

MEMPHIS-SHELBY COUNTY BOARD OF EDUCATION

PROCUREMENT SERVICES

3176 Jackson Avenue Memphis, Tennessee 38112-4892 Phone (901) 416-5550

(This bid will not be accepted electronically or by facsimile. All bids must be mailed to the above address.)**INVITATION FOR BID****(NOT AN ORDER)**

Please submit Bids on the item(s) listed below. The right is reserved to reject any or all Bids. If substitutions are offered, give full particulars. The Bid must be submitted no later than **May 06, 2022 @ 11:00 A.M., CST.**

The Memphis-Shelby County Board of Education reserves the right to accept or reject any or all Bids, or any part thereof, and to waive any minor informalities and/or technicalities that are deemed to be in the best interest of the Memphis-Shelby County Board of Education. Successful Bidders shall be paid only when delivery is complete. **For the appropriate purchases, all material data safety data sheets (MSDA) must accompany all shipments covered under Tennessee Hazardous Chemical Right to Know Law- Tennessee Public Chapter #417- House Bill #731.*

NUTRITION SERVICES**CENTRAL NUTRITION CENTER FOOD WAREHOUSE****2022-2023 MSCBE PRODUCE 1ST SEMESTER – FRESH FRUITS AND VEGETABLES**

The Memphis-Shelby County Board of Education ("MSCBE") is requesting bids for the purchase of MSCBE **PRODUCE 1ST SEMESTER – FRESH FRUITS AND VEGETABLES** or the 2022-2023 school period, for the as indicated in the attached specifications. Bids **MUST** be received by Memphis Shelby County Schools ("MSCS" or "District) by the due date and time set forth above.

Questions or requests for clarification of technical issues and terms pertaining to this Bid must be submitted in writing via e-mail to **williamsa38@scsk12.org**.

ISSUED BY: A'Ishah Williams**BID #05062022**

We propose to furnish the item(s) and/or services outlined in the Bid at prices quoted and guarantee safe delivery **F.O.B. delivered** and as specified. Bids are submitted with a declaration that no Shelby County Board of Education Member or employee has a financial or beneficial interest in this transaction.

NAME OF FIRM

PHONE #

FAX #

ADDRESS

CITY

STATE

ZIP CODE

EMAIL ADDRESS

AUTHORIZED REPRESENTATIVE NAME

NAME OF BILLING CONTACT

PHONE#

EMAIL ADDRESS

NAME OF QUALITY CONTROL MANAGER

PHONE#

EMAIL ADDRESS

☐ CHECK HER IF YOU ARE A MINORITY VENDOR

"In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA. To file a complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC. 20250-9410 or call (866) 632-9992 or (800) 877-8339 (TTY). USDA is an equal opportunity provider and employer."

"Shelby County Board of Education does not discriminate in its programs or employment on the basis of race, color, religion, national origin, handicap/disability, sex or age

PART I: SCOPE OF WORK

1.0 INTRODUCTION

This Invitation for Bid (IFB) is soliciting bids for **MSCBE PRODUCE 1ST SEMESTER – FRESH FRUITS AND VEGETABLES** for the 2022-2023 school period.

Memphis-Shelby County Board of Education is interested in:

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

Memphis-Shelby County Board of Education 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.

2.0 BACKGROUND

Memphis Shelby County Schools (MSCS) is Tennessee's largest public school district and is among the 25 largest public school districts in the United States. Formerly comprised of two smaller districts, Memphis City Schools and Shelby County Schools, MSCS serves approximately 110,000 students in 207 schools. We employ more than 6,200 teachers and 6,000 support personnel to serve our unique student population, while, offering programming and services to fit the needs of all our students. Through our strategic plan - Destination 2025 – we are committed to working toward three goals: 80 percent of students are college or career ready, 90 percent of seniors graduate on time and 100 percent of graduates will enter college or a career. To reach these goals, MSCS has placed a strong emphasis on early literacy, improvement of post-secondary readiness, developing strong teachers, leaders and support staff, expanding availability of high quality school options and working closely with families and community partners. MSCS partners with almost 4,000 volunteers and 700 school adopters and community partners to increase student achievement and empower our community to strive.

3.0 SCOPE OF WORK

The MSCBE requests bids for 1st Semester Produce Bid – Fresh Fruits and Vegetables. The specifications are contained in the Invitation for Bid. Responses submitted must meet or exceed all requirements. Bids that do not meet or exceed all requirements will be considered non-responsive. All exceptions must be noted.

4.0 NON-EXCLUSIVE

The intent of this contract is to provide the MSCBE with an expedited means of procuring supplies and/or services at the lowest cost. This contract is for the convenience of the MSCBE and is considered to be a "Non-Exclusive" use contract. The MSCBE does not guarantee any usage. The MSCBE will not be held to purchase any particular Brand, in any groups, prices or discount ranges, but reserves the right to purchase any item/items listed in the price schedule submitted.

PART II: GENERAL TERMS AND CONDITIONS

1.0 STATEMENT OF CONFIDENTIALITY

It is understood and agreed that all information pertinent to this solicitation may contain trade secrets, which are confidential and proprietary. The selected vendor agrees not to disclose or knowingly use any confidential or proprietary information of the MSCBE and/or third party participant.

Bid submissions are subject to the Tennessee Open Records Act ([Tenn. Code Ann. §10-7-503 et seq.](#)). In accordance with the Act, certain information is subject to public disclosure. Please be advised that should you deem any portion of your bid as confidential or proprietary, it must be conspicuously indicated on those portions so deemed. However, and in accordance with the Act, you are hereby notified that every portion may still be subject to disclosure under the Act.

2.0 TERM OF AGREEMENT

The anticipated term of this contract shall be between August 3, 2022 – December 16, 2022.

The bidder warrants that prices for the bid under this IFB are not higher than prices currently extended to any other governmental agency for the same product or service.

3.0 PRE-BID MEETING (N/A)

4.0 QUESTIONS AND INQUIRIES

No interpretation of the meaning of the specifications or other documents will be made to any Supplier orally. Questions shall be submitted in writing to the Point of Contact (see Part II, § 5.0). To be given consideration, the questions must be received **NO LATER THAN May 6, 2022 @ 11:00 a.m., CST**. Questions that are deemed to be substantive in nature will be responded to in the form of an addendum and posted on MSCBE website <http://www.scsk12.org/procurement/bids>. Please do not submit question in PDF format.

Bid Posted	04/27/2022
Bid Advertised	04/27/2022
Questions Due	05/02/2022 @ 11AM CST
Addendum Posted	05/04/2022 @ EOB
Samples Submission Deadline	05/04/2022 @ 4PM CST
Bid Due Date/Time	05/06/2022 @ 11AM CST

5.0 POINT OF CONTACT

A'Ishah Williams, Senior Buyer
Procurement Office
E-mail: williamsa38@scsk12.org

6.0 CONTRACT MONITOR/SCBE SUPERVISION

The Contractor's performance will be under the direction of the Buyer/Requesting Department who will be responsible for ensuring contractor's compliance with the requirements of this contract to include managing the daily activities of the contract, providing guidance to the contract, and coordination. The Contractor shall be accountable to the end users on all matters relating to the scope of work.

7.0 CONTRACT TYPE

The contract resulting from this solicitation will be a Fixed Price.

8.0 PAYMENT TERMS

The Contractor shall submit an invoice detailing the product or services provided and the actual costs incurred. Payment shall be in accordance with line item price on the purchase order and made within Net 30 days upon receipt of invoice.

The MSCBE reserves the right to reduce or withhold contract payment in the event the Contractor does not provide the Department with all required deliverables within the timeframe specified in the contract or in the event that the Contractor otherwise materially breaches the terms and conditions of the contract.

