



### Request for Proposal (RFP) Template

List Title of Goods/Services being Solicited (i.e.: Kitchen Equipment Repair)

List Contract Number

SFA NAME

SFA ADDRESS

SFA CONTACT INFORMATION

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

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

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted 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; or
2. fax:  
(833) 256-1665 or (202) 690-7442; or
3. email:  
[program.intake@usda.gov](mailto:program.intake@usda.gov)

This institution is an equal opportunity provider.

# REQUEST FOR PROPOSAL AND CONTRACT INDEX

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## **I. INTENT OF REQUEST/SCOPE OF WORK**

[School/Facility Name], hereinafter referred to as the “School Food Authority” or “SFA”, is accepting proposals from vendors for **List Product or Service** at each school within the SFA. The intent of this Request for Proposal (RFP) is to establish a fixed-price contract with the awarded vendor. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the SFA, with price and other factors considered.

## **II. REQUEST FOR PROPOSAL/INSTRUCTIONS**

### **A. Legal Notice**

All costs involved in submitting a response to this Request for Proposal (RFP) shall be borne in full by the interested party. The SFA is not liable for any cost incurred by any bidder prior to the signing of a contract by all parties.

The SFA reserves the right to reject any and all proposals or to accept the proposal that it finds to be the most responsive and responsible proposal submitted.

The Offeror to this RFP will be referred to as the Vendor, and any contract that may arise from this RFP will be between the Vendor and the SFA.

### **B. Request for Proposal**

1. The SFA will consider a proposal for **List Product or Service** only. The fixed-fee price for **List Product or Service** shall be inclusive of delivery.
2. In accepting proposals, the SFA reserves the right to reject any and all proposals and to waive any minor informality in order to take the action which it deems to be in the best interest of the SFA.
3. Offerors must submit a complete response to this Request for Proposal (RFP), including all certifications, for consideration as a responsive proposal. Bidders must complete, sign, and return this entire packet. No proposal may be altered, amended, or withdrawn after the specified time for opening and review of proposals.
4. Contracts entered into on a basis of submitted proposals are revocable if contrary to law.
5. RFPs will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical.
6. Proposals will be solicited from an adequate number of qualified sources.
7. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. Price is to be the most heavily weighted evaluation criteria.
8. Discussions, for the purpose of clarification, may be conducted with responsible offerors who submit proposals determined to be considered for award selection, to assure full understanding of all terms and conditions of the RFP response and Contract requirements following state regulations and the SFA policy.
9. In conducting these discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
10. All procurement transactions shall be conducted in a manner that provides maximum open and free competition consistent with 2 CFR 200.319. Some of the situations considered to be restrictive of competition include but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business, requiring unnecessary experience and excessive bonding, Noncompetitive pricing practices between firms or between affiliated companies, noncompetitive awards to consultants that are on retainer contracts, organizational conflicts of interest, specifying only a “brand name” product

instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement, and any arbitrary action in the procurement process.

11. The SFA must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. This applies if the SFA has a parent, affiliate, or subsidiary organization that is not a state, local government or Indian tribe.
12. If more than one proposal is offered by any one party, by or in the name of a clerk, partner, or other assistance or employee, all such bids will be rejected.
13. Bidders or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting proposals; failure to do so will be at the bidder’s own risk and he/she cannot secure relief on the plea of error.
14. Any person that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions, or other documents for use by the SFA in conducting a procurement under the USDA entitlement programs specified in 2 CFR 200.319 shall be excluded from competing for such procurements. Such persons are ineligible for contract awards resulting from such procurements regardless of the procurement method used.
15. Bidders certify, by signing this bid, that they will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352). In accordance with Title VI of that Act, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contract.
16. The subject matter of this RFP is subject to legislative changes either by the federal or State government. If any such changes occur prior to contract award, then all bidders will have the opportunity to modify their bids to reflect such changes. If any such changes occur after a contract award has been made, then the SFA (i) reserves the right to negotiate modifications to the Contract reflecting such legislative changes; and (ii) shall have no obligation to provide unsuccessful bidders with the opportunity to modify their bids to reflect such legislative changes.
17. This RFP is issued pursuant to 29 Del. C. §§ 6981 and 6982.
18. See Standard Terms and Conditions herein below.

### **C. Pre-Proposal Meeting / Timeline**

1. An agency may conduct a pre-bid conference within a reasonable time but not less than seven days before a bid opening to explain the requirements of an invitation to bid. An agency may require mandatory attendance by bidders at such pre-bid conferences to qualify as a responsible and responsive bidder. Statements made at the pre-bid conference shall not be considered amendments to the invitation to bid unless a written amendment is issued
2. A pre-bid meeting is scheduled for [date and time]. Attendance is required. No bid or proposal will be accepted from a vendor not in attendance at this meeting. [Virtual pre-bid meetings via platforms such as Zoom, Webex, Microsoft Teams, or other teleconference services, are allowable. If conducting a pre-bid opening by virtual and/or teleconference, the SFA must include details such as date/time/phone number, and/or how an invitation link will be sent. The SFA must have a process in place to record attendance, with date and time stamp, and include language that outlines tardiness.] Pre-bid meetings are optional. Delete this section or state that a pre-bid meeting will not be held if the SFA does not plan to have one.

