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| Invitation for Bid IFB #USDADF20 | SY 2019-2020 | |
| The Bureau of Nutrition and Health Services of the Iowa Department of Education is issuing an Invitation for Bid (IFB) for processed end products through the USDA Foods - Diverted Foods Program for SY 2019-2020. | |  |

Submit Invitation for Bid (IFB) documents to:

Keerti Patel, IFB Issuing Officer

Iowa Department of Education

Division of School Finance and Support Services

Bureau of Nutrition and Health Services

Grimes State Office Building

400 E 14th Street

Des Moines, IA 50319 – 0146

Email: [IowaUSDAFoods@iowa.gov](mailto:IowaUSDAFoods@iowa.gov) (preferred method of communication)

Fax: 515-242-5988

All questions should be in writing and directed to the Issuing Officer.

All available information concerning this Invitation for Bid can be viewed and downloaded from the following website: <http://bidopportunities.iowa.gov/>

STATE OF IOWA



INVITATION FOR BID

IFB #USDADF20

Processed End Products for the USDA Foods – Diverted Foods Program

SY 2019-2020

On Behalf of the Iowa Department of Education, Bureau of Nutrition and Health Services

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# SECTION 1 – INTRODUCTION

* 1. **BACKGROUND**

In SY 2016-2017, all School Food Authorities (herein after referred to as “SFAs” or “District”) in the State of Iowa participating in the National School Lunch Program (NSLP) could choose to divert some, or all, of their USDA Donated Foods to forty-seven (47) further processed end products within eighteen (18) categories. The manufacturing of bulk USDA Donated Foods into further processed end products (herein after referred to as “end products”) was competitively procured by the Bureau of Nutrition and Health Services (herein after referred to as “Department”, “Bureau” or “State Agency”). All SFAs, who chose to, could divert USDA Foods only to the food processors (herein referred to as “vendor” or “contractor”) and end products approved in each category. The categories and end products were derived from gathering SFA purchase data for SY 2012-2014. The end products selected in the initial procurement represented eighty-seven (87) percent of the USDA Donated Foods dollars diverted.

The Department established a three-year procurement cycle with approximately one-third of the categories to be solicited each year. See Appendix 2 for the Procurement Cycle. More categories and/or end products may be added with each procurement cycle. The decision to adjust categories, end products, or the procurement cycle, will be based on tracking SFAs usage of end products, along with the USDA Foods Advisory Council input. The Department can justify competitively procuring only those categories and end products that are in the best interest of all SFAs participating in the Iowa USDA Diverted Foods Program.

* 1. **INTENT OF THE INVITATION FOR BID (IFB)**

In the Fall of 2018, the Department issued a Request for Information (RFI) #USDADF20 from qualified processors for further processed end products on behalf of SFAs participating in the NSLP for SY 2019-2020.

The purpose of the RFI was to receive end product specifications from qualified Vendors. The Department reviewed Vendor responses received. Vendors with end products that met written specifications, as provided in the RFI, and met the requirement of submitting at least one end product per written specification within a category, were identified. Vendors were contacted to provide end product samples for Food Service Director/Student evaluation. The Food Service Director/Student evaluation of end product samples was from October 2018 through January 2019.

The intent of this Invitation for Bid (IFB) is to request pricing from Vendors for pre-approved end products. A contract will be awarded to the responsive Vendor(s) whose combined total cost per category is the lowest.

All Vendors submitting a sealed bid agree to comply with all the required contract provisions identified in program regulations for programs operated (7 CFR Parts 210.21, 215.14a, 220.16, 225.17, and 226.22, as applicable), USDA Foods (7 CFR Part 250), and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), respectively.

* 1. **CONTRACT TYPE:** A fixed price contract will be awarded to the Vendor(s) with the lowest bid by category based on combined total cost per serving per product within a category.
  2. **DEFINITIONS**

*Binders/Extenders/Fillers*means substances added to end products to improve texture, proportion, moisture, appearance, or other characteristics. For a list of acceptable substances please refer to FSIS Directive 7120.1 “Safe and Suitable Ingredients Used in the Production of Meat, Poultry, and Egg Products at: <http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/directives/7000-series/safe-suitable-ingredients-related-document>

*Bureau* means the Bureau of Nutrition and Health Services of the Iowa Department of Education.

*Child Nutrition (CN) Label –*a voluntary Federal labeling program for the Child Nutrition Programs. The CN Labeling Program is run by the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA) in cooperation with the Food Safety and Inspection Service (FSIS), Agriculture Marketing Service (AMS); and National Marine Fisheries Service (NMFS).

*Child Nutrition Programs (CNP) –* The National School Lunch Program (7 CFR 210) including the Fresh Fruit and Vegetable Program, the Seamless Summer Option, and afterschool snacks, School Breakfast Program (7 CFR 220), Special Milk Program (7 CFR 215), Summer Food Service Program (7 CFR 225), the Food Distribution Program (7 CFR 250), and the Child and Adult Care Food Program (7 CFR 226) are collectively referred to as the Child Nutrition Programs (CNP).