9.0 INVITATION FOR BID (IFB) REVISIONS

Should it become necessary to revise any part of this IFB, addenda will be posted on MSCBE <http://www.scsk12.org/procurement/bids>. Failure of any offeror to receive or acknowledge receipt of such addenda or interpretation shall not relieve any offeror from any obligations under this IFB as amended by all addenda. All addenda so issued shall become part of the award.

10.0 SUBMISSION DEADLINE

In order to be eligible for consideration, bids must be received in the Procurement Office no later than **May 6, 2022 @ 11:00 a.m. CST, 3176 Jackson Avenue, Memphis, TN 38112**. Vendors mailing bids shall allow sufficient carrier delivery time to ensure timely receipt of their bid in the Office of Purchasing prior to the deadline. Any bid received in the Purchasing Office after the submission deadline, no matter what the reason, will be returned unopened. **Bid responses delivered to any other location shall not constitute delivery to the Procurement Office.**

11.0 BID OPENING

The MSCBE shall receive sealed bids until the bid due date indicated on the bid front cover sheet. Bid tabulations will be posted to the Memphis-Shelby County Board of Education's (MSCBE) website at www.scsk12.org once completed. The MSCBE shall then review all responses and analyze the results of the bidding process. A final recommendation(s) shall be prepared for review and approval by the Procurement Director. Upon acceptance and approval of the bid(s) by the Procurement Director, the Director may grant its approval subject to such conditions as it may deem appropriate.

All bids shall be publicly opened at the Nutrition Services, 3176 Jackson Avenue, Memphis, TN 38112 on the date specified on the bid. In the event of inclement weather on the due date of a bid and The MSCBE is closed, the bid will be due and opened on the next business day at the same time as specified in the bid or applicable addendum.

12.0 DURATION OF BID

A bid submitted in response to this solicitation is binding upon the bidder and is considered irrevocable for a minimum of **120 days** following the closing date for receipt of initial bids.

13.0 E- COMMERCE

The Commercial Appeal, Daily News and www.scsk12.org/procurement Website. This website also serves to publish any addenda, associated materials, bidder/offeror questions and the MSCBE's responses, and other solicitation related information.

The successful bidder must be an active vendor in APECS to receive Purchase Orders and Payment. Instructions on how to register are detailed on the Procurement website @ <http://www.scsk12.org/procurement>, Doing Business with MSCS.

SCBE does not discriminate in educational programs, activities or employment on the basis of race, color, national origin, sex, age, religion or disability. Bidders will be required to comply with all applicable requirements pertaining to fair labor, state and local government.

14.0 INSURANCE

Failure to provide the required insurance coverage by either of the two (2) methods described in Appendix E when the bid is submitted may result in rejection of your bid as being non-responsive.

15.0 LIQUIDATED DAMAGES

The successful Bidder accepts this contract with the understanding that should they fail to complete the work/delivery in an acceptable manner and in the time stated, shall be subject to the payment of liquidated damages as stated in the bid document.

16.0 CRIMINAL BACKGROUND CHECK/PHOTO IDENTIFICATION BADGE

In accordance with TN Code Ann. 49-5-413, unless explicitly excluded by statute; and pursuant to Memphis-Shelby County Schools' requirements, Vendors (persons, corporations or other entities) whose employee(s), subcontractor(s), or representative(s) will come in contact or close proximity to MSCS students during the course of business, must require their employee(s), subcontractor(s), or representative(s) to supply a fingerprint sample, submit to a criminal history records check to be conducted by the Memphis-Shelby County Schools, Tennessee Bureau of Investigation, and the Federal Bureau of Investigation, and obtain Memphis-Shelby County School's identification badge prior to permitting the person to have contact with the children or entering school grounds.

The cost of fingerprinting, conducting the criminal records check, and obtaining a Memphis-Shelby County School's identification badge will be the sole responsibility of the Vendor for each of the Vendor's employee(s), subcontractor(s), or representative(s). The Memphis-Shelby County School's identification badge shall be worn at all times by each of the Vendor's employee(s), subcontractor(s), or representative(s) at shirt pocket height while on Memphis-Shelby County Schools' property. For more information regarding of fingerprinting, conducting the criminal records check, and obtaining a Memphis-Shelby County School's identification badge, please contact 901-416-4720.

MSCS further reserves the right to audit the criminal history background records of any Vendor employee(s), subcontractor(s) or representative(s) having contact with MSCS students. Audits may be conducted on a quarterly basis with 48 hours' prior notice. It is the Vendors responsibility

to ensure records are current and made available upon request to MSCS. Failure to provide MSCS access to current criminal history checks upon request could lead to Vendor debarment.

17.0 COMPLIANCE WITH LAWS

Offerors shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations applicable to the services to be rendered under this Contract. Offerors violation of any of these laws, statutes, ordinances, rules or regulations constitutes a breach of this Contract and entitles MSCBE to terminate this Contract immediately upon delivery of written notice of termination to Offeror.

18.0 BONDING- (N/A)

19.0 TERMS AND CONDITIONS

Any contract entered in connection with this solicitation shall be subject to these General Terms and Conditions except as otherwise modified herein.

It shall be the Contractor's sole responsibility to insure they are compliant with all applicable federal, state, and county laws, rules, ordinances, statutes, etc., that may impact this contract. The MSCBE shall bear no responsibility for monitoring the Contractor's compliance with said legal requirements. If the Contractor fails to maintain legal compliance, The SCBE may find said Contractor in default.

In the event of conflict between the General Terms and Conditions shall take precedence.

In the event of conflict between this solicitation any of the General Terms and Conditions proposed by any bidder, or incorporated in any acknowledgement of contract awarded to the successful bidder, then, and in such event, the terms and conditions stated herein shall take precedence unless modified in writing by the Procurement Director.

20.0 BASIS OF AWARD

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, Memphis-Shelby County Board of Education **will award this bid on the basis of lowest "approved brand" cost per serving, cost per unit, cost per case, or cost per pound.** Pricing shall remain firm for the initial term of the agreement.

20.1 OPTION TO RENEW CONTRACT PERIOD

- A. Upon satisfactory service and by mutual agreement the BOARD OF EDUCATION OF MEMPHIS-SHELBY COUNTY reserves the right to renew the contract. The term of renewal shall not exceed an additional one (1) year period.
- B. The MSCBE expects all vendors to provide year over year cost reductions recommendations.
- C. Price decreases are acceptable at any time, need not be verifiable, and are required should the contractor/producer/processor/manufacture experience a decrease in costs associated with the execution of the contract.

- D. Price adjustments from the contractor/producer/processor/manufacturer for any/all items may be considered at renewal. The request is subject to approval by the Contracting Officer. The request must be submitted in writing at least sixty (90) days prior to the renewal term and shall be accompanied by supporting documentation.
- E. 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.
- F. Should the awarded vendor, at any time during the life of the contract, sell materials of similar quality to another customer, or advertise special discounts or sales, at a price below those quoted within the contract, the lowest discounted prices shall be offered to Memphis Shelby County Schools.

21.0 STATE OF TENNESSEE CERTIFICATE OF EXISTENCE (N/A)

22.0 PROTEST

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.