### **D. Proposal Submission and Award**

1. Proposal packets will be sent to interested parties by contacting:  
[List Contact Information]

2. The SFA will allow written requests for clarification of the RFP. All questions should be directed to the designated contact, [contact name and information]. If clarification of the specifications and/or instructions is required, the SFA will clarify the specifications and/or instructions in the form of an addendum issued to all prospective bidders by [date].
3. Proposals, including all required documentation and attachments, must be received no later than [Date and Time]. Proposals received after this date and time will not be considered. Proposals must be addressed to [Name, Title, and Address] in a sealed envelope. The outside of the envelope should be clearly marked Child Nutrition Proposal.
4. The proposed schedule of events subject to the RFP is outlined below:

|                                   |                        |
|-----------------------------------|------------------------|
| Deadline for Receipt of Proposals | Date: [Date and Time]. |
| Notification of Award             | Date: [Date and Time]. |
5. No proposal may be altered, amended, or withdrawn after the specified time for opening and review of proposals.
  - a) Any changes, amendments, or modifications to a proposal must be made in writing, submitted in the same manner as the original response, and conspicuously labeled as a change, amendment, or modification to a previously submitted proposal. Changes, amendments, or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.
6. Vendor may modify or withdraw its proposal by written request, provided that both proposal and request to modify or withdraw is received by the SFA prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further. Proposals become the property of the SFA at the proposal submission deadline. All proposals received are considered firm offers at that time.
7. Late proposals will not be accepted.
8. To be considered, each offeror must submit a complete response to this solicitation **using the forms provided**.
  - a) No other documents submitted with the RFP and Contract will affect the Contract provisions, and **there may be no modifications to the RFP and Contract language**.
  - b) In the event that Offeror modifies, revises, or changes the RFP and/or Contract in any manner, the SFA may reject the offer as non-responsive.
9. Each proposal must be accompanied by a transmittal letter, which briefly summarizes the proposing firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP, which the applicant may have taken in presenting the proposal. Furthermore, the transmittal letter must attest to the fact that no activity related to this proposal contract will take place outside of the United States.
10. Prices quoted in the proposal shall remain fixed and binding on the bidder at least through [Month, Day, 20XX (SFA – enter the contract award date here)]. The SFA reserves the right to ask for an extension of time if needed.
11. The SFA discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other

promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The SFA's interest is in the quality and responsiveness of the proposal.

12. It is the expectation of the SFA that vendors can fully satisfy the obligations of the proposal in the manner and time frame defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials, and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.
13. The SFA shall bear no responsibility or increase obligation for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.
14. All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the SFA or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract.
15. Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify the SFA's designated contact [enter contact information], in writing, of such findings. All unresolved issues should be addressed in the proposal.
16. The SFA reserves the right to accept or reject any or all proposals or any part of any proposal; to waive defects, technicalities or any specifications; to sit and act as sole judge of the merit and qualifications of each product offered; or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as the school may deem necessary in the best interest of the school.
17. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered (2 CFR 200.320):
  - a) A responsible offeror is one who's financial, technical, and other resources indicate an ability to perform the services required.
  - b) Offeror shall submit for consideration such records of work and further evidence as may be required by the SFA's Board of Trustees.
  - c) Failure to furnish such records and evidence, or the inclusion of any false or misleading information therein shall be sufficient cause for the rejection of the proposal or termination of any subsequent contract.
  - d) The qualification data shall be submitted by each offeror along with the proposal.
18. The final award of a contract is subject to approval by the Executive Board of the SFA (or SFA should list responsible party). The school has the sole right to select the successful vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.
19. Notice in writing to a vendor of the acceptance of its proposal by the SFA and the subsequent full execution of a written contract will constitute a contract. No vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.
20. Offerors or their authorized representatives must fully inform themselves as to the conditions, requirements, and specifications before submitting proposals; failure to do so will be at the offeror's own risk who cannot secure relief on plea of error.

21. Any person that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions or other documents for use by the SFA in conducting a procurement under the USDA entitlement programs specified in 2 CFR 200.319 shall be excluded from competing for such procurements. Such persons are ineligible for contract awards resulting from such procurements regardless of the procurement method used.
22. The SFA is not liable for any cost incurred by the offeror in submitting a proposal.