*Commodity Reprocessing* means to convert USDA Donated Food into more convenient ready-to-use end products.

*Contract* means the resulting State Participation Agreement (SPA) incorporating the Invitation for Bid (IFB), and addenda thereto, and the vendor’s Proposal. The contract constitutes the entire agreement between the Department and the vendor.

*Department* means the Iowa Department of Education.

*Direct Distributions*means the program where NSLP participants in Iowa order USDA Foods from the Bureau six (6) times per year.

*Distributor* means a commercial food purveyor or handler who is independent of a processor and both sells and bills for the end products delivered to recipient agencies.

*Diverted Foods* means the State of Iowa’s commodity processing program for recipient agencies.

*End Product* means a commercially produced food product that contains any USDA Donated Foods.

*Fee for Service (FFS)* is a Value Pass Through method where the manufacturer bills for the cost additional ingredients, processing, and delivery to identified location. The value of the USDA Donated Food is not included in the price for recipient agencies. This method can work as a direct shipment or through a distributor.

*Food and Nutrition Service (FNS)*– the agency under the United States Department of Agriculture responsible for administering the NSLP, USDA Foods, and other nutrition and food assistance programs.

*Freight-on-Board (F.O.B.)* – Delivery is “just-in-time” Freight-on-Board to the warehouse of choice of the member SFA. Delivery charges or fees, if any, shall be included in the bid price. No charges shall be noted on the invoice for delivery or handling fees. If the distributor manages the freight by picking up at the Vendor’s storage facility, or their production plant, the Vendor agrees to reimburse the distributor the difference between the delivered bid price and the distributors into stock cost including all freight cost.

*Fully Cooked (FC)* means the product has been fully cooked and only requires warming to serve.

*Invoice* means a bill submitted to the Department by the Vendor for services rendered under the contract.

*IQF* means Individually Quick Frozen.

*Invitation for Bid (IFB) –* It is a formal method of procurement where the type of solicitation document used is a competitive sealed bidding in which primary consideration is cost and results in a fixed price contract with or without adjustment factors. The expectation is that sealed bids will be received and an award will be made to the responsive and responsible vendor whose bid is lowest in price.

*National School Lunch Act (NSLA)–* the legislation that established the National School Lunch Program (NSLP) (42 USC 1751 et seq.) in 1946.

*Net-Off Invoice (NOI)* means the method where the manufacturer bills the distributor at the commercial price, but the distributor bills the RA at the commercial price net the value of the donated food. Upon delivery to an eligible RA; the distributor requests a rebate for the value of the donated food from the manufacturer.

*Pass Through Value (PTV) of USDA Foods* – This is value of the USDA Foods ingredients included in processed end products expressed in price per pound or case.

*Product Formulation Statement (PFS) –*A signed statement on manufacturer’s letterhead that demonstrates how the processed end product contributes to the meal pattern requirements. Generally for end products with no CN label. More information about PFSs can be found at: <http://www.fns.usda.gov/cnlabeling/food-manufacturersindustry>

*Rebate* means the method where the RA pays the commercial price for a processed item and submits a request for the rebate to the manufacturer, who issues a check for the value of the donated food used.

*Recipient Agency (RA)* means a School Food Authority or district (public or non-public) or Residential Child Care Institution (RCCI) that participates in the National School Lunch Program.

*Request for Proposal (RFP) –* It is a formal method of procurement where the type of solicitation documents is a competitive proposal. The RFP identifies the goods and services needed and all significant evaluation factors of which price is of the primary factor to consider an award to the most responsive and responsible vendor.

*Responsible Vendor* means a vendor that has the capability in all respects to perform the requirements of the Contract. In determining whether a vendor is a Responsible Vendor, the Department may consider various factors including, but not limited to, the vendor’s competence and qualifications to provide the goods and services requested, the vendor’s integrity and reliability, the past performance of the vendor and the best interest of the Department and the Recipient Agencies.

*School Food Authority (SFA) –* the governing body that is responsible for the administration of one or more schools, and has the legal authority to operate the Program therein or be otherwise approved to by United States Department (USDA) to operate the Program.

*State Agency (SA) –* Agency identified in an agreement with USDA to administer USDA Food Distribution. In Iowa, the Iowa Department of Education is the State Agency for USDA Foods.

*School Year (SY) –* means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

*Targeted Small Business* means a small business which is fifty-one percent (51%) or more owned, operated and actively managed by one (1) or more women, minority persons, or persons with a disability, as defined in Iowa Code Section 15.102.

*USDA Donated Food* means the bulk raw material purchased by USDA and sent to processors for Commodity Reprocessing.

*Value Pass Through (VPT)* system is the system used to credit the value of the USDA Donated Foods contained in purchased end products to the RA.

*Vendor* means a person, firm, corporation, partnership, or joint venture submitting a Bid for the purpose of obtaining a contract.

*Web-Based Supply Chain Management (WBSCM)* means the web application used by USDA, Department, and the manufacturer for the ordering, solicitation for bids, purchasing, and paying invoices of USDA Donated Foods.

