

GENERAL CONDITIONS

1. The undersigned agrees that if all or any part of this bid is accepted and a purchase order is issued by **April 5, 2021 – June 30, 2022** 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. **The unit price is for a 14 months' period with the option to renew for one (1) addition one-year period.**
2. Purchase Orders: Items will be ordered on one or more purchase orders. Each purchase order will reflect the "Ship Lot" quantity specified and delivery date, and will be issued by the Division of Procurement Services as these items are required. ***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.

Each purchase order will remain active until the entire order has been received. Any shipment arriving without a purchase order, unless otherwise mutually agreed upon, may be refused at vendor's expense.

3. Each bidder must complete and electronically attach the following items within their bid submission in eSchoolMall:
 1. Vendor Information Form
 2. Certification Regarding Lobbying
 3. Debarment / Suspension Certificate for purchases over \$25,000
 4. Second Tier Purchasing
 5. Promise of Non-Discrimination Statement
 6. Vendor's HACCP Program Letter

If the above items are not submitted along with your bid response through eSchoolMall, your bid may not be evaluated and may be deemed as "non-responsive".

4. **Bid tabulations will be posted to the Shelby County Board of Education's (SCBE) website at www.scsk12.org once completed.**
5. 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.
6. The Board of Education of Shelby County Board of Education encourages the participation of minority-owned businesses as prime supplier, second tier supplier or as part of a joint venture or any other relationship.
7. Items on this bid will be awarded on a "***line item***" basis, unless stated differently in the bid instructions and specifications. As indicated on the pricing sheet, **Shelby County Board of Education will award this bid on the basis of lowest "approved" cost per unit.**

Specific Conditions

SHELBY COUNTY BOARD OF EDUCATION IS REQUESTING BIDS FOR CAFETERIA SUPPLY ITEMS TO BE PURCHASED FOR THE 2020-2022 SCHOOL YEAR.

1. **Bid Period:** The prices in this bid shall be effective for all purchases made by Shelby County Board of Education between **April 5, 2021 – June 30, 2022.**
2. **Option to Extend at Initial Term Pricing:** Shelby County Board of Education reserves the right to extend the initial term of this agreement / contract (July 1, 2022 – June 30, 2023), at initial term pricing, for one (1) additional year (July 1, 2023 – June 30, 2024) by giving the awarded vendor written notice prior to the expiration of the current term. The awarded vendor and Shelby County Board of Education 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. Bidder guarantees that any increase in rates for the optional, additional one-year contract period will not exceed the lower of the percentage rate increase in the National Consumer Price Index for the Urban Consumers (CPI-U), under the expenditure category for all items, over the previous twelve-month period.
4. **Prices:** All prices are fixed for the duration of the contract period. Shelby County Board of Education 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. **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.
7. **Delivery:** All Products are to be delivered to the Central Nutrition Center Warehouse located at 2970 Jackson Avenue, Bldg. 7, Memphis, TN 38112 (**Dry Item Storage**). Also, there may be times were a delivery maybe re-routed to an alternate location due to storage constraints at the CNC. Prices shall include freight, packing, and insurance at the manufacturer's expense on all items delivered to Central Nutrition Center Warehouse or alternate storage location. Shelby County Board of Education 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 Board of Education or its authorized representative.

8. **Delivery Scheduling:** ALL DELIVERIES REQUIRE A 48 HOUR NOTICE PRIOR TO DELIVERY. All Full truck loads being delivered to the Central Nutrition Center must have a sealed truck. This seal will be reviewed by the receiving team of the CNC. Any shipment arriving at the Central Nutrition Center warehouse without a purchase order, **packing list(s)** or scheduled delivery time may be refused at vendor's expense. ***Furthermore, purchase order numbers must be written on the bill of lading (BOL) documentation.*** The receiving hours for the CNC Warehouse for all incoming freight is Monday through Friday, 6:00 AM to 12:00 Noon CST. Scheduling deliveries must be arranged by contacting: Anaella Sanders at 901-416-2950 or via email to NewCNCLogistics@scsk12.org. Once a delivery appointment has been made the vendor will receive a delivery confirmation number. In the event the warehouse is closed for unforeseen circumstances, the vendor will be responsible to reschedule the delivery at no cost to the Shelby County Board of Education.