**E. Evaluation of Proposal**

1. Award Criteria
  - a) Proposals will be evaluated by the SFA based on the criteria, categories, and assigned weights as stated herein below (to the extent applicable).
  - b) Committee members must consist of SFA employees familiar with the regulations and requirements of the Child Nutrition Programs.
  - c) If a committee member is an agent for, employee of, or in any manner associated with a Vendor, that Vendor may not participate in the RFP and subsequent contract or comply with the conflict of interest policies of the SFA or district.
  - d) Each area of the award criteria must be addressed in detail in the Proposal.
  - e) The SFA will maintain records sufficient to detail the significant history of a procurement to include, but not limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
  - f) The SFA reserves the right to:
    - i. Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
    - ii. Waive or modify any information, irregularity, or inconsistency in proposals received.
    - iii. Request modification to proposals from any or all vendors during the contract review and negotiation.
    - iv. Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
2. Evaluation Process
  - a) The SFA will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected. **Price will be the most heavily weighted evaluation criteria for submitted proposals.**
  - b) The SFA reserves full discretion to determine the competence and responsibility, professionally and/or financially, of vendors. Vendors are to provide, in a timely manner, any and all information that the school may deem necessary to make a decision.
3. Weight Criteria
  - a) The SFA must determine prior to advertising the RFP what percentage (total of 100 points which equals 100%) each category below will be given when comparing proposals. Cost must be the most heavily weighted criteria.
  - b) The SFA may insert additional categories if needed.
  - c) The SFA may not include as a category: prior experience with the SFA, as it would violate USDA’s free and open competition regulation for procurement.

| Points                               | Criteria                                                                                                                                                                                                                                                                                                       |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Enter points value – MUST be highest | Cost (must be primary consideration)                                                                                                                                                                                                                                                                           |
| Enter points value                   | Service Capability Plan (Vendor’s ability to provide services as stated in the RFP) <ul style="list-style-type: none"> <li>• Vendors is able to provide the goods/services at the locations and times in the RFP</li> <li>• Vendor is responsive to the SFA needs and remedies problems immediately</li> </ul> |
| Enter points value                   | Experience, References with programs like the SFA’s and familiarity pertaining to such operations <ul style="list-style-type: none"> <li>• Vendor is able to provide three references with programs like the SFAs</li> </ul>                                                                                   |



|                    |                                                                                                              |
|--------------------|--------------------------------------------------------------------------------------------------------------|
|                    | <ul style="list-style-type: none"> <li>SFA may not use their own past experiences with the vendor</li> </ul> |
| Enter points value | Quality of Goods/Services                                                                                    |
| Enter points value | List additional criteria                                                                                     |
| Enter points value | List additional criteria                                                                                     |
| 100                | TOTAL                                                                                                        |

**F. Firm Offer**

1. By submitting a response to this RFP, and if such response is not withdrawn prior to the time for opening proposals arrives, the offeror understands and agrees that they are making a firm offer to enter into a contract, which may be accepted by the SFA and which will result in a binding contract.
2. Such proposal is irrevocable for a period of ninety (90) days after the time for opening of proposal has passed. **(Vendor must initial and date to show agreement)**

**G. Bonding Requirements (if the SFA does not participate in SFSP, delete the SFSP language below)**

**School Nutrition Program (SNP) and Child and Adult Care Food Program (CACFP):**

**Bid Bonds** - The bid bond security need not be for a specific sum but may be stated to be for a sum equal to 10% of the bid to which it relates. A bid bond or bid security may be stated as a certain stated sum provided that the sum is equal to or greater than 10% of the bid. A SFA or a CACFP sponsor may choose to waive the requirement of a bid bond. **The decision to waive the requirement of a bid bond must be clearly stated in the bid special provisions.**

**Performance Bonds** - The procuring agency shall require the successful bidder to execute a good and sufficient bond to the State for the benefit of the agency. In cases where contracts for the purchase of material with a value less than the \$50,000 formal purchase threshold, a SFA or a CACFP sponsor may waive, or reduce, the performance bond requirement from the successful bidder. Such a waiver or reduction must be stated in the bid specifications. The Performance bonds shall be with a corporate surety authorized to do business in this state and be in a sum equal to 100% of the contract award. **The decision to waive the requirement of a bid bond must be clearly stated in the bid special provisions.**

**Summer Food Service Program (SFSP):** The SFSP requires the following regarding bonds:

**Bid Bond Requirement** - For bids over \$150,000, a bid bond in the amount of 10 percent of the estimated value of the contract for which the bid is made must accompany the bid. The bid bond must be from a company listed in the current United States Department of Treasury Circular 570 certified to do business in Delaware. No other type of bid bond is acceptable.