*United States Department of Agriculture (USDA)* means the Federal agency designated by the Congress to administer the National School Lunch Program.

# SECTION 2: ADMINISTRATIVE INFORMATION

**2.1. ISSUING OFFICER**: The Issuing Officer, identified below, is the sole point of contact regarding this Bid from the date of issuance until selection of the successful vendor(s):

Keerti Patel, Issuing Officer

Iowa Department of Education

Division of School Finance and Support Services

Bureau of Nutrition and Health Services

Grimes State Office Building

400 East 14th Street

Des Moines, Iowa 50319-0146

Email: [IowaUSDAFoods@iowa.gov](mailto:IowaUSDAFoods@iowa.gov)

Fax: (515) 242-5988

* 1. **PROCUREMENT TIMETABLE**: The following dates are set forth for informational and planning purposes; however, the Department reserves the right to change the dates:

|  |  |
| --- | --- |
| **Event** | **Date/Time and Location, as applicable** |
| Issue Invitation for Bid (IFB) | January 11, 2019 by 3:00 pm CST |
| Deadline for submission of Vendor questions to Issuing Officer | January 18, 2019 by 3:00 pm CST |
| Issue responses to Vendor questions | January 22, 2019 by 3:00 pm CST |
| Sealed Bids due | February 1, 2019 by 1:30 pm CST |
| Sealed Bid Opening Date and time: | February 1, 2019 at 1:30 pm CST |
| Location of Sealed Bid Opening | Iowa Department of Education  Grimes State Office Building  Room B 50, Basement Level  400 E 14th Street  Des Moines, IA 50319 |
| Notice of Intent to Award | February 6, 2019 by 3:00 pm CST |
| Awarded Vendor(s) Participate in Food Show | April 16, 2019  Gateway Hotel & Conference Center  2100 Green Hills Dr  Ames, IA 50014 |
| Selected Vendor Start Date | July 1, 2019 |

* 1. **QUESTIONS, REQUEST FOR CLARIFICATION AND SUGGESTED CHANGES**: Vendors are invited to submit questions and requests for clarification, interpretation, and suggestions. All inquiries concerning interpretation, additional clarification, additional information, and questions pertaining to this IFB must be submitted in writing and sent via U. S. mail, electronic mail, or fax to: Keerti Patel, IFB Issuing Officer, [IowaUSDAFoods@iowa.gov](mailto:IowaUSDAFoods@iowa.gov) and must be received by January 18, 2019 by 3:00 pm CST.

Email is the preferred method of communication.

Oral questions (in person or via telephone) will NOT be permitted. Please reference the page(s) and section number(s) if questions pertain to a specific section of the IFB. Inquiries must include the Vendor’s business name, Vendor authorized representative contact name and job title, email address, and phone number.

* 1. **RESPONSE TO INQUIRIES:** Written addendum to questions and requests for clarification or interpretation, and suggestions will be posted on or before January 22, 2019 by 3:00 pm CST on the State Bid Opportunities website <http://bidopportunities.iowa.gov/>. Once issued, all addenda will be considered part of this IFB. If the Department decides to adopt a suggestion, the Department will issue an amendment to this IFB. The Department assumes no responsibility for verbal representations made by its officers or employees unless such representations are confirmed in writing and incorporated into this IFB.
  2. **AMENDMENT TO THE IFB AND WITHDRAWAL OF THE BID**: The Department reserves the right to amend this IFB at any time. The Vendor shall acknowledge receipt of any addendums to this Bid.

Vendors who submit Sealed Bids in advance of the deadline may withdraw, modify, and re-submit Sealed Bids at any time prior to the deadline. Vendors must notify the Issuing Officer in writing if they wish to withdraw the Bid.

After the deadline for the submission of Sealed Bids, Vendors may make a written request to withdraw their Sealed Bid and must provide evidence that a substantial mistake has been made or a change in the Vendor’s ability to perform.

* 1. **COST TO PREPARE THE BID**: The costs of preparation and delivery of the Sealed Bid to the Department are the sole responsibility of the Vendor.
  2. **REJECTION OF BID:** The Department reserves the right to reject any or all bids, in whole or in part, received in response to this IFB, and at its discretion, may withdraw or amend the IFB at any time prior to the execution of a written contract. Issuance of the IFB in no way constitutes a commitment by the Department to award a contract. The Department reserves the right to waive any deviations or error that are not material, do not invalidate the legitimacy of the bid, and do not improve a Vendor’s competitive position. All awards will be made in a manner deemed in the best interest of the NSLP USDA Foods – Diverted Foods program participants.
  3. **PUBLIC DISCLOSURE OF IFB CONTENTS:** Before the Notice of Intent to Award is issued, all details of the Bid will remain confidential. Upon issuance of the Notice of Intent to Award, all Bids become public information. The release of information by the Department is subject to Iowa Code Chapter 22 or other applicable laws. Vendors are encouraged to familiarize themselves with Chapter 22 before submitting a Bid. The Department will treat all information submitted by a vendor as public information unless the vendor properly requests that information be treated as confidential at the time of submission.