NOTE: SCBE reserves the right to change the designated delivery locations and times by notifying the vendor.

9. **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 fifty-six (56) 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.

All dry products shall not be stacked on pallets any higher than 48 inches.

- a. **Lumping:** If Vendor ships pallets higher than as stated above, a flat "lumping fee" of \$300 per load will be accessed. The Vendor will be responsible for the payment of such lumping fee. If any loading and/or unloading is done by a SCBE personnel beyond the tailgate, including sorting or stacking or similar service, Vendor must pay the flat "lumping fee." Any Vendor requiring more than 3 lumping fees will be charged in a contract time frame will be held accountable under the penalties for non-compliance listed in this document.
10. **Quantities:** The quantities given are the **approximate** amounts expected to be ordered by Shelby County Board of Education 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 Board of Education 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. However, SCBE will only purchase the quantity actually needed.

11. **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 there are any formulation or pack size changes after the vendor's or manufacturer's brand has been approved, bidder must notify SCBE in writing with current nutritionals and get product re-approved. If product packing and 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.

12. **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 Board of Education 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.

13. **Ability to Deliver Product:** Quote prices only if merchandise can be processed and delivered within 3 weeks from issuance of a purchase order. Each item bid shall be considered binding. Shelby County Board of Education 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.

14. **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 Board of Education. If inspection cannot be reasonably conducted upon delivery, but subsequent inspection indicates defective or damaged product, or products not meeting bid specifications, SCBE shall notify Vendor and Vendor shall either replace all non-conforming items or credit SCBE 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.

SCS warehouse will inspect all deliveries for the following:

- Evidence of tampering, incomplete labeling and discoloration of cases
- Pinholes, leaks or bulges in cans, foreign matter or decay
- Any visible signs of damage to product
- Unusual packing or packages
- Contamination – Insect or rodent activity on truck or around / on cases
- Received at proper temperatures
- Cleanliness of the truck delivering products i.e.: Excessive debris inside truck, liquid from food products, etc.
- Truck is in good repair

- No foreign objects on the truck
 - Seal intact
 - No chemicals delivered with food products
15. **Product Recall:** Vendor(s) awarded agreement(s) under this solicitation shall be required to notify Shelby County Board of Education 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).
16. **Default:** Shelby County Board of Education 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 Board of Education 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.
17. **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.
18. **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*.
19. **Approved Brands:** Only those brands specified on the bid worksheet will be accepted on this bid, except for those items where requested samples are received on or before **March 30, 20210 by 11:00 a.m. CST**. Items that are tested / evaluated, and APPROVED by the district, prior to the bid opening will be considered for awards. *Sample submission response letters will be e-mailed as soon as the products have been evaluated. In the event that you have not received your sample submission response letter, please go ahead and bid your item(s). Do not let this be a deterrent for you to submit a bid.*
20. **BID SAMPLE PROCEDURES (Cafeteria Supplies Only)**
1. Contact and coordinate with Mabel Kwamusi, Nutrition Services Analyst, on any samples of food or cafeteria supply items that meet bid specification(s) via e-mail at kwamusimc@scsk12.org or by telephone at (901) 416-0080.
 2. Samples of cafeteria supply items are to be shipped to the address and attention listed below after been given the approval to ship item(s). 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.

**Shelby County Schools
Nutrition Services
Attn: Mabel Kwamusi
3176 Jackson Avenue**

Memphis, TN 38112

3. All bid samples submitted will be tested and must meet a minimum of seventy-five percent (75%) approval rating to be deemed as an “approved brand” for current and future bids.
4. A letter will be issued via email from SCBE stating if the sample item(s) submitted by the vendor were approved or disapproved prior to bid opening. *In the event the vendor does not receive a letter, please bid all line items that a sample was submitted for on this particular bid.*
5. In the event a vendor fails to submit samples (i.e. if their product is not a current approved brand) and bids a line item, that line item only will not be evaluated by SCBE.