**Performance Bond Requirement** - For contracts over \$150,000, a performance bond equal to at least 10 percent, but not more than 25 percent of the value of the winning contract, must be obtained by the contractor. The performance bond must be from a company listed in the current United States Department of Treasury Circular 570 certified to do business in Delaware. The contractor must furnish a copy of the bond to the sponsor within 10 days of the contract's award. The performance bond must include the entire period that sponsor will operate the feeding program. Sponsors may not accept cash, letter of credit, trust account, land or any other form of guarantee in lieu of the performance bond.



### III. STANDARD TERMS AND CONDITIONS

#### A. Definitions

The following definitions shall apply within this document and its attachments:

1. “Buy American”—The term ‘domestic commodity or product’ means an agricultural commodity that is produced in the United States; and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.
2. “Child Nutrition Program (CNP)” means the USDA Child Nutrition Programs in which the SFA participates.
3. “Contract” means this RFP and Contract, the exhibits attached to this RFP and Contract and Vendor’s Proposal.
4. “DDOE” means the Delaware Department of Education.
5. “Effective Date” means [contract start date] through [contract end date] (must not exceed one year in length).
6. “Fixed Fee” All goods/services provided are to be incorporated into the fixed fee cost, and no other fees will be allowed.
7. “Vendor’s Proposal” means Vendor’s response to the RFP and Contract.
8. Healthy Hunger Free Kids Act of 2010 (HHFKA): The current Child Nutrition Program Reauthorization is due for reauthorization and is pending.
9. Procurement standards - The SFA may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with nonprofit food service account funds adhere to the standards set forth in 2 CFR 200 Part D and 2 CFR 200.21. The SFA procedures must include a written code of standards of conduct meeting the minimum standards of 2 CFR 200.318, as applicable. No employee, officer or agent of the SFA shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards
10. “Program(s)” or “Child Nutrition Program (CNP)(s)” means the USDA Child Nutrition Programs in which the SFA participates.
11. “Proposal” means vendor’s response to the RFP and Contract.
12. “RFP” means the SFA’s Request for Proposal and Contract, and all of its attachments.
13. “Services” means the services and responsibilities of Vendor as described in this Contract.
14. “The SFA” or “School Food Authority” as defined in 7 CFR 210.2.
15. “The SFA’s Food Service Location(s)” means the schools or other locations where Program meals are served to The SFA’s schoolchildren.
16. “USDA” means United States Department of Agriculture, Food and Nutrition Service.

#### B. Scope and Purpose

1. Contract Terms: This contract may be extended for additional time periods upon the mutual written agreement of all parties. Any increase in rates, if accepted, shall not exceed the increase in the Consumer Price Index (CPI-W US City Average) for the previous twelve-month period.
2. The SFA should list **specific** specifications here; including details about the goods (type, delivery to individual schools, in refrigerated truck, if applicable, etc.) or services (response time, travel time, repair estimates, time on task, trouble shooting, etc.)

3. Duration of Contract. This contract shall be for a period of one year beginning on or about **July, 1**, and ending **June 30,**.
4. The Vendor shall:
  - a. Comply with applicable federal, state and local laws, rules and regulations, policies, 2 CFR 200 and the other laws described in the “Contract Provisions for The SFA Contracts under CNP Awards,” which is attached to this Contract as “Exhibit E” and fully incorporated herein by reference.
  - b. The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.
  - c. The Vendor will provide a warranty that the deliverables provided pursuant to the contract will function as designed for a period of no less than one (1) year from the date of system acceptance. The warranty shall require the Vendor correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the School’s requirements.
  - d. Gifts from Vendor: The SFA’s officers, employees, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors nor potential contractors in accordance with all laws, regulations and policies. To the extent permissible under federal, state, or local laws, rules, or regulations, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards.

### C. Purchases

#### **The following applies to all Vendor contracts for the purchase of food in the School Nutrition Programs:**

1. Buy American: The Vendor comply with the Buy American Provision for contracts that involve food. As required by the Buy American Provision, all products must be of domestic origin as required by 7 CFR Part 210.21(d).
  - a. The SFA participates in the NSLP and SBP 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) (at least 51% or more domestic agricultural commodities).
  - b. Exceptions to the Buy American Provision should be used as a last resort; however, an alternative or exception may be approved upon request.
  - c. To be considered for the alternative or exception, Vendor must submit request in writing to the SFA and be approved. Approval will be retained with purchase records. The request must include the:
    - i. Alternative substitute (s) that are domestic and meet the required specifications:
      1. Price of the domestic food alternative substitute(s); and
      2. Availability of the domestic alternative substitute(s) in relation to the quantity ordered.
    - ii. Reason for exception: limited/lack of availability or price (include price):
      1. Price of the domestic food product documenting that the domestic product is significantly higher; and
      2. Price of the non-domestic product that meets the required specification of the domestic product.

2. **Payment Terms/Method:** Vendor shall invoice the SFA within [insert number of days] days after the end of each Accounting Period for the total amount of the SFA's financial obligation for that Accounting Period.