Any request for confidential treatment of information must be included in the transmittal/cover letter with the vendor’s bid. In addition, the Vendor must enumerate the specific grounds in Iowa Code Chapter 22 or other applicable law, which support treatment of the material as confidential and must explain why disclosure is not in the best interest of the public. The request must include: the name, the address, and telephone number of the person authorized by the vendor to respond to any inquiries by the Department concerning the confidential status of the materials.

An entire Bid cannot be marked confidential. Only those sections that meet the criteria in Iowa Chapter 22 or other applicable laws for confidentiality may be marked and treated as confidential information.

* 1. **IFB CLARIFICATION PROCESS**: After the Bids are publicly opened at the time and place as indicated in this IFB, the Department reserves the right to contact a Vendor for the purpose of clarifying price/package information to ensure mutual understanding. The Department will not consider information if the information materially changes the type of end product the Vendor is offering to the Department. Failure to comply with requests for additional information may result in rejection of the Bid as non-responsive.

* 1. **VENDOR DISQUALIFICATION:**
     1. Failure to submit bid document by due date specified in section 2.2 Procurement Timetable.
     2. Failure of Vendor to comply with requests for additional information for clarification purposes may result in rejection of the Bid as non-responsive.
     3. Failure to adhere to the bid format may result in the disqualification of the bid.
     4. Rejection in whole or in part to the Terms and Conditions may be cause for rejection of a Vendor’s bid.
     5. Vendors who submit bids with missing, or inaccurate pricing information on the *Official Bid Spreadsheets* may be ineligible for evaluation and selection for an awarded Contract.
     6. Vendors who submit bids with pricing information for categories and end products that are not listed on the *Official Bid Spreadsheets* will be ineligible for further evaluation and selection for an awarded Contract
  2. **REGULATIONS:** All Vendors submitting a IFB, agree to comply with all required contract provisions identified in program regulations for programs operated (7 CFR Parts 210, 215, 220, 225, 226, as applicable), USDA Foods (7 CFR Part 250), and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), respectively.

# SECTION 3: VENDOR RESPONSIBILITY

* 1. **VENDOR PRE-APPROVAL:** Vendor(s) must be pre-approved to submit pricing information for the end products that are listed in Appendix 1. Businesses owned, operated, and managed by women, minority persons, and individuals with disabilities or service-connected to disabled veterans, who were pre-approved, are encouraged to respond to the solicitation. Vendor should attach a copy of the Targeted Small Business (TSB) certification issued by the Iowa Department of Economic Development. Vendors were pre-approved following issuance of a Request for Information (RFI) #USDADF20**.** Pre-approved Vendor(s) will use USDA Donated Foods to process into end products per specifications issued in the RFIs.
  2. **NATIONAL PROCESSING AGREEMENT (NPA):** The Vendor must have a current signed NPA (National Processing Agreement) with the USDA. Bids and awarded Contract(s) with selected Vendor(s) must comply with all applicable requirements in the NPA that govern the processing of bulk USDA Foods into finished End Products listed in this IFB. If Vendor does not hold a current NPA, Vendor must be willing to go through the process of becoming a Single State Processor.
  3. **STATE PARTICIPATION AGREEMENT (SPA):** The SPA documents will be forwarded by the Department to the Awarded Vendor(s). Approved SPA must be in place by the start of the awarded Contract year – **July 1, 2019**. Winning Vendor(s) must comply with all applicable requirements in the SPA that govern the processing of bulk USDA Foods into finished End Products listed in this solicitation.
  4. **SUMMARY END PRODUCT DATA SCHEDULE (SEPDS):** The Vendor(s) will submit SY 2019-2020 SEPDS by the start of the awarded Contract year.
  5. **VALUE PASS THROUGH:** The Vendor(s) will pass through the value of USDA Foods to SFAs based on the applicable November price file (https://www.fns.usda.gov/fdd/processor-material-prices)
  6. **Web Based Supply Chain Management (WBSCM):** The Vendor(s) will receive USDA Donated Foods from USDA contracts and will receipt these shipments in WBSCM per Policy Memo FD-062 and any subsequent revisions.
  7. **MONTHLY PERFORMANCE REPORTS (MPRs):** The Vendor(s) will provide a Monthly Performance Report to Department staff.
  8. **DONATED FOOD TRACKING:** The Vendor(s) will provide a method for SFAs to track their USDA Food usage. Preferred method would be K12Foodservice.com or ProcessorLink.com.
  9. **F.O.B. DESTINATIONS:**  The Vendor(s) will deliver awarded end products F.O.B., as applicable, to the following destinations: SFAs location, SFA designated third party distributor, and Department contracted warehouses.
     1. Third party distributors may include the following: Kohl Wholesale, Martin Brothers, Reinhart Food Service (Cedar Rapids, La Crosse), Sysco, and US Foods.
     2. Failure to ship product for delivery of SFA’s first orders may result in an alternate bid award to the next lowest bidder.
  10. **DIRECT DISTRIBUTION ORDERS:** If a Vendor would like one, or more of their end products to be included on the USDA Foods Direct Distribution Ordering Form, the Vendor must agree to the following:
      1. There are approximately 470 SFAs that order Direct Distribution USDA Foods
      2. These orders were offered five times SY18-19 with approximate delivery timelines below

|  |  |
| --- | --- |
| **Distribution** | **Delivery Period to SFAs** |
| **A** | End of August through September |
| **B** | October through November |
| **C** | January through February |
| **D** | March through April |
| **E** | End of April through May |