PART III: BID SUBMISSION REQUIREMENTS

1.0 GENERAL FORMAT

- A. Bidders shall submit one (1) hard copy and one (1) electronic copy of bid pricing in Microsoft Office Excel 2007 Workbook format. A template worksheet will be provided by the Memphis Shelby County Board of Education. No other form will be considered. **All Bidders must submit a Microsoft Office Excel 2007 Workbook file on a USB flash drive (readable by Microsoft Windows 7 version) as well as include copies of bid documents, bid worksheets and nutritional/crediting statements and related documents.** Also, bidders must provide a hardy copy of bid worksheets typewritten as a backup and nutritional. In case of errors in extensions, the unit price shall prevail. Electronic media shall bear a label on the outside containing the IFB number and name as well as the name of the Bidder and include all requested information and documents. **MSCBE RESERVES THE RIGHT TO CONTRACT IN THE BEST INTEREST OF MSCBE, AND TO REJECT ANY AND ALL BIDS AT ANY TIME PRIOR TO AWARD.**
- B. Bid submission shall be labeled on the outside of each submitted package with the following:
 1. Bidder's name and business address;
 2. Bid Due Date/Time for receipt of Bids, and
 3. Invitation for Bid (IFB) number and Title

C. Delivery of Bids: Each bidder must complete and return the following items in a sealed bid envelope no later than **11:00 a.m. C.S.T. on Friday, May 06, 2022:**

1. Completed Invitation for Bid form
2. Certification Regarding Lobbying (Appendix B)
3. Completed Debarment Affidavit (Notarized) (Appendix C)
4. Nutrient analysis of each item bid and End Product Data Sheets
5. CN label or Crediting Statement or Product Formulation Statement for each item bid (if applicable)
6. Vendor's GAP Like/GMP Practices/HACCP Program Letter
7. Vendor (or) Manufacturer Julian Date Document (or) Shelf Life Document
8. Completed Certificate of Insurance (Appendix D)
9. Completed Pricing Confirmation (Appendix E)
10. Buy American Certification/Waiver (Appendix F)
11. Product Information Profile Form (Appendix G)
12. Completed Addenda Acknowledgement form (Appendix H)
13. Fully completed hard copy Bid Sheet on each item typewritten
14. A Microsoft Office Excel 2007 Workbook file on USB flash drive (readable by Microsoft Windows 7 version) as well as include copies of Bid documents, bid worksheets and nutritionals/crediting statements and related documents.

Failure to provide any of the requested information or documents in this solicitation may render the bid non-responsive.

**PART IV
SCOPE OF SERVICES
IFB#05062022**

2022-2023 MSCBE PRODUCE 1ST SEMESTER – FRESH FRUITS AND VEGETABLES BID

**MEMPHIS-SHELBY COUNTY BOARD OF EDUCATION IS REQUESTING BIDS
FOR FOOD ITEMS TO BE PURCHASED FOR THE 2022-2023 MSCBE PRODUCE 1ST
SEMESTER – FRESH FRUITS AND VEGETABLES BID**

1. The undersigned agrees that if all or any part of this bid is accepted and one or more purchase orders are issued for delivery between **August 03, 2022, and December 16, 2022**, they will supply any or all of the items upon which prices have been quoted in accordance with the specifications applying at that price set opposite each item.
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.

4. 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.
5. The Memphis-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.
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. **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.
8. **Delivery:** All Products are to be delivered to either one of the Central Nutrition Center Food Warehouses: 3176 Jackson Ave., Memphis, TN 38112 (*Frozen and Refrigerated Storage*) and 2970 Jackson Ave., Memphis, TN 38112 (*Dry Storage*). **MSCBE reserves the right to change the designated delivery location(s) and times by notifying the vendor.** 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 Food 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.

9. **Delivery Scheduling:** *ALL DELIVERIES REQUIRES 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.*** Jackson Ave. Warehouses for all incoming freight are *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 Memphis-Shelby County Board of Education.

Produce and Refrigerated Storage will be delivered to 3176 Jackson Warehouse, Jackson Ave., Memphis, TN 38112.

- a. **contract time frame will be held accountable under the penalties for non-compliance listed in this document.**
- b. **SCBE reserves the right to change the designated delivery locations and times by notifying the vendor.**

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

10. **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 frozen 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.

- c. **Lumping:** If Vendor ships pallets higher than as stated above, a flat "lumping fee" of **\$600** per load will be assessed. The Vendor will be responsible for the payment of such

lumping fee. If any loading and/or unloading is done by a MSCBE personnel beyond the tailgate, including sorting or stacking or similar service, Vendor must pay the flat “lumping fee.” **Any Vendor requiring more than three lumping fees will be charged in a contract time frame will be held accountable under the penalties for non-compliance listed in this document.**

11. **Quantities:** The quantities given are the approximate amounts expected to be ordered by Memphis 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 Memphis-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, MSCBE will only purchase the quantity actually needed.
12. **Specifications:** All items offered must be in accordance with specifications. When applicable, all 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, delivery and/or product transport style and packaging is to be different than specified in the bid, the Bidder must state the deviation. Delivery and/or transporting products inconsistent with the bid specifications will result in at minimum the rejection of the shipment. 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, PRODUCT FORMULATION STATEMENT, CN LABEL OR CREDITING STATEMENT (IF APPLICABLE) AND SPECIFICATION SHEET DOES NOT ACCOMPANY THE BID PRICE.**
13. **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 Memphis-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.
14. **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. Please include a list of all expiration dates and the decoding process for expiration dates of products delivered. **All dry foods are to maintain a temperature at the industry standard for dry deliveries of 50 – 70°F. All refrigerated foods are to maintain a temperature of 40 degrees Fahrenheit or below, but not to go below 32 degrees Fahrenheit cold holding, ALL food items must have 70% remaining shelf life (per the chart below) to be counted from delivery date. The date of evaluation for Shelf Life will**

be counted as thus: Items being received at 11:00 a.m. CST or before will be counted as day 1, Deliveries made after 11:00 a.m. CST will be counted as day 0 and the following day will begin day 1. If sending mixed expiration dates, lump all products with the same expiration date on the same pallet. If pallets are mixed, expiration dates must be easily identified. Failure to do so will result in lumping fees due upon arrival to Memphis Shelby County Schools warehouse (See condition #10a for fee amounts). **All frozen foods are to be delivered hard frozen at 0 degrees Fahrenheit or below. Partially thawed goods will be rejected. Memphis-Shelby County Board of Education 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. Freshness dating shall be legible on each individual item and each individual case. Any items received with a shelf life of less than indicated will be refused or returned at the contractor's expense. If inspection cannot be reasonably conducted upon delivery, but subsequent inspection (within 24 - 48 hours of delivery) indicates defective or damaged product, or products not meeting bid specifications, MSCBE shall notify the Vendor and the 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 and expired items shall be considered sufficient cause for default action under the DEFAULT provision of the agreement.

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 Memphis Shelby County Board of Education. If inspection cannot be reasonably conducted upon delivery, but subsequent inspection indicates defective or damaged product, products not meeting the shelf life requirements, 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.

MSCS 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

16. **Analytical Laboratory Testing:** Items may be sent out to a laboratory for analytical testing for bacteria (i.e. listeria, salmonella, apc, mold and yeast) and a product shelf life study on items manufactured at the Central Nutrition Center Central Kitchen utilizing the awarded vendor's

product. The analytical laboratory has exceptional knowledge of food matrices and regulatory requirements for food items that are being manufactured and distributed to MSCBE's school cafeterias. If a vendor's product results returns with a high level or an unacceptable range of bacteria, the vendor's product will be removed from the "approved brands list" but not limited to losing the line item award.