Vendor must:

- a. Be responsible for paying all applicable taxes and fees, including, but not limited to, excise tax, state and local income tax, payroll and withholding taxes, for Vendor employees.
  - b. Indemnify and hold the SFA harmless for all claims arising from payment of such taxes and fees.
3. The SFA shall not be responsible for any expenditure incurred by Vendor before execution of this Contract.
  4. No expenditure may be made from the nonprofit food service account for any cost resulting from a procurement failing to meet the requirements.

**D. Term and Termination**

1. Contracts for more than the simplified acquisition threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (2 CFR Appendix II to Part 200) [This language should be specific to the SFA's practices.]
2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the SFA including the manner by which it will be affected and the basis for settlement:
  - a) **Termination for Cause:** The SFA may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the SFA, upon request, with adequate assurances of future performance. The SFA shall provide the Contractor with a written notice thirty (30) days prior to the contract termination date. In the event of termination for cause, the SFA shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the SFA for any and all rights and remedies provided by law. If it is determined that the SFA improperly terminated this contract for default, such termination shall be deemed a termination for convenience. The Contractor may also terminate this contract under the same set of aforementioned conditions. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the SFA become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to the SFA. (7 CFR210.16(c)(3)(d))
  - b) **Termination for Convenience:** The SFA may terminate this contract for any reason, provided that the SFA shall be required to provide the Contractor with a prior sixty (60) days' written notice of the effective date of such termination (the "Termination for Convenience Date"). The Contractor may also terminate this contract under the same set of aforementioned conditions. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the SFA, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the School. If the contract is terminated by the SFA as so provided, the Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Vendor as covered by the contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services covered by the contract have been performed upon the effective date of termination, the Vendor shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the contract) incurred by the Vendor during the contract period which are directly attributable to the uncompleted portion of the services covered by the contract.

3. If, at any time, the SFA shall make a reasonable decision that adequate funding from federal, state or local sources shall not be available to enable the SFA to carry out its financial obligation to Vendor, then the SFA shall have the option to terminate this Contract by giving 10 days written notice to Vendor.
4. In the event either party commits material breach of this Contract, the non-breaching party shall give the breaching party written notice specifying the default, and the breaching party shall have 30 days within which to cure the default.
  - A. If the default is not cured within that time, the non-breaching party shall have the right to terminate this Contract for cause by giving 30 days written notice to the breaching party.
  - B. If the breach is remedied prior to the proposed termination date, the non-breaching party may elect to continue this Contract.
  - C. Notwithstanding the foregoing termination clause, in the event that the breach concerns sanitation problems, the failure to maintain insurance coverage as required by this Contract, failure to provide required periodic information or statements or failure to maintain quality of service at a level satisfactory to the SFA, the SFA may terminate this Contract immediately.
5. In the event that either party is prevented from performing its obligations under this Contract by war, acts of public enemies, fire, flood or acts of God (individually each known as a “Force Majeure Event”), that party shall be excused from performance for the period of such Force Majeure Event exists.
6. In the event of Vendor's nonperformance under this Contract or the violation or breach of the terms of this Contract, the SFA shall have the right to pursue any and all available administrative, contractual, and legal remedies against Vendor. Nonperformance subjects the Vendor to specified sanctions in instances where the Vendor violates or breaches contract terms. **The SFA shall indicate these sanctions in accordance with the procurement provisions stated in §210.21.**
7. The SFA is the responsible authority without recourse to USDA or DDOE for the settlement and satisfaction of all contractual and administrative issues arising in any way from this Contract. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, or federal authority that has proper jurisdiction.

**E. Insurance**

1. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney’s fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor’s negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.
2. The vendor shall maintain such insurance as will protect against claims under Worker’s Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the SFA.
3. During the term of this contract, the vendor shall, at its own expense, carry insurance minimum limits as follows:

|    |                                                                  |                         |
|----|------------------------------------------------------------------|-------------------------|
| a. | Comprehensive General Liability                                  | \$1,000,000             |
| b. | Professional Liability/Misc. Error & Omissions/Product Liability | \$1,000,000/\$3,000,000 |

If the contractual service requires the transportation of departmental clients or staff, the vendor shall, in addition to the above coverages, secure at its own expense the following coverage:

|    |                                        |                     |
|----|----------------------------------------|---------------------|
| a. | Automotive Liability (Bodily Injury)   | \$100,000/\$300,000 |
| b. | Automotive Property Damage (to others) | \$ 25,000           |