* + 1. The Department will collect SFA requests for end product(s) and submit orders to Vendor(s) for only the quantities needed. Delivery of product must be within two (2) weeks of order, unless stated otherwise, to state contracted warehouses.
    2. Currently, Keck Food Distribution is the transportation company utilized by the State of Iowa. Under a resulting award, Keck is responsible for payment to the Vendor for the value of product delivered to schools. Keck will mail an agreement with terms to all Vendors doing business with the State.
    3. Vendor(s) will bill Keck the Fee for Service per case delivered. Keck will collect payment from SFAs as product is delivered and in turn remit payment to applicable Vendor. Payment occurs seventy (70) days from the date distribution commences

# SECTION 4: FORMAT AND CONTENT OF THE BID

* 1. **INSTRUCTIONS:** All submitted responses should adhere to the instructions and format requests outlined in this IFB. They are designed to facilitate a uniform review process. All responses must follow the outline below, including the numbering, section, and sub-section headings as they appear here. Vendors are asked to be brief and to respond only with the information sought. Bids must provide all information noted in this solicitation document, per issued forms, or on Vendor’s letterhead, when appropriate and have required signatures. All information requested in the IFB must be received at the time of submission.
  2. **FORMAT:**
     1. The response should be typed or printed. Responses should be on white 8 ½“ x 11” paper, single-spaced with 1” margin using Arial font style no smaller than point size 11.
     2. All pages should be numbered consecutively beginning with number one (1) on the first page of the narrative (this does not include the cover page or the table of contents page) through to the end, including all forms and attachments.
     3. All information should be presented in the same order and format as described in IFB section 4.3 Response Contents.
     4. For clarity, the vendor’s name should appear on every page, including Attachments.
     5. One original and one (1) copy of IFB will be submitted to the Issuing Officer via standard, or expedited, mail service or hand delivery, in a clearly labeled envelope. The original will be labeled “original” and the copy labeled “copy.” The Official Bid Spreadsheet Attachment B must be submitted in an electronic format, either burned onto a CD, or saved onto a flash drive.
        1. Envelope should be clearly labeled with Vendor Name, Product Categories Enclosed; and Authorized Vendor Representative’s contact information (e-mail and phone number).
        2. If using standard or expedited mail service, please allow sufficient time for arrival before due date and time, in the event of inclement weather or delay. Any Bids received after the deadline will be rejected and returned unopened to the Vendor.
  3. **RESPONSE CONTENTS:**
     1. **Bid Cover Letter** - Vendors will need to include a “Bid Cover Letter.” The letter shall be signed by an individual authorized to legally bind the Vendor. There is no template for the letter. The letter shall include:
* Vendor Mailing Address
* Authorized Signer’s Electronic Mail Address
* Authorized Signer’s Telephone Number
* Vendor Fax Number

Any request for protection of confidential information shall be included in the letter in addition to the specific statutory basis supporting the request and an explanation why the disclosure of the information is not in the best interest of the public. The cover letter shall also contain the name, address, and telephone number of the individual authorized to respond to the Department about the confidential nature of the information.

The Vendor shall acknowledge in the letter the receipt of any amendments and receipt of the Department’s responses to questions submitted by Vendors.

* + 1. **Table of Contents:** The Vendor shall include a Table of Contents.
    2. **Acknowledgement:** Attachment A - The Vendor certifies that the contents of the Bid submitted on behalf of the Vendor are true and accurate.
    3. **Official Bid Spreadshee**t: Attachment B - Vendors must follow the **instructions found on the first sheet of the** *Official Bid Spreadsheet* (Excel format).
       1. Volume Estimates:All volume estimates presented in this bid document are based on historical usage data of SFAs participating in the USDA Foods – Diverted Foods Program. The historical data was obtained through *ProcessorLink and K-12 Foodservice*. No guarantees in order quantities exist until the Vendor receives an order from a participating SFA. While good faith efforts are made in providing the quantities listed in this IFB, quantities are for estimation and planning purposes only. The listed quantities are subject to change, with no guaranteed minimum order implied by this request for IFB.
       2. If the Processor has minimum shipment requirements, the requirements must be documented and included on the *Official Bid Spreadsheets* as instructed. In the absence of specific shipment information, it will be assumed there is NO minimum ship requirements.
    4. **Suspension and Debarment Certification**: Attachment C
    5. **Anti-Lobbying Certification**: Attachment D
    6. **Acceptance of Terms and Conditions:** The Vendor shall specifically agree that the bid is predicated upon the acceptance of all terms and conditions stated in this IFB. However, if the Vendor objects to any term(s) or condition(s), the Vendor must specifically refer to the page(s) and section(s) clearly identifying the term and condition they object and include a statement recommending term(s) and condition(s) the Vendor would find acceptable. Rejection in whole or in part to the Terms and Conditions may be cause for rejection of a Vendor’s bid.
    7. **References:** The Department reserves the right to request references.
    8. **Assurance of Non-collusion or Certificate of Independence (Attachment E):** The Vendor assures that any business entity represented by the Vendor has not received compensation for participation in the preparation of any items, specifications, or General Terms and Conditions, price related to this IFB.