17. **Product Recall:** Vendor(s) awarded agreement(s) under this solicitation shall be required to notify Memphis-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).
18. **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.
19. **CN Labels or Crediting Label:** Products which carry Child Nutrition (CN) labels are preferred.
20. **HACCP Program:** Vendor must provide a letter with the bid stating that they have a HACCP program in place or documentation of manufacturing practices that follow *current food safety compliance standards*.
21. **Approved Brands:** The approved brands are specified on the bid worksheet for this bid. Bidder with a product that meets the specifications may bid the product as an "approved equal." Samples for that "approved equal" must be submitted by the sample submission deadline to be considered for the bid. Any Bidder submitting a sample(s) should submit it to be received on or before **Wednesday, May 04, 2022, by 4:00 PM 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 emailed as soon as the product has 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 not to submit a bid.***
22. **BID SAMPLE PROCEDURES**
 1. Vendors must submit nutritional information, product formulation sheet and/or credit statement on item(s) they would like to become an "approved brand" to the attention of the dietitian via email (Amber Chaney: email chaneyae@scsk12.org) to get the item nutritionally approved.
 2. The dietitian will review the nutritional information, product formulation sheet and/or credit statement in accordance to the bid specification(s). A decision will be made to the vendor within 24-48 hours stating whether their item(s) were nutritionally approved from the dietitian(s) via email. Once the item(s) are approved please follow the next steps to physically ship the product.
 3. Contact and coordinate with Mable Kwamusi, Nutrition Service Analyst, on any samples of food or cafeteria supply items that meet bid specification(s) via email at

kwamusimc@scsk12.org by telephone at (901) 416-0080.

4. Samples of food and 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. **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.**

Memphis-Shelby County Schools – Nutrition Services

**Attn: Mable Kwamusi
3176 Jackson Avenue
Memphis, TN 38112**

5. 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.
6. A letter will be issued via email from MSCBE 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.*
7. 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 MSCBE.

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

23. **Nutritional Facts Label or CN Labels or Product Formulation Statements or Crediting Statements:** 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.
24. **Buy American Requirement:** This SFA participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals. A "domestic commodity or product" is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7

CFR Part 210.21(d). **Note: products must be BOTH produced and processed in the U.S.**

Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request. To be considered for the alternative or exception, the request must be completed using the Buy American Certification Form and submitted with the bid. If a request for an exception occurs after time of bid and during the contract period, it must be submitted in writing to the Menu Planning Manager, a minimum of five (5) days in advance of delivery.

25. **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 Memphis-Shelby County Board of Education, the number of pounds processed into each product, and the dates of shipment back to Memphis-Shelby County Board of Education.
26. **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 Memphis-Shelby County Board of Education. Notice is hereby given that Memphis-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.
27. **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. MSCBE will exhaust all efforts to utilize product when applicable up to full orders as it pertains to the business needs of MSCBE. 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 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.
28. **Right to Additional Competition:** Memphis-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 Memphis-Shelby County Board of Education.
29. **Contract Termination:** Memphis-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 Memphis-Shelby County Board of Education.
30. **Basis for Ineligibility:** Unsatisfactory performance, including but not limited to, any of the following:

- a. Failure to comply with terms of MSCBE'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.

31. **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].

32. **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.

33. **Vendor Scorecard:** (AWARDED VENDOR ONLY). The awarded vendor of each commodity will be scored based on the following measurements below.

Vendor Scorecard			
Measurement	Weight	Score (1-5)	Weighted Score
Improper Product Packaging or Palletizing	25	0	0
Unscheduled Delivery	20	0	0
Delivery Shortages / Overages Count	15	0	0

Vendor Submitted Incorrect Invoices	5	0	0
Product has Less than 70% Shelf Life	15	0	0
Poor Product Quality	15	0	0
Account Support	5	0	0
			0

Performance Levels					
Level	Unacceptable	Bronze	Silver	Gold	Platinum
Score	0 - 299	300 - 349	350 - 399	400 - 449	450 - 500

**PART V
BID FORMS**

Bid Instructions for Bid Worksheet Tab:

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

Column #	Column Name	Instructions
1	<i>Stock Number</i>	<i>Information only.</i>
2	<i>Unit</i>	<i>Information only.</i>
3	<i>Description</i>	<i>Information only.</i>
4	Approved Brand Manufacturer Product Code	<i>Information only.</i>
5	Estimated Number of Units	<i>Information only.</i>
6	Bidder	Enter your name for the first item only, regardless of whether bidding on this item.
7	Bidder Terms	Enter your payment terms for the first item only, regardless of whether bidding on this item.
8	Bidder Brand	Enter for each item bid.
9	Bidder Manufacturer's Product Code	Enter for each item bid.
10	Pack Size	Enter for each item bid.
11	Estimated Units Per Case	Enter for each item bid.
12	Cost Per Case	Enter for each item bid.
13	Required Number of Cases	<i>Calculated by spreadsheet</i>
14	Cost Per Unit	<i>Calculated by spreadsheet</i>
15	Extended Total Cost	<i>Calculated by spreadsheet</i>

“In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA”.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](http://www.ascr.usda.gov/complaint_filing_cust.html), (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) Mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) Fax: (202) 690-7442; or
- (3) Email: program.intake@usda.gov.

This institution is an equal opportunity provider.

PART VI: APPENDICES

APPENDIX A - SPECIAL TERMS AND CONDITIONS FOR SEALED BIDS

These Terms and Conditions shall apply unless otherwise noted in General Terms and Conditions attached to individual bid request. It shall be the Contractor's sole responsibility to insure they are compliant with all applicable federal, state, and county laws, rules, ordinances, statutes, etc., that may impact this contract. The MSCBE shall bear no responsibility for monitoring the Contractor's compliance with said legal requirements. If the Contractor fails to maintain legal compliance, The MSCBE may find said Contractor in default.

1. INVITATION TO BID

- a. The MSCBE invites all interested and qualified vendors to submit sealed bids for the procurement of goods and services in accordance with directions specified in the attached General Terms and Conditions and these Special Terms and Conditions.

2. GENERAL BID REQUIREMENTS

- a. **AGGREGATE BIDS:** Where provision is made on the Bid form for bidding items on an individual, group or aggregate basis, the award will be made on whichever basis is in the best interest of the MSCBE. When an aggregate bid is requested, the unit prices for each item shall be identified in the bid response. The unit prices in an aggregate bid should be consistent with the total quoted price for an aggregate bid. No bid or a combination of items will be permitted except as noted in the General Terms and Conditions.
- b. **COMPLIANCE WITH SPECIFICATIONS:** The awarded Bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications, as decided by the Procurement Director. Where the requirements of the specifications call for higher grade and are not in conflict with the laws, ordinances, etc., the specifications shall govern. Where the requirements of the laws, ordinances, etc., are mandatory, they shall govern. The successful bidder, after award and before manufacture and/or shipment, may be required to submit working drawings or detailed descriptive data identified as acceptable to The MSCBE, which would provide sufficient data to enable The SCBE to judge the bidder's compliance with the specifications.
- c. **DEVIATIONS TO SPECIFICATIONS:** Any deviation from the specifications must be noted in detail by the Bidder, in writing, as an attachment to the bid response. Bidders are fully aware that any deviations may render their bid as non-responsive. The absence of a written list of specification deviations attached to the bid response will hold the Bidder strictly accountable to The MSCBE to the specification as written. After Bid award, any deviation by the Awarded Bidder from the specifications, without prior documented approval, will be grounds for rejection of the goods and/or equipment when delivered.
- d. **SUB-CONTRACTORS:** The Awarded Vendor shall give its constant personal attention to the faithful execution of this contract, shall keep the same under its own control, and shall not assign by power of attorney or otherwise, the work or any part thereof without the previous written consent of the MSCBE. The Awarded Bidder shall provide the name of the sub-contractor(s) it intends employing, the portion of the materials/labor to be furnished, their place of business, and such other information as requested by the bid specifications. The information may be used in considering the potential performance capabilities of the sub-contractor(s). The Awarded Vendor shall not, without prior written consent of The MSCBE, assign any of the monies payable under the contract.