1. The vendor shall provide a certificate of insurance as proof that the vendor has the required insurance.

**F. Trade Secrets and Proprietary Information**

1. All submitted proposals become the property of the SFA. The SFA is a political subdivision of the State of Delaware, and responders to this RFP are advised that proposals and related materials will generally be treated as “public records” and be available for inspection and copying under the Freedom of Information Act (FOIA). If a responder believes that certain information included in the proposal is subject to exclusion under FOIA, the responder should, in the proposal, specifically delineate such information and state the specific exclusion, including citation to FOIA. The SFA shall consider such statements in its response to FOIA requests. The SFA will notify the responder if a request is made for such information so that the responder may take any action it deems necessary to defend against the request. The responder, not the SFA, shall be the entity responsible for defending against FOIA disclosures for any records, including the costs of litigation.
2. PROPRIETARY INFORMATION. It is understood that the SFA is a public institution and, as such, is subject to the FOIA. Except as otherwise agreed prior to the award or finalization of any vendor transaction, the SFA shall provide for inspection upon request by any third party all information pertaining to such transaction which must be disclosed pursuant to FOIA. The SFA’s obligations under FOIA supersede its obligations under any agreement, contract, purchase order or negotiated transaction.
3. During the term of this Contract, Vendor may grant to the SFA a nonexclusive right to access certain proprietary materials of Vendor, including menus, recipes, signage, food service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed by Vendor) and similar compilations regularly used in Vendor business operations (“Trade Secrets”).
  - A. The SFA shall not disclose any of Vendor's Trade Secrets or other confidential information, directly or indirectly, during or after the term of this Contract.
  - B. The SFA shall not photocopy or otherwise duplicate any such material without the prior written consent of Vendor.
  - C. All trade secrets and other confidential information shall remain the exclusive property of Vendor and shall be returned to Vendor immediately upon termination of this Contract.
  - D. The SFA shall not use any confusingly similar names, marks, systems, insignia, symbols, procedures and methods.
  - E. Without limiting the foregoing, and except for software provided by the SFA, the SFA specifically agrees that all software associated with the operation of the food service, including without limitation, menu systems, food production systems, accounting systems and other software, are owned by the SFA.
  - F. In the event of any breach of this provision, Vendor shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available.
  - G. All of the SFA's obligations under this section are subject to the SFA’s obligations under Delaware Statute and any other law that may require the SFA to use, reproduce, or disclose Vendor confidential information.
  - H. This provision shall survive termination of this Contract.
  - I. After contract award, the bids shall be available for public inspection, except to the extent that withholding of information is permitted by Chapter 100 of Delaware Title 29 or otherwise permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and

identify in writing the confidential portions. The bidder shall include with this designation a statement that explains and supports the firm's claim that the bid items identified as confidential contain trade secrets or other proprietary data.

4. Any discovery, invention, software or program, the development of which is paid for by the SFA, shall be the property of the SFA to which DDOE and USDA shall have unrestricted rights.

**G. Certifications**

The SFA will take all necessary affirmative steps outlined in 2 CFR 200.321 to assure that minority businesses, women's business enterprises, small businesses, and labor surplus area firms are used when possible. This can be accomplished by:

- a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- c) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- d) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2502. The vendor must provide evidence of a Delaware business license or the ability to conduct business in the State of Delaware.

Vendor shall execute and comply with the following Certifications which are attached to this Contract as Exhibits and fully incorporated herein:

1. Certificate of Independent Price Determination
2. Suspension and Debarment Certification
3. Disclosure of Lobbying Activities
4. Certification Regarding Drug-Free Workplace

**H. Miscellaneous**

1. Emergency Notifications.

- a. When requested by the Vendor, the SFA shall notify Vendor personnel of any delay in the school day start or the closing of school(s) due to snow or other emergency situations. Notification will be provided to:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone number: \_\_\_\_\_ Alternate telephone number: \_\_\_\_\_

2. Governing Law. This RFP is issued pursuant to 29 *Del. C.* §§ 6981 and 6982. The final Contract is governed by and shall be construed in accordance with Delaware law.

3. Incorporation/Amendments.

- a. The resulting Contract and any additional agreements contained in the Vendor proposal contain the entire agreement between the parties with relation to the transaction contemplated hereby, and there have been and are no covenants, agreements, representations, warranties, or restrictions between the parties with regard thereto other than those specifically set forth in this Contract.
- b. In the event of a conflict between or among any of the terms of the Contract Documents, such conflicts shall be resolved by referring to the Contract Documents in the following order of priority:

- i. Contract;
- ii. The SFA's RFP. No modification or amendment to this Contract shall become valid unless made in writing and signed by the parties.

4. Indemnity.

- a. Except as otherwise expressly provided in this Contract, Vendor will defend, indemnify, and hold the SFA harmless from and against all claims, liability, loss and expense, including reasonable collection expenses, attorneys' fees and court costs that may rise because of the actions of Vendor, its agents or employees in the performance of its obligations under this Contract, except to the extent any such claims or actions result from the negligence of the SFA, its employees or agents.
- b. This clause shall survive termination of this Contract.