This Bid has been prepared independently and is submitted without collusion with any other Vendor, with any competitor or potential competitor, or with any other person or entity to obtain any information or gain any special treatment or favoritism that would in any influence or discretion concerning the sale, delivery, or performance of any product or service related to this Bid.

The Vendor has not accepted, offered, conferred or agreed to confer, and will not in the future accept, offer, confer, or agree to confer any benefit or anything of value to any person or entity related to the SFA or any of its members in connection with any information or submission related to this Bid, any recommendations, decisions, vote, or award related to this Bid, or the exercise of any influence or discretion concerning the sale, delivery, or performance of any product or service related to this Bid.

Neither the Vendor, nor any business entity represented by the Vendor, nor anyone acting for such business entity, has violated the Federal Antitrust Laws with regard to this Bid; furthermore this Bid has not been knowingly discussed with nor disclosed to, and will not be knowingly discussed with nor disclosed to another Vendor, competitor, potential competitor or SFA officials prior to the opening of the Bids.

No attempt has been or will be made to induce any other person or entity to submit or not to submit a Bid.

* + 1. **Assurance of Civil Rights Compliance** Attachment F

**SECTION 5: CONTRACT TERMS AND CONDITIONS**

* 1. **PRECEDENCE FOR CONTRACT DOCUMENTS:** The Contract that the Department expects to award as a result of this IFB will be based on the IFB response submitted by the apparent successful Vendor and this IFB. The contract between the Department and the apparent successful Vendor shall be a combination of the specifications, terms and conditions of this IFB, the offer of the Vendor in their response to this IFB, written clarifications or changes made in accordance with the provisions in the IFB. The governing precedence for documents shall be:
* Amendment to the Contract with the most recent dated amendment having the highest priority.
* The Executed Contract.
* Amendments to the Invitation for Bid (IFB).
* The Invitation for Bid (IFB).
* The Request for Invitation (RFI).
* The Vendor Response to RFI and IFB signed in ink.

Once bids are opened they become the property of the State of Iowa and will not be returned.

* 1. **APPROPRIATED FUNDS:** Any and all payments to the Vendor are dependent upon and subject to the availability of funds to the SFA for the purpose set forth in this agreement. In the event no funds or insufficient funds are appropriated for payments due under a Contract made pursuant to this IFB, the SFA shall immediately notify the Vendor awarded the Contract of such occurrence but the SFA shall have no further obligation.
  2. **CONTRACT PERIOD:** The contract period will begin July 1, 2019 and continue for twelve (12) consecutive months ending June 30, 2020. The pricing submitted is considered valid for the Contract Period.
  3. **CONTRACT AND PRICE RENEWAL/EXTENSION:** The Department intends to award a contract for a one (1) year period for all categories. Some categories will have the option for one (1) or two (2) renewals by mutual agreement of the Department and the Vendor(s). See **Appendix 2** for the tentative procurement cycle.

Contract renewal shall be based on:

1. Price
2. Customer satisfaction with product
3. Customer service
4. Continuance of USDA-approved National Processing Agreement or Single State Processing Agreement.

At time of renewal, the Vendor(s) may petition the Department for a price increase per end product. The petition shall be submitted in writing at least sixty (60) days before the proposed effective date of price increase. Petitions must include supporting documentation for proposed price increase using applicable U.S. Bureau of Labor Statistics Producer Price Index or Consumer Price Index data to substantiate request.

* 1. **CONTRACTOR RESPONSIBILITY:** The awarded Vendor is solely responsible for fulfilling the contract, with responsibility for all services offered and products to be delivered as stated in this IFB, the Vendor’s response to the RFI and IFB, and the resulting Contract. The Vendor shall be the sole point of contact regarding all contractual matters. Prior written authorization by the Department will be required if any portion of the Contract made as a result of this IFB is to be transferred or subcontracted to a new entity. Following execution of the Contract, the Vendor shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the Contract.
  2. **CONTRACT TERMINATION:** Except as otherwise provided within the Terms and Conditions of this IFB and per Child Nutrition Programs procurement regulations, the resulting Contract may be terminated in whole, or in part, by either the Department or the Vendor(s) for any reason including in the event of substantial failure by the other party to fulfill its obligations under the Contract through no fault of the terminating party; provided that a written notification (delivered by certified mail, return receipt requested) of intent to terminate is given at least thirty (30) days prior to the effective date of such action.