3. BID PRICES

- a. **UNIT PRICES:** The unit price offered may contain four points (.0000) beyond the decimal. All unit prices on items bid shall be completed on the Bid sheet(s). A NO BID notation must be completed for each item not being bid. In case of error in extension of prices in the bid, the unit price shall govern.

All prices are fixed for the duration of the contract period. Memphis-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.

- b. **UNITS OF MEASURE:** Wherever The MSCBE indicates the unit of measure required for bidding purposes and the Bidder's price(s) is based on a different unit of measure than that indicated in the bid, it shall be at the sole discretion of MSCBE to determine whether the Bidder's price will be recalculated. The MSCBE will not accept any bids with bidder escalator clauses, unbalanced figures, or irregular features.
- c. **CASH DISCOUNTS:** Cash discounts will not be taken into consideration in determining a contract award. All discounts, other than prompt payment, are to be included in the bid price.
- d. **PRICE REDUCTIONS:** The MSCBE reserves the right to accept price reductions from the Awarded Bidder during the term of this contract.
- e. **TAXES:** MSCBE is a tax-exempt entity and, as such, is exempt from the payment of taxes, including but not limited to sales and use taxes, federal excise taxes and federal high use taxes.
- f. **EXTRA CHARGES:** Unless agreed by the parties in writing, charges in excess of the amounts agreed upon in the final contract shall not be allowed.
- g. **NO COMMITMENT:** This bid does not commit MSCBE to award a contract, pay any costs incurred in the preparation of any Bid submitted, procure or contract for Services from any Bidder or any other person. Accordingly, each Bidder shall be responsible for all costs incurred in the preparation and submission of its Bid or in any part of its participation in the pre-award process.
- h. **Conditions and Assumptions:** All Bids and related documents submitted shall be based on the same conditions and assumptions that will underlie any prospective final contract between MSCBE and the successful Bidder. Thus, in establishing the terms of any resulting contract, MSCBE may assume the conditions and assumptions underlying the Bid submitted by the successful Bidder are accurate.
- i. **Ethics in Public Contracting:** Memphis-Shelby County Board of Education adheres to strict laws, rules, and ethical practices when purchasing goods and services. MSCBE Procurement Services subscribes to the standards set forth by the National Association of Purchasing Management and the National Institute of Governmental Purchasing. Ethics in Shelby County Board of Education 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.
- j. The bidder represents and warrants to Memphis-Shelby County Board of Education 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 MSCBE 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, Memphis-Shelby County Board of Education shall have the right to terminate the bid or agreement, either in whole or in part, and any loss or damage sustained by Memphis-Shelby County Board of Education 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 MSCBE provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or equity.

- k. 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 Memphis-Shelby County Board of Education 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.
- l. **Prohibited Contacting:** Registered and non-registered lobbying of MSCBE staff members or Board members with respect to a pending project or award is prohibited during the time period between the date the bid is advertised and the date a final contract is awarded. ANY CONTACT BETWEEN MSCBE STAFF MEMBERS OR BOARD MEMBERS AND ANY REPRESENTATIVE OF A RESPONDENT RELATING TO A PENDING PROJECT OR AWARD (WHETHER BY WRITING, TELEPHONE, E-MAIL OR OTHERWISE) OUTSIDE OF PROPERLY SCHEDULED MEETINGS, OTHER THAN AS INTENDED AND INITIATED BY AN MSCBE STAFF MEMBER, SHALL BE GROUNDS FOR DISQUALIFICATION OF THE BIDDER FROM THE PROCESS. By submitting a Bid, the Bidder represents and warrants that it has not made, and will not make, any contact prohibited by this paragraph.
- m. **Conflict of Interest:** Bidder certifies that no MSCBE Board member, staff member or any MSCBE employee has a financial or beneficial interest in the Bidder.
- n. **Mandatory Use of Form and Modification of Terms and Conditions:** Failure to submit a Bid on any official form provided for that purpose may be cause for rejection of a Bid. Return of the complete form is required. Modification of, or additions to, the general terms and conditions of this BID may be cause for rejection of the Bid. Notwithstanding, the MSCBE Director of Purchasing reserves the right to decide, on a case by case basis, in his or her sole discretion, whether to reject such a Bid.
- o. **Errors or Omissions:** The Bidder shall not be allowed to take advantage of any errors or omissions in the specifications set forth in this bid. Where errors or omissions occur in this bid, the Bidder shall promptly notify the contact person listed in this bid and report the identified error or omission. Inconsistencies in the specifications are to be reported before Bids are submitted to MSCBE.
- p. **Liability for Improper Date or Time Processing:** By submitting a Bid, the Bidder agrees that, if it becomes the successful contractor, the Bidder will indemnify and hold harmless MSCBE and the officers, employees, Board members and agents of MSCBE against any claim of, or liability for, breach of any contract related to the Services that is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

- q. **Records:** All vendors are required to keep records for three (3) years after Memphis-Shelby County Board of Education 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.
- r. **Compliance with Procedures:** The successful contractor will comply with all procedural instructions that may be issued from time to time by MSCBE. However, the substantive terms and conditions of the contract shall not change without the written consent of all parties thereto.
- s. **Obligation of Successful Contractor:** By submitting a Bid, the successful contractor covenants and agrees, based upon its own investigation of the conditions to be met, that it fully understands its obligation and that it will not make any claim under, or have any right to cancellation or relief from, the contract because of any misunderstanding or lack of information.
- t. **Format of Services; Satisfaction of MSCBE:** The Bidder agrees that, if it becomes the successful contractor, the Bidder will fully provide to MSCBE, to the best of its capabilities, the Services in substantially the format, quality and scope required by, or indicated in, this Bid, including any modifications and additions hereto. Furthermore, the Bidder agrees to be responsible for providing the Services in a manner and to an extent satisfactory to MSCBE.
- u. **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. Memphis-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.
- v. **Taxes:** The successful contractor shall determine, be responsible for and pay any applicable taxes related to the Services or the Agreement, including but not limited to any property tax, sales tax, federal excise tax or federal highway use tax. SCBE is a tax-exempt organization and shall not be billed for, nor be expected to pay, any taxes applicable to the Services. A COPY OF DOCUMENTATION VERIFYING THE "TAX EXEMPT" STATUS OF SCBE IS AVAILABLE AND WILL BE FURNISHED TO THE SUCCESSFUL CONTRACTOR UPON REQUEST.
- w. **Support:** If it becomes the successful contractor, the Bidder agrees and affirms that, throughout the Agreement Term, it will utilize its best efforts to assist and support MSCBE in addressing any problem whatsoever relating to the Services or the Agreement.
- x. **LIQUIDATED DAMAGES:** 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 MSCBE agreement. Poor vendor performance may result in removal from the eligible vendor's list for a period of one year.

4. STABILITY OF FIRM

- a. Bids will not be considered from companies who are currently involved in official financial reorganization or bankruptcy proceedings.