5. Nondiscrimination / Civil Rights.

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

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

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted 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; or

2. fax:

(833) 256-1665 or (202) 690-7442; or

3. email:

program.intake@usda.gov

This institution is an equal opportunity provider.

6. Severability. If one or more provisions of this Contract, or the application of any provision to either party or circumstance is held invalid, unenforceable, or illegal in any respect, the remainder of this Contract and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.
7. Silence, absence or omission. Any silence, absence, or omission from the Contract specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only materials (e.g., food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.



8. Subcontract/Assignment. No provision of this Contract shall be assigned or subcontracted without prior written consent of the SFA.
9. Waiver. The failure of Vendor or the SFA to exercise any right or remedy available under this Contract upon the other party's breach of the terms, covenants or conditions of this Contract or the failure to demand prompt performance of any obligation under this Contract shall not be deemed a waiver of such right or remedy; of the requirement of punctual performance; or of any subsequent breach or default on the part of the other party.
10. Organizations Ineligible to Submit a Proposal. Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.
11. Drug-Free Workplace. The awarded contractor and all grantees, including the SFA, are required to abide by the provisions set forth in the Drug-Free Workplace Act of 1988 (41 U.S.C. 81). Failure to adhere to these provisions can result in debarment.
12. Exclusions. The SFA reserves the right to refuse to consider any proposal from a vendor who:
  - a. Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
  - b. Has been convicted under State or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
  - c. Has been convicted or has had a civil judgment entered for a violation under State or federal antitrust statutes;
  - d. Has violated contract provisions such as:
    - i. Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - ii. Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
  - e. Has violated ethical standards set out in law or regulation; and
  - f. Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.
13. Covenant against Contingent Fees. The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty, the SFA shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
14. Applicable Law. The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor consents to jurisdiction and venue in the State of Delaware. In submitting a proposal, Vendors certify that they comply with all federal, state and local laws applicable to its activities and obligations including:
  - 1) the laws of the State of Delaware;
  - 2) the applicable portion of the Federal Civil Rights Act of 1964;

- 3) the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
- 4) a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
- 5) that programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If any vendor fails to comply with (1) through (5) of this paragraph, the SFA reserves the right to disregard the proposal, terminate the contract, or consider the vendor in default.

The selected vendor shall keep itself fully informed of, and shall observe and comply with, all applicable existing Federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

**IV. PROPOSAL FORM**

Costs to provide **List Goods/Services** as per the Request for Proposal:

Cost for **Goods/Service** \_\_\_\_\_

Cost for **Goods/Service** \_\_\_\_\_

Total Costs \_\_\_\_\_

The undersigned bidder acknowledges that the above costs are submitted in accordance with the General and Special Instructions. Any exceptions to these instructions are listed separately. The bidder also acknowledges that he/she has not entered into any form of collusion, either directly or indirectly, in connection with this proposal.

Company Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

Name of Representative \_\_\_\_\_

Fed. E.I. Number \_\_\_\_\_

Telephone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

Date \_\_\_\_\_

**Exhibit A: SITE INFORMATION *[To be completed by the SFA]***

**Include the list of all sites with the following information for each site:**

- 1. Location of all sites that need the goods/services covered under this RFP.**
- 2. Add column or separate addendum to list approximate usage of goods/services covered under this contract.**

| Site Names | Site Addresses |
|------------|----------------|
|            |                |
|            |                |
|            |                |
|            |                |
|            |                |
|            |                |
|            |                |
|            |                |

**Exhibit B: Piggyback Clause**

For the term of the contract and any mutually agreed extensions pursuant to this Request for Proposal, at the option of the Awarded Vendor, other school districts, charter schools, and single-unit schools operating the School Nutrition Programs in Delaware may purchase the contract goods/services at the same terms, conditions, and pricing of this contract award.

Acceptance or rejection of this clause will not affect the outcome of this Request for Proposal.

Piggyback option granted \_\_\_\_\_

Piggyback option not granted \_\_\_\_\_

## **Exhibit C: CONTRACT PROVISIONS FOR THE SFA CONTRACTS UNDER CNP AWARDS**

The SFA's contracts must contain all applicable provisions described in 2 CFR 200 Appendix II, which include the following:

### **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387)**

#### Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the (name of the applicant entering into the contract) and understands and agrees that the (name of the applicant entering into the contract) will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office, the Federal awarding agency, or the USDA.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000.

#### Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the (name of the applicant entering into the contract) and understands and agrees that the (name of the applicant entering into the contract) will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office, the Federal awarding agency, or the USDA.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000.

### **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**

- (1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan/grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to

satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

**Rights to Inventions Made Under a Contract or Agreement**, applicable if the SFA will be using the funding agreement for development, research, or experimental work. [37 CFR 401.14 – Standard patent rights clauses](#)

**Equal Employment Opportunity:**

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.



(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### **Debarment and Suspension**

(1) This contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935).