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

21. **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 Board of Education. Notice is hereby given that Shelby County Board of Education will not honor any assignment made by the bidder / manufacturer unless consent in writing, as indicated above, has been given.
22. **Force Majeure or Uncontrollable Forces:** Either party’s performance under this agreement is subject to acts of God, war, epidemics, government regulation, strikes, or any other occurrence or emergency beyond the party’s control, making it impossible, illegal, or commercially impracticable for either party to perform its obligations under this agreement, in whole or in part. SCBE will exhaust all efforts to utilize product when applicable up to full orders as it pertains to the business needs of SCBE. If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.
23. **Hold Harmless Clause:** The bidder / manufacturer shall hold harmless and indemnify Shelby County Board of Education, 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 Board of Education on any such claim or demand, and satisfy any judgment that may be rendered against any of them.
24. **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.
25. **Award of Bid:** Items on this bid will be awarded on a “*line item*” basis, unless stated differently in the bid instructions and specifications. As indicated on the pricing sheet, **Shelby County Board of Education will award this bid on the basis of lowest “approved” cost per unit.** Shelby County Board of Education 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.
27. **Right to Protest:** Prior to the commencement of an action in court concerning the controversy, any actual vendor who claims to be aggrieved in connection with a solicitation, the solicitation process, or a pending award of a contract may protest to the Buyer. Procurement Director shall attempt to resolve informally all protest of award recommendations. Protest shall be submitted in writing within seven (7) days after such claimant knows or should know of the facts giving rise to the protest.
- 1. An aggrieved bidder of standing or offeror may protest to the Buyer a proposed award of a contract for supplies, equipment, services, or maintenance. A bidder of standing is a bidder who would be directly next in line for an award should the protest be supported.
 - a. The protest shall be in writing addressed to the Buyer with a copy to the Procurement Director and shall include the following:
 - The name address and telephone number(s) of the protester.
 - Identification of the solicitation
 - Statement of reasons for the protest
 - Supporting documentation to substantiate the claim
 - The remedy sought
 - 2. The protest must be filed with the Procurement Office within seven (7) calendar days of the recommendation of award or notification to the bidder or offeror that their bid or Bid will be rejected.

3. A vendor who does not file a timely protest before the contract is executed by the Board is deemed to have waived any objection.
4. The Procurement Director shall inform the Chief of Business Operations (CBO) upon receipt of the protest.
5. The Procurement Director shall confer with the general counsel prior to issuance of a decision regarding disputes of contracts or awards.

Appeal of Contract Award Decision

1. The Procurement Director shall issue a decision in writing. Any decision of an award protest may be appealed to the CBO within seven (7) days of issuance of the decision by the Procurement Director.
 2. Any decision of an award protest may be appealed to the Superintendent within seven (7) days of issuance of the decision by the Chief of Business Operations.
 3. The Superintendent will evaluate the issues involved and render a decision. The decision of the Superintendent is final.
26. **Right to Additional Competition:** Shelby County Board of Education 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 SCBE.
27. **Ethics:** Shelby County Board of Education adheres to strict laws, rules, and ethical practices when purchasing goods and services. SCBE Procurement Services subscribes to the standards set forth by the National Association of Purchasing Management and the National Institute of Governmental Purchasing. Ethics in SCBE 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.
28. The bidder represents and warrants to SCBE 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 SCBE 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, SCBE shall have the right to terminate the bid or agreement, either in whole or in part, and any loss or damage sustained by SCBE 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 SCBE provided in this

clause shall not be exclusive and are in addition to any other rights and remedies provided by law or equity.

29. 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 SCBE 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.
30. **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 SCBE agreement. Poor vendor performance may result in removal from the eligible vendor's list for a period of one year.
31. **Contract Termination:** Shelby County Board of Education 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 Board of Education.
32. **Basis for Ineligibility:** Unsatisfactory performance, including but not limited to, any of the following:
 - a. Failure to comply with terms of SCBE's contract, including but not limited to: willful failure to perform in accordance with the terms of one or more contracts, a history of failure to perform or unsatisfactory performance of one (1) or more contracts.
 - b. Offering unbalanced bids, i.e. failure to accurately bid forecasted quantities of vendor's or manufacturer's "approved brands."
 - c. Failure to complete the work in the timeframe specified in the contract.
33. **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 (41CFR, 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.

Rights to Inventions Made Under a Contract or Agreement (if applicable). [Appendix II to 2 CFR 200/7 CFR 3019.48].

34. **Records**: All vendors are required to keep records for three (3) years after the Shelby County Board of Education has 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.