5. BID SUBMISSION

- a. **BIDDER ADDRESS:** Each bid must show the full business address, telephone number, email and fax number of the Bidder and be signed by the person or persons legally authorized to sign contracts. All correspondence concerning the bid and contract, including Notice of Award, copy of Contract, and Purchase Order, will be mailed or delivered to the address shown on the bid in the absence of written instructions from the Bidder to the contrary.
- b. **PARTNERSHIPS:** Bids by partnerships shall be signed with the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing, who shall also state the names of the individuals composing the partnership.
- c. **CORPORATIONS:** Bids by corporations shall be signed with the name of the corporation, followed by the signature and designation of the officer having authority to sign. When requested, satisfactory evidence of authority of the officer signing in behalf of the corporation shall be furnished. Anyone signing the bid as agent shall file satisfactory evidence of authorization to do so.
- d. **BID PREPARATION FEES:** The MSCBE will not be responsible for any costs incurred by a Bidder in preparing and submitting a Bid in response to a bid.
- e. **BID EVALUATION:** While these specifications are intended to describe the principal features of the items bid, Bidders are notified that the proposed items will be evaluated for compliance with detailed specifications. The bid specifications shall vary with each individual bid issued, and the award shall be made in accordance with the General Terms and Conditions, which identify an individual line item, group bid or an aggregate basis. Bids shall be awarded to the lowest responsive and responsible Bidder with consideration given to the quantities, time required for delivery, purpose of the goods/services, competency and responsibility of the Bidder, and the ability of the Bidder to perform satisfactorily. Evaluation may also be made for other factors such as serviceability, functional suitability, and overall product quality, where acceptability may be determined on the basis of professional judgment and educational application. The SCBE will consider the Bidder's record and performance of any prior contracts with The SCBE, federal departments or agencies, or with other public bodies.
- f. **TIE BIDS:** In the event of tie bids, where all other factors such as past performance on purchases/contracts or Bidder's service or delivery record are considered comparable, the selection of the successful Vendor shall be made by the Procurement Director or designee via a coin toss.
- g. **BID AWARD:** Bids will be awarded to the lowest responsive and responsible Bidder with consideration given to the quantities, time required for delivery, purpose of the goods/services, competency and responsibility of the Bidder, and the ability of the Bidder to perform satisfactorily. The award may be subject to final review and approval by the MSCBE. Upon acceptance and approval of the bid(s) by the MSCBE, the MSCBE may grant its approval subject to such conditions as it may deem appropriate. In such cases, a Notice of Award will not be issued until the award has been approved by the MSCBE.

6. COMMENCEMENT OF SERVICES

- a. The MSCBE shall have no obligation to pay for services performed before the Notice of Award is executed; MSCBE approves the contract or after the contracts ends. The MSCBE shall have no obligation to pay for services in excess of the monetary amount of the award. The MSCBE shall have no obligation to pay for services before a purchase order is issued.

7. ADDENDA

- a. **QUESTIONS/INQUIRIES:** No interpretation of the meaning of the specification or other documents will be made to any Supplier orally. To be given consideration, inquiries must be received as outlined in Part II Item 4.0. Inquiries are to be sent in writing via email to the Buyer. The subject field of the e-mail must include "INQUIRY" and the Bid name and number.
- b. **ISSUANCE:** Any changes to the bid specifications will be made through the appropriate addenda. Failure of any Bidder to receive such addenda or interpretation shall not relieve any Bidder from any obligations under this bid as amended by all addenda. All addenda so issued shall become part of the award.

8. ANNULMENTS AND RESERVATIONS

- a. **RIGHT TO REJECT:** The SCBE reserves the right to exercise its statutory option to reject any or all bids and re-advertise for other bids. The MSCBE reserves the right to order the said equipment, materials, supplies or services as described within the specifications, and the SCBE also reserves the right not to order any items(s) within the specification.
- b. **WAIVER OF TECHNICAL DEFECTS:** The MSCBE reserves the right to waive minor technical defects or minor irregularities, if in its judgment the interest of The MSCBE shall so require.
- c. **CONTRACT RESERVATIONS:** The MSCBE reserves the right to annul any contract if, in its opinion, there shall be a failure, at any time, to perform faithfully any of its stipulations, or in case of any willful attempt to impose upon The MSCBE materials, products and/or workmanship inferior to that required by the Vendor, and any action taken in pursuance of this latter stipulation shall not affect or impair any rights or claims of The MSCBE to damages for the breach of any covenant of the contract by the Vendor(s). Should the Vendor(s) fail to comply with the conditions of this contract or fail to complete the required work within the time stipulated in the contract, except for circumstances beyond its control, including but not limited to Acts of GOD, war, flood, governmental restrictions, or the inability to obtain transportation, The MSCBE reserves the right to purchase the required articles in the open market, or to complete the required work at the expense of the Vendor(s). Should the Vendor be prevented from furnishing any item or items, or from completing the required work included in the contract, by reason of such failures caused by circumstances beyond its control, including but not limited to Acts of GOD, war, flood, governmental action, or the inability to obtain transportation, The MSCBE reserves the right to withdraw such items or required work from the operation of this contract without incurring further liabilities.

9. TERMINATION OF CONTRACT

- a. **TERMINATION FOR NON-APPROPRIATION OF FUNDS:** The MSCBE may terminate this contract, in whole or in part, due to insufficient funding or non-appropriation of funds with written notice to the Vendor. The MSCBE shall pay for all of the purchases, if any, incurred up to the date of the termination notice.
- b. **TERMINATION FOR DEFAULT:** Memphis-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 Memphis-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.

- c. **TERMINATION FOR CONVENIENCE:** The MSCBE has the right to withdraw from the terms of the contract, without liability or showing cause, by providing ten (30) calendar days, written notice to the Vendor. The Vendor shall be compensated for services rendered prior to the date of termination.

10. GOVERNING LAW

- a. The bid shall be construed in accordance with, and interpreted under, the laws of the State of Tennessee. Any lawsuits arising out of such bid shall be filed in the Circuit Court of Shelby County, Tennessee.

11. CONTRACT TERMS AND CONDITIONS

- a. **INCORRECT INVOICES:** Invoices will be returned for correction unless they contain the following information: Item Numbers, Description of Item, Quantity, Unit Price extensions, and total. Each invoice shall reflect the MSCBE Purchase Order Number, Ship to Location, and all the items on the invoice shall be listed in the same sequence as listed on the Purchase Order.
- b. **PARTIAL PAYMENTS:** Payment in full will only be made upon final acceptance of items as shown on Purchase Order. Partial payments may be paid if partial shipments have been made.
- c. **LATE SUBMISSION OF INVOICES:** The parties acknowledge and agree that the Vendor's invoices are to be submitted in a timely manner, per the terms of the purchase order, after the services have been provided or the goods and materials have been provided. If invoices are submitted after one calendar year after the Vendor's services have been rendered or the last date when goods and materials were accepted by the MSCBE, then the MSCBE shall have no obligation to pay for the stale invoices.
- d. **CONFIDENTIALITY:** Vendor acknowledges and agrees to hold all Confidential Information in the strictest confidence as a fiduciary and will not make any press release or public announcement, or voluntarily sell, transfer, publish, disclose, display or otherwise make available to any third persons such Confidential Information or any portion thereof without the express written consent of the MSCBE.
- e. **INDEMNIFICATION:** Vendor shall indemnify, defend, and hold harmless the MSCBE of Education and their respective elected/appointed officials, employees, departments, agencies, agents and volunteers from any and all claims, demands, suits, and actions, including attorneys' fees, litigation expenses and court costs, connected therewith, brought against the MSCBE, the MSCBE and their respective elected/appointed officials, employees, departments, agencies, agents, and volunteers, arising as a result of any direct or indirect, willful, or negligent act or omission of the Consultant or its employees, agents, or volunteers.

