability”.

To file a complaint of discrimination, write U.S.D.A., Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992 (Voice). Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer.
**Bid Instructions for Bid Worksheet Tabs: “Frozen-Servings”, Frozen-Servings Bottom Line”, “Dry–Serving”**

Complete the enclosed Request for Bid Line Item or Bottom Line Price Sheet. Complete the information as follows. The following columns must be completed:

<table>
<thead>
<tr>
<th>Column #</th>
<th>Column Name</th>
<th>Instructions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Stock Number</td>
<td>Information only.</td>
</tr>
<tr>
<td>2</td>
<td>Estimated Number of Serving,</td>
<td>Information only.</td>
</tr>
<tr>
<td>3</td>
<td>Unit</td>
<td>Information only.</td>
</tr>
<tr>
<td>4</td>
<td>Description</td>
<td>Information only.</td>
</tr>
<tr>
<td>5</td>
<td>Vendor</td>
<td>Enter your name for the first item only, regardless of whether bidding on this item.</td>
</tr>
<tr>
<td>6</td>
<td>Terms</td>
<td>Enter your payment terms for the first item only, regardless of whether bidding on this item.</td>
</tr>
<tr>
<td>7</td>
<td>Brand</td>
<td>Enter for each item bid.</td>
</tr>
<tr>
<td>8</td>
<td>Product Code</td>
<td>Enter for each item bid.</td>
</tr>
<tr>
<td>9</td>
<td>Pack Size</td>
<td>Enter for each item bid.</td>
</tr>
<tr>
<td><strong>10</strong></td>
<td>Estimated Servings Per Case for Bid Worksheet Tabs: “Frozen-Servings”, Frozen-Servings Bottom Line”, “Dry–Serving”</td>
<td>Enter for each item bid.</td>
</tr>
<tr>
<td><strong>11</strong></td>
<td>Estimated Pounds Per Case for Bid Worksheet Tabs: “Frozen-Case”, “Dry-Case”, “Dry–Pound”</td>
<td>Enter for each item bid.</td>
</tr>
<tr>
<td><strong>12</strong></td>
<td>Required Number of Cases</td>
<td>Enter for each item bid.</td>
</tr>
<tr>
<td><strong>13</strong></td>
<td>Cost Per Case</td>
<td>Enter for each item bid.</td>
</tr>
<tr>
<td><strong>14</strong></td>
<td>Case Cost Per Serving</td>
<td>Calculated by spreadsheet.</td>
</tr>
<tr>
<td><strong>15</strong></td>
<td>Extended Total Cost Notes</td>
<td>Calculated by spreadsheet.</td>
</tr>
<tr>
<td><strong>16</strong></td>
<td>Notes</td>
<td>Information only.</td>
</tr>
</tbody>
</table>

**Notes:**

- The following columns must be completed:
  - Column 1: Stock Number
  - Column 2: Estimated Number of Serving
  - Column 3: Unit
  - Column 4: Description
  - Column 5: Vendor
  - Column 6: Terms
  - Column 7: Brand
  - Column 8: Product Code
  - Column 9: Pack Size
  - Column 10: Estimated Servings Per Case
  - Column 11: Estimated Pounds Per Case
  - Column 12: Cost Per Case
  - Column 13: Case Cost Per Serving
  - Column 14: Extended Total Cost Notes
  - Column 15: Notes
**Bid Instructions for Bid Worksheet Tabs: “Frozen Servings Local Preference”** Complete the enclosed Request for Bid Line Item or Bottom Line Price Sheet. Complete the information as follows. The following columns must be completed:

<table>
<thead>
<tr>
<th>Column #</th>
<th>Column Name</th>
<th>Instructions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Stock Number</td>
<td>Information only.</td>
</tr>
<tr>
<td>2</td>
<td>Estimated Number of Serving, Unit</td>
<td>Information only.</td>
</tr>
<tr>
<td>3</td>
<td>Description</td>
<td>Information only.</td>
</tr>
<tr>
<td>4</td>
<td>Terms</td>
<td>Enter your payment terms for the first item only, regardless of whether bidding on this item.</td>
</tr>
<tr>
<td>5</td>
<td>Vendor</td>
<td>Enter your name for the first item only, regardless of whether bidding on this item.</td>
</tr>
<tr>
<td>6</td>
<td>Brand</td>
<td>Enter for each item bid.</td>
</tr>
<tr>
<td>7</td>
<td>Product Code</td>
<td>Enter for each item bid.</td>
</tr>
<tr>
<td>8</td>
<td>Pack Size</td>
<td>Enter for each item bid.</td>
</tr>
<tr>
<td>9</td>
<td>Percentage Eligible for Local Preference</td>
<td>Information only.</td>
</tr>
<tr>
<td>10</td>
<td>Estimated Servings Per Case</td>
<td>Enter for each item bid.</td>
</tr>
<tr>
<td>11</td>
<td>Required Number of Cases</td>
<td>Enter for each item bid.</td>
</tr>
<tr>
<td>12</td>
<td>Cost Per Case</td>
<td>Enter for each item bid.</td>
</tr>
<tr>
<td>13</td>
<td>Cost Per Serving</td>
<td>Calculated by spreadsheet</td>
</tr>
<tr>
<td>14</td>
<td>Extended Total Cost</td>
<td>Calculated by Spreadsheet</td>
</tr>
<tr>
<td>15</td>
<td>Preference Weighted Discount</td>
<td>Calculated by Spreadsheet</td>
</tr>
<tr>
<td>16</td>
<td>Preference Weighted Bid Amount</td>
<td>Calculated by Spreadsheet</td>
</tr>
<tr>
<td>17</td>
<td>Notes</td>
<td>Information only.</td>
</tr>
</tbody>
</table>
PROMISE OF NON-DISCRIMINATION STATEMENT