The party terminating the Contract provides the party to be terminated a reasonable opportunity to rectify the defects in products or performance, prior to termination.

The Department may terminate the contract due to noncompliance and nonperformance with Federal and State regulations, effective immediately after written notification by the Department to the Vendor(s).

* 1. **CONFLICT OF INTEREST CLAUSE:** The Vendor will maintain a written code of standards of conduct governing the performance of their employees engaged in the administration of contracts. No employee, officer, or agent of the Vendor shall participate in the administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer, or agent,
2. Any member of his/her immediate family,
3. His or her partner, or
4. An organization which employs, or is about to employ, any of the above has a financial or other tangible personal interests that conflict with the ethics and standards of business conduct of the Vendor.
   1. **CHANGE IN PRODUCT FORMULATION/SPECIFICATION:** It is the Vendor’s responsibility to inform the Department of ANY change to product formulation, nutrition facts, and product code or pack size BEFORE the end product(s) is shipped to distributors or delivered as part of the Contract Awarded pursuant to this IFB. Failure of the Vendor to provide an updated specification to the Department may result in the product being removed from the Contract.
   2. **DEVIATIONS:** Any deviations from specifications and changes in product formulation since submitted in response to applicable RFI shall be clearly pointed out by the Vendor. Otherwise, it will be considered that product offered is in strict compliance with specifications and requirements, and the successful Vendor will be held responsible therefore. Any deviations shall be explained in detail on a separate sheet as attachment with the IFB. However, no implication is made by the Department that deviations will be acceptable.
   3. **BUY AMERICAN:** Vendor will comply with the Buy American provision. The Buy American Provision in Section 12(n) of the NSLA requires SFAs to purchase, to the maximum extent practicable, domestic commodity or product. This provision supports American agriculture. A domestic commodity or product is defined as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States. “Substantial” means that over 51 percent of the final processed product consists of agricultural commodities that were domestically grown.
   4. **EQUAL EMPLOYMENT OPPORTUNITY:** The Vendor shall comply with the Executive Order 11246, “Equal Employment Opportunity”, as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60,”Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

To comply, the Vendor will:

1. Provide equal opportunity to all qualified persons, to prohibit discrimination in employment on the basis of race, color, religion, sex or national origin.
2. Will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
3. That the applicants are employed and treated fairly during employment, which shall include, but is not limited to the following: upgrading, demotion, or transfer; recruitment, layoff or termination, rates of pay or other forms of compensation; and selection for training.
4. The Vendor will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the non-discrimination clause.
5. USDA Non-Discrimination Statement - 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.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf), (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:

mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410;

fax: (202) 690-7442; or

email: program.intake@usda.gov.

This institution is an equal opportunity provider.

1. Iowa Non-Discrimination Statement - It is the policy of this CNP provider not to discriminate on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, disability, age, or religion in its programs, activities, or employment practices as required by the Iowa Code section 216.6, 216.7, and 216.9.  If you have questions or grievances related to compliance with this policy by this CNP Provider, please contact the Iowa Civil Rights Commission, Grimes State Office building, 400 E. 14th St. Des Moines, IA 50319-1004; phone number 515-281-4121, 800-457-4416; website: [https://icrc.iowa.gov](https://icrc.iowa.gov/)/.

By submitting a response, the Vendor has agreed to affirmatively cooperate in the implementation of the policy and provisions of Executive Order 11246, Executive Order 11375, and 40 CFR part 60.

* 1. **CLEAN AIR ACT (42 U.S.C. 7401-7671q) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387):** The Vendor is required to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act 42 U.S.C. 7401-7671q and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
  2. **ENERGY POLICY AND CONSERVATION ACT (42 U.S.C. 6201):** The Vendor agrees to comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
  3. **DEBARMENT AND SUSPENSION:** The Vendor is required to complete, sign and attach the **Suspension and Debarment Certification Form.** The signed form must be included as Attachment C.
  4. **LOBBYING:** The Vendor must complete, sign, and submit the **Lobbying Certification** and **Disclosure of Lobbying Activities Form.** By submitting the signed form, the Vendor certifies that no federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence any federal agency or Congress with respect to the awarding of a federal contract, or in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. The signed form must be included as Attachment D.
  5. **INSURANCE:** The Vendor(s) awarded the Contract shall maintain all necessary and proper insurance for the duration of the work to be performed, including Comprehensive General Liability Insurance, Property Damage Insurance, Workers Compensation Insurance, Employer’s Liability Insurance, and Automobile Liability Insurance.
  6. **FOOD SAFETY AND QUALITY CONTROL PLAN:** Pre-approved Vendors signed and submitted a letter as part of their response to RFI # FOODS20161 providing assurance that industry standard Hazard Analysis Critical Control Points (HACCP) procedures are implemented that are in compliance with safe food handling and quality assurance practices in compliance with federal regulations. Only changes to the plan submitted with RFI # FOODS20161 must be provided.
  7. **FOOD RECALL:** Pre-approved Vendors in response to RFI #USDADF19, Pear Cups, and Chicken Breaded provided assurance that adequate food recall policies and procedures are in place in the event there is a recall of end products due to a breakdown in the HACCP principles. Only changes to the plan submitted with RFI must be provided.
  8. **DELAY IN PRODUCTION OR DELIVERY OF PRE-APPROVED PRODUCT(S):** It is the expectation of the Department that all end products awarded in this bid will be available for the bid period. The Contractor is responsible for immediate notification to the Department, in addition to the brokers and distributors, of any delay in production that will affect delivery of product to distributors and consequently the SFAs. Failure to ship product to distributors for delivery of first orders may result in an alternate bid award to the next lowest bidder.
  9. **CONFIDENTIALITY OF BID:** In submitting a bid, the Vendor agrees not to disclose or otherwise reveal the contents of its bid to any source outside of the Department contact, government or private, until after the award of the Contract. All Vendors who submit a bid are advised that they are not to have any communications with the Department during the evaluation of the bids (i.e., after the public opening of the bids and before the award of the Contract), unless the Department Issuing Officer contacts the Vendor(s) for the purpose of seeking clarification. Only those communications with the Department authorized by this IFB are permitted.
  10. **PROTEST PROCEDURES:** Per IAC Chapter 281-7.5(290, 17A), there must be a ten (10) business day appeal period during which time non-selected Vendor(s) may appeal the intent to award decision. Protests must be in writing and provide specific reasons with supporting documentation for the protest.