12. INSURANCE:

- a. The contractor must maintain and pay for Comprehensive Business Insurance to protect their claims under the Workers' Compensation Act, from claims or damages because of bodily injury to others, including employees of the MSCBE, damage to the property of others, including the MSCBE, claims for damages arising out of the operation of motor vehicles,

which may arise during the performance of the contract whether caused by themselves or by any sub-contractor or anyone directly or indirectly employed by either of them, and Product Liability Insurance. Said insurance is to cover the duration of the contract under an express or implied warranty.

b. The following coverages and limits are required of all vendors:

1. General Liability, including Products Liability & Completed Operations - \$1,000,000 per occurrence/\$2,000,000 aggregate
2. Workers Compensation – Statutory Benefits (Only required if the Contractor will be delivering the product(s) to our building).
3. Employers Liability - \$500,000 each accident/\$500,000 injury by disease/\$500,000 injury by disease aggregate (Only required if the Contractor will be delivering the product(s) to our building).
4. Auto Liability - \$1,000,000 combined single limit (Only required if the Contractor will be delivering the product(s) to our building).

c. The certificate on this insurance shall be made in favor of the **MEMPHIS-SHELBY COUNTY BOARD OF EDUCATION, MEMPHIS TENNESSEE 38112** and indicate paid up coverage for the term of the contract.

d. It will be the responsibility of the successful bidder(s) to ensure that a **current** Certificate of Insurance is on file in the Procurement Office during the entire period of the contract.

13. NON-ASSIGNABILITY

a. This contract shall not be assigned, or services subcontracted in whole or in part without the written consent of the MSCBE. Any attempt to do so without such written consent shall be null and void of no effect.

14. GENERAL RECORDS CLAUSE

a. The Vendor shall agree that in accordance with Section 952 of the Omnibus Budget Reconciliation Act of 1980, its contracts, files, accounts, records, and other documents related to this Contract shall be open to examination and/or audit by The MSCBE and made available by the Bidder to the MSCBE and/or its designated agents at any time upon reasonable prior notice, during performance under this Contract and for a period of five (5) years after final payment or such longer period of time as required by law or rule or regulations.

15. SOLE AGREEMENT

a. This Contract constitutes the sole agreement between the parties hereto and no amendment, modification or waiver of any of the terms and conditions hereof shall be valid unless in writing and executed by both parties. Any prior verbal agreements or bids shall not be considered a part of this Contract.

16. PROTECTION OF PROPERTY

a. Bidder will use reasonable care to avoid damaging existing buildings, equipment, and property at The MSCBE sites and all material furnished by The MSCBE. If the Vendor's failure to use reasonable care causes damage to any property, Vendor must replace or repair the damage at no expense to the MSCBE as directed by the Contracting Officer. If the Vendor fails or refuses to make such repair or replacement, the Vendor will be liable for the cost, which may be deducted from payments due Vendor.

17. PUBLIC STATEMENTS

- a. Bidder shall not use or reference the Name or Emblem of the Memphis-Shelby County Schools in issuing any press releases or otherwise making any public statement with respect to this Contract (unless such press release or statement is required by applicable law regulation or the requirements of any listing agreement with any applicable stock exchange), without the prior written consent of The MSCBE, whose consent will not be unreasonably withheld. Purchase by the MSCBE of any articles, material, merchandise, or service does not imply that the MSCBE has either adopted or endorsed the product of service, and the use by any manufacturer, Vendor, merchant or other person of the name or emblem of the MSCBE in any advertisement that they are furnishing products or services is not authorized. The unauthorized use of the name or emblem of the MSCBE is prohibited by the United States Criminal Code - Section 706.

18. BID FORM

- a. All pricing submitted shall be prepared and submitted using the enclosed Bid Form and not using other forms or formats. Bidders, who modify the Bid Form or include supplemental pricing or conflicting cost information, will be considered non-conforming and the bid will be rejected.

19. SENSITIVE INFORMATION

- a. The bidder shall not publish or otherwise disclose, except to the MSCBE and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in publications whereby the information or data furnished by or about particular person or establishment can be identified, except with the consent of such person or establishment.
- b. The parties shall not use or disclose any information about a recipient receiving services from, or otherwise rerolled in, a MSCBE program affected by or benefiting from services under this bidder for any purpose not connected with the parties' Contract responsibilities except with the written consent of such recipient, recipient's attorney, or recipient's parent or guardian pursuant to applicable state and federal law and regulations.

20. NON-HIRING OF EMPLOYEES

- a. No employee of the MSCBE shall be employed or encouraged to become employed by the bidder.

21. RELATIONSHIP TO THE SCBE

- a. The bidder will be legally considered as an independent contractor and neither the firm nor its employees will, under any circumstances, be considered an employee or agent of the MSCBE. The MSCBE will not be legally responsible for any negligence or other wrong doing of the contractor, its servants or agents.

22. AVAILABILITY OF FUNDS

- a. MSCBE for the purchase of such articles. The obligation of the MSCBE on all contracts, including those which envision funding through current and successive fiscal years, shall be contingent upon actual MSCBE appropriations for the fiscal year(s) involved.

23. INFRINGEMENT OF PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OTHER INTEREST

- a. The following terms apply to any infringement, of claim or infringement, of any patent, trademark, copyright, trade secret or other proprietary interest based on the manufacture, normal use or sale of any material, equipment, programs or services furnished by Bidder to the MSCBE, unless such infringement or claim results from the Bidder following written instruction or directions of The MSCBE. Bidder shall indemnify the MMSCBE, for any loss, damage, expense, or liability that may result by reason of any such infringement or claim. Bidder shall defend or settle, at Bidder's own expense, any action or suit for which Bidder is responsible hereunder. The MSCBE shall notify Bidder promptly of any claim or infringement for which Bidder is responsible and shall cooperate with Bidder in every way to facilitate the defense of any such claim.

24. NON-DISCRIMINATION

- a. The Contractor is to conduct business in a non-discriminatory manner prohibiting discrimination in any manner against any employee or applicant for employment because of sex, race, creed, color, age, mental or physical disability, sexual orientation or national origin.

25. LEGAL COMPLIANCE

- A. Specifically, contractor shall comply with all applicable laws and regulations relating to the employment of aliens, such failure, shall constitute a material breach of contract. It is a mandatory requirement of this contract that employees of contractor and contractor's subcontractors are screened through the Federal Government's E-Verify system, found at www.dhs.gov/E-Verify . This is a "no fee" service.

APPENDIX B
(TO BE SUBMITTED WITH BID)
IFB#: 05062022

2022-2023 MSCBE PRODUCE 1ST SEMESTER – FRESH FRUITS AND VEGETABLES BID

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

APPENDIX C - DEBARMENT AFFIDAVIT
(TO BE SUBMITTED WITH BID)
2022-2023 MSCBE PRODUCE 1ST SEMESTER – FRESH FRUITS AND VEGETABLES BID
IFB#: 05062022

This form is available electronically.

OMB Control No. 0505-0027

Expiration Date: 04/30/2022

AD-1048

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552a, as amended). This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 C.F.R. §§ 180.300, 180.335, Participants' responsibilities. The regulations were amended and published on August 31, 2005, in 70 Fed. Reg. 51865-51880. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

According to the Paperwork Reduction Act of 1995 an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0027. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal, civil, fraud, privacy, and other statutes may be applicable to the information provided.

(Read instructions on page two before completing certification.)

- A. 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;
- B. 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	PR/AWARD NUMBER OR PROJECT NAME
NAME(S) AND TITLE(S) OF AUTHORIZED REPRESENTATIVE(S)	
SIGNATURE(S)	DATE

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political

beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint \(https://www.ascr.usda.gov/filing-program-discrimination-complaint-usda-customer\)](https://www.ascr.usda.gov/filing-program-discrimination-complaint-usda-customer) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442.

Instructions for Certification

- (1) By signing and submitting this form, the prospective lower tier participant is providing the certification set out on page 1 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 or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to the person(s) 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 the rules implementing Executive Order 12549, at 2 C.F.R. Parts 180 and 417. You may contact the department or agency to which this proposal is being 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 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 System for Award Management (SAM) database.
- (8) Nothing contained in the foregoing shall be construed to require establishment of a system of records 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.