Know All Men By These Presents, that I/we, (_________________________), Name(s)
(_________________________). Name of Participant
Title(s) (hereinafter “Company”), in consideration of the privilege to submit Proposals on contracts
funded, in whole or in part, by the Board of Education of the Shelby County Schools, hereby
consents, covenants and agrees as follows:

(1) No person shall be excluded from participation in, denied the benefit of, or otherwise
discriminated against on the basis of race, color, national origin or gender in connection with any
Proposal submitted to Shelby County Schools or the performance of any contract resulting from;

(2) That it is and shall be the policy of this Company to provide equal opportunity to all
business persons seeking to contract or otherwise interested in contracting with this Company,
including various local small business enterprises;

(3) In connection herewith, I/We acknowledge and warrant that this Company has been made
aware of, understands and agrees to make voluntary good faith efforts to solicit LSBEs to do business
with this Company;

(4) That the promise of non-discrimination as made and set forth herein shall be
continuing in nature and shall remain in full force and effect without interruption;

(5) That the promises of non-discrimination as made and set forth herein shall be and are
hereby deemed to be made a part of, and incorporated by reference into, any contract or portion
thereof which this Company may hereafter obtain; and

(6) That the failure of this Company to satisfactorily discharge any of the promises of non-
discrimination as made and set forth herein shall constitute a material breach of contract entitling
the Board to declare the contract in default and to exercise any and all applicable rights and
remedies, including but not limited to, cancellation of the contract, termination of the contract,
suspension and debarment from future contracting opportunities, and withholding and/or
forfeiture of compensation due and owing on a contract.

(Authorized Company Representative Signature) Date
CERTIFICATION REGARDING LOBBYING

Applicable to Grants, Sub-grants, Cooperative Agreements, and Contracts Exceeding $100,000 in Federal Funds.

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

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 any 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 a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into of cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a 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, and officer or employee of Congress, or an employee of a Member of Congress in connection with the Federal grant 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 the certification be included in the award documents for all covered sub-awards exceeding $100,000 in Federal funds at all appropriate tiers and that all sub-recipients shall certify and disclose accordingly.

____________________________________
FNS Grant/Cooperative Agreement

________________________________________________________________________
Name/Address of Organization

________________________________________________________________________
Name/Title of Submitting Official

________________________________________________________________________
Signature _______________________________ Date __________
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

(Before completing certification, read instructions on the next page.)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its Principals is presently debarred, suspended, proposed for debarment, declared ineligible, or Voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this Certification, such prospective participant shall attach an explanation to this proposal.

__________________________________________
Organization Name

__________________________
Bid Number

________________________________________________________________________
Name(s) and Title(s) of Authorized Representative(s)

________________________________________________________________________
Signature(s) Date
Instructions for Certification

(1) By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.

(2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(3) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(4) The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

(5) The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

(6) The prospective lower tier participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

(7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

(8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(9) Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Form AD-1048 (1/92)
FSMC Guidance for SFAs – June 1995
Appendix E - Debarment/Suspension
SECOND TIER PURCHASING

Shelby County Schools utilizes a race neutral program for all purchases and contracts. In order to set benchmarks for all Local, Small, Women Owned Business Enterprises, we ask that our vendors review and actively participate in the Fair Business Program which can be found in the Procurement Services website at: www.scsk12.org-Procurement Services link.

In order to track the purchases and contracts issued to MBE's (Minority Business Enterprises), we ask our vendors to indicate their level of second tier purchasing commitment. Second tier purchasing is defined below:

**Second-tier purchasing** is the process through which a first-tier (or prime) supplier utilizes a minority supplier either directly or indirectly.

Please indicate below the level of participation, in both dollars and percentage that would define the level of minority business enterprise participation for this project.

Second Tier Commodity_________________________(Example: Office supply vendors may purchase subsets from minority owned companies. Manufacturers may purchase a certain percentage from minority suppliers. This line asks for the commodity.)

MBE category for second tier supplier – **PLEASE CHECK ALL THAT APPLY:**

- □ Hispanic
- □ Black
- □ Asian American
- □ Native American Indian
- □ Woman Owned

Dollars expended for this commodity, this project $____________________

Percentage of this project___________%

_________________________________________________
Name of Business

_________________________________________________
Signature of Authorized Representative /S/

_________________________________________________
Date
Regarding “Buy American” Requirements

Section 104 (d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 requires SFAs to purchase domestically grown and processed foods, to the maximum extent practicable. There is a two-part test to define the country of origin for a manufactured end product: (1) the article must be manufactured in the United States; and (2) the cost of domestic components must exceed 50 percent of the cost of all the components.

We require that suppliers certify the percentage of U.S. content in products supplied to us according to the two-part test above. If you are unable or unwilling to make such certification, we will not purchase from you.

Two situations may warrant a waiver to permit purchases of foreign food products.  
1) The product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality.  
2) Competitive bids reveal the cost of a U.S. product is significantly higher than the foreign product. If the supplier offers a Non-American product due to the fact that he/she feels the cost of the domestic product is significantly higher, then the supplier MUST list a price for the domestic product as well as a price for the Non-American product in the table below.

Requested Waiver Items

<table>
<thead>
<tr>
<th>Product Description</th>
<th>Vendor Item #</th>
<th>American Price</th>
<th>Non American Price</th>
<th>Reason for Waiver Request</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*use additional pages if needed*

“We certify that our food products were manufactured in the United States and have at least 51% U.S. contents.”

Date ___________________________

Vendor Name ________________________________

Completed By ________________________________