Vendors whose Bid has been filed in accordance with the requirements of this IFB may appeal the decision by filing a written notice of appeal to:

Director

Iowa Department of Education

Grimes State Office Building

400 East 14th Street

Des Moines, Iowa 50319-0146

A copy of the appeal shall also be submitted to the Issuing Officer. A notice of appeal must be filed within five (5) business days. The appeal must clearly and fully identify all issues being contested by referencing the page(s), section(s), line number(s) and/or the Notice of Intent to Award. A notice of appeal may not stay the negotiations with the apparent successful Vendor.

* 1. **CONTRACT ADVERTISING:** In submitting a response to this IFB, or thereafter, the Vendor agrees not to use the results of this IFB as part of any news release or commercial advertising.
  2. **INDEMNIFICATION:** Awarded Vendor(s) shall indemnify participating SFA from and against any and all claims, demands lawsuits, liabilities, judgments, and expenses (including attorney fees and other costs of litigation) arising out of or relating to injuries, disease, or death of persons or damages to or loss of property resulting from or in connection with the negligent performance of this contract by the Vendor(s), its agents, employees, or one for whom the Vendor(s) is responsible. The Vendor(s) liability shall not be limited by any provisions or limits of insurance set forth in this Contract. The obligations, indemnities, and liabilities are assumed by the Vendor(s) under this paragraph shall not extend to any liability caused by negligence of the participating SFA or its employees.
  3. **FORCE MAJEURE:** Except for payments of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party’s performance of this Contract is prevented by reason of Force Majeure. Force Majeure includes acts of God; fire; flood; or other similar occurrences beyond the control of the Contract or participating SFA.
  4. **RECORD KEEPING REQUIREMENTS:** By responding to this IFB, the Vendor awarded the Contract understands that the participating SFA, the U.S. Department of Agriculture, the Department, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Vendor which are directly pertinent to this Contract, for the purpose of audits, examinations, excerpts, and transcriptions.

Additionally, the Vendor(s) awarded the Contract must provide all documents necessary for an independent auditor to conduct the participating SFA’s single audit.

The Vendor(s) awarded the Contract must retain all pertinent records identified by source, type, and category for a minimum of three (3) years after the participating SFA makes final payments. In the event of any unresolved audit findings, the records shall be retained beyond the three (3) year period for as long as required for resolution of the issues raised by the audit.

**Section 6: REVIEW OF RESPONSES RECEIVED**

1. **PUBLIC BID OPENING:** Public Bid opening will held at the Iowa Department of Education location, on February 1, 2018 at 1:30 pm CST.

Iowa Department of Education

Grimes State Office Building,

Room B50, Basement Level

400 E 14th Street

Des Moines, IA 50319

Vendors are not required to, but are encouraged to attend. In the event of inclement weather, the Bid opening may be postponed. Vendor Authorized Representatives will be notified of the Bid postponement. The public will be notified of the postponement via network television weather related closing announcements. The postponement of the Bid opening will be determined by Metro area schools closings/cancellations.

1. **PRICE COMPUTATIONS:** A Vendor’s weighted total cost will be calculated using the serving volume for commercial distribution identified in Official Bid Spreadsheet multiplied by per serving cost. A total category cost will then be calculated for each Vendor. Vendors with multiple pre-approved end products per product will have multiple total category costs computed. The Vendor with lowest total cost in a category will be awarded that category.
2. **POST BID OPENING REVIEW:**  The Department will review all spreadsheets for accuracy in information and price computations.
3. **INTENT TO AWARD LETTERS:** Following post Bid opening review an Intent to Award letter will be issued. Notice of Intent to Award will be sent to all responsive Vendors. See section 5.21 for Protest Procedures.