APPENDIX D - CERTIFICATE OF INSURANCE COVERAGE
(TO BE SUBMITTED WITH BID)
2022-2023 MSCBE PRODUCE 1ST SEMESTER – FRESH FRUITS AND VEGETABLES BID
IFB #05062022

CONTRACTOR NAME: _____

ADDRESS: _____

NAME OF SURETY: (TYPE OR PRINT) _____

NAME OF AGENT: (TYPE OR PRINT) _____

AGENT'S PHONE NO: _____

The below signed hereby certifies that the following information is true and correct.

TYPE OF COVERAGE	MINIMUM REQUIRED LIMITS	POLICY OR BINDER NUMBER	ACTUAL LIMITS PROVIDED	EXPIRATION DATE
COMMERCIAL GENERAL LIABILITY OCC	\$1,000,000			
COMMERCIAL GENERAL LIABILITY AGG	\$2,000,000			
BUSINESS AUTOMOBILE LIABILITY	\$1,000,000 PER OCCURRENCE			
WORKMAN'S COMP	TENNESSEE STATE MINIMUM COMPENSATION STATUTORY			
EMPLOYERS LIABILITY	\$500,000			

() LIMITS ON ABOVE POLICY WILL BE INCREASED () ABOVE POLICY NOW IN EFFECT

() POLICY WILL BE OBTAINED/ISSUED ON _____

The following additional clauses will be considered a part of the above policy(s), the same as if specifically written therein, as pertains to the above stated contract.

- The Board of Education of Memphis-Shelby County is hereby named as Additional Insured.
- The policy(s) cannot be reduced or cancelled without at least forty-five (45) days prior written notice to the Board of Education of Memphis-Shelby County.
- The insurance company is prohibited from pleading government function in the absence of any specific written authority by the Board of Education of Memphis-Shelby County.
- The policy(s) will be automatically included and cover all phases of work, equipment, persons, et cetera which are normally covered while performing work under the above contract, whether specifically written therein or not.
- The Board of Education of Memphis-Shelby County is hereby granted authority to contact the agency directly to confirm information or obtain copies of certificates of insurance. The Board of Education of Memphis-Shelby County bears no responsibility for premiums or other cost of insurance. If policy(s) is not currently in effect, it will be written immediately upon notice of award, and a copy of binder or certificate will be sent directly to the Board of Education of Memphis-Shelby County. A properly executed copy of this document shall be legally binding as a Carrier Certificate of Insurance Form.

The successful bidder will be required to provide insurance coverage as shown in General Conditions of Bid and Contract, prior to beginning any work. This insurance coverage must be maintained throughout the life of the contract. This can be done by one of the two following methods:

1. Complete form "CERTIFICATION OF INSURANCE COVERAGE" or
2. Submit a Certificate of Insurance on a form provided by your Insurance Agent. This form must include the following clauses:

"The Board of Education of Memphis-Shelby County is hereby named as Additional Insured."

"The policy(s) cannot be reduced or canceled without at least forty-five (45) days' prior written notice to the Board of Education of Memphis-Shelby County."

"The insurance company is prohibited from pleading government function in the absence of any specified written authority from the Board of Education of Memphis-Shelby County."

"The policy(s) will automatically include and cover all phases of work, equipment, persons, et cetera which are normally covered while performing work under the above contract, whether specifically written therein or not."

Regardless of the method used, the form **MUST** be totally complete, **MUST** show that all Limits of Insurance are or will be met, and **MUST** be signed by the Agent.

Failure to provide the required insurance coverage by either of the two (2) methods described above when the bid is submitted may result in rejection of your bid as being non-responsive.

(AUTHORIZED AGENT'S SIGNATURE)

(DATE)

APPENDIX E – PRICING CONFIRMATION
(TO BE SUBMITTED WITH BID)

IFB #05062022

2022-2023 MSCBE PRODUCE 1ST SEMESTER – FRESH FRUITS AND VEGETABLES BID

CONTRACTOR NAME: _____

ADDRESS: _____

TO: BOARD OF EDUCATION OF MEMPHIS-SHELBY COUNTY

We propose to provide to the Board of Education of Memphis-Shelby County USDA Commodity Processed-Commercial Equivalent Items in accordance with Scope of Work, General Terms and Conditions, and Special Terms and Conditions of IFB-04202022.

Instructions:

Each vendor shall provide a fixed price for each cost item listed on the Bid Form. *Bidders must bid on all items listed or insert no bid. Price shall be fixed for the initial contract award year(s).*

The undersigned agrees to furnish all labor, materials, and services necessary to provide USDA Commodity Processed-Commercial Equivalent Items for Board of Education of Memphis-Shelby County Schools in accordance with the attached specifications, and other related contract documentation.

Vendors must complete all cost items on the included Bid Form or insert NO BID

Name _____

Title _____

Signature _____

Date _____

Email Address _____

APPENDIX F - REGARDING “BUY AMERICAN” REQUIREMENTS

We require that suppliers comply with the Buy American provision in all program meals and:

- 1) certify that the products they are offering are domestic; or
- 2) request permission to provide an alternative item when domestic is not available or is priced substantially higher than the non-domestic item.

Requests for alternatives or exceptions should be made as a last resort. However, if you do not have a domestic item to provide for any line-item specification on this bid, we will entertain a request for exception at the time of bid. Requests for exceptions during the bid period must be made in writing using this same form. All requests must be submitted at least () days prior to the scheduled delivery date.

Item as specified (include vendor number)	Reason for exception (check one: “Limited or lack of availability” or “Price”)		Alternative substitute item (include vendor number)	Price of Domestic Product	Price of Non-Domestic Product	Country of Origin
	Limited or lack of availability	Price				

In all cases, the school food authority (SFA) is the determining official that makes the decision to accept non-domestic items. Unless a specific exception has been granted, non-domestic items may not be shipped.

What other alternatives to using non-domestic food products were considered?

Requested Waiver Items

I/We, _____, certify that all food items on this bid have at least ____ percent U.S. content and were processed in the U.S., except for those listed above.

Vendor Certification

Authorized signature

Date

PRODUCT INFORMATION PROFILE FORM

MAIN CONTACT PERSON:				PHONE:		E-MAIL:			
VENDOR NAME:			VENDOR ADDRESS:					VENDOR ID:	
SCS STOCK #:	VENDOR STOCK #:	PRODUCT NAME / DESCRIPTION:	PRODUCT STORAGE TYPE (Dry, Frozen, or Refrigerated):	CASES PER PALLET:	LEAD TIME:	PRODUCT SHELF LIFE:	DECODING PROCEDURE (please attach separate sheets if needed):		
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
VENDOR PROFILE									
VENDOR REP:			PHONE:				E-MAIL:		
ADDITIONAL CONTACT PERSON:					DATE(S) OF CONTRACT:				
COMMENTS:									
NOTE: *ALL products must have 70% shelf life upon delivery (exceptions are canned fruits and vegetables: 50%-70%).									
If pallet(s) have several expiration dates, the expiration date must be clearly labeled and identifiable.									

APPENDIX H - ADDENDA ACKNOWLEDGEMENT

IFB #05062022

2022-2023 SCBE PRODUCE 1ST SEMESTER – FRESH FRUITS AND VEGETABLES BID

(If applicable) Please complete and return with your bid response.

I the undersigned acknowledge the receipt of the following addenda to this solicitation

Addendum #1- Date Received _____

Addendum #2 - Date Received _____

Addendum #3 - Date Received _____

Addendum #4 - Date Received _____

Signature

Title

Vendor Name

Email

Contact Phone Number