(2) The contractor must comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by (insert name of recipient/subrecipient/applicant). If it is later determined that the contractor did not comply with 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to (insert name of recipient/subrecipient/applicant), the federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 CFR pt. 180, subpart C and 2 CFR pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Exhibit F, which is attached herein and incorporated by reference and made a part of this Contract. (2 CFR 180) or the SFA includes documentation that Vendor is not listed on governmentwide exclusions in System for Award Management (SAM), which contains the names of parties debarred, suspended, or otherwise excluded by agencies, or declared ineligible under statutory or regulatory authority other than Executive Order 12549.

### **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally-appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency. If applicable, the contractor must sign and submit to the non-federal entity, a certification regarding lobbying activities. The certification is attached herein and is incorporated and made a part of this Contract. If applicable, Vendor completed and submitted Standard Form-LLL, Disclosure Form to Report Lobbying, Exhibit G.

### **2 CFR 200.322 Domestic preference for procurements**

The SFA(s) participate(s) 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 provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) for the production of Program meals. For purposes of this contract, “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### **2 CFR 200.323 Procurement of recovered materials**

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement->

[guideline-cpg-program](#). The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Vendor has signed the Anti-Collusion Affidavit, Exhibit H, which is attached herein and is incorporated by reference and made a part of this Contract.

### **Buy American Provision**

As required by the Buy American provision, all products must be of domestic origin as required by 7 CFR Part 210.21(d).

The District(s) 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). Substantially means that at least 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

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 submitted in writing to a designated official, a **minimum of** day (s) in advance of delivery. The request must include the:

- (a) Alternative substitute(s) that are domestic and meet the required specifications:
  - (i) Price of the domestic food alternative substitute(s); and
  - (ii) Availability of the domestic alternative substitute(s) in relation to the quantity ordered
- (b) Reason for exception: limited/lack of availability or price (include price):
  - (i) Price of the domestic food product documenting a significant price difference; and
  - (ii) Price of the non-domestic product that meets the required specification of the domestic product.

### **Civil Rights:**

The Vendor and SFA agree to adhere to the provisions set forth in the following regulations, as amended:

- i) FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities
- ii) Title VI of the Education Amendments of 1972;
- iii) Section 504 of the Rehabilitation Act of 1973;
- iv) The Age Discrimination Act of 1975;
- v) The Americans with Disabilities Act; and
- vi) Title 7 CFR Parts 15, 15a, and 15b

**EXHIBIT D: DEBARMENT AND SUSPENSION FORM**

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

- 
- (1) The prospective lower tier participant certifies, by submission of this proposal that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  
  - (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Organization Name and Address

---

Name(s) and Titles of Authorized Representative

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Signature(s)

DATE

**EXHIBIT E: CERTIFICATION REGARDING LOBBYING**

**Certification Regarding Lobbying: Applicable to Grants, Sub-grants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal funds. Contractors that apply or bid for such an award must file the required certification.**

**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                 |                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|
| <p>1. Type of Federal Action: _____</p> <p>a. contract<br/>b. grant<br/>c. cooperative agreement<br/>d. loan<br/>e. loan guarantee</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p>2. Status of Federal Action: _____</p> <p>a. bid/offer/application<br/>b. initial award</p>                                  | <p>3. Report Type: _____</p> <p>a. initial filing<br/>b. material change<br/>For Material Change Only:<br/>Year _____</p> |
| <p>4. Name and Address of Reporting Entity:</p> <p>_____ Prime _____ Subawardee</p> <p>Tier _____, if known:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known:</p> |                                                                                                                           |
| <p>6. Federal Department/Agency:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable:</p>                                                  |                                                                                                                           |
| <p>8. Federal Action Number, if known:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p>9. Award Amount, if known:<br/>\$ _____</p>                                                                                  |                                                                                                                           |
| <p>10. a. Name and Address of Lobbying Entity:<br/>(if individual, last name, first name, middle)</p> <p>(Attach Continuation Sheet(s))</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>10. b. Individuals Performing Services (including address if different from No. 10, a.) (last name, first name, middle)</p>  |                                                                                                                           |
| <p>11. Amount of Payment (check all that apply):<br/>\$ _____</p> <p>_____ Actual _____ Planned</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <p>13. Type of payment (check all that apply):</p> <p>_____ a. retainer<br/>_____ b. one-time fee<br/>_____ c. commission</p>   |                                                                                                                           |
| <p>12. Form of Payment (check all that apply):</p> <p>_____ a. cash</p> <p>Actual</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                 |                                                                                                                           |
| <p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or member(s) contracted for Payment indicated in Item 11:</p> <p>(Attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                 |                                                                                                                           |
| <p>15. Are Continuation Sheet(s) SF-LLL-A Attached: Yes _____ (Number No</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                 |                                                                                                                           |
| <p>16. Information requested through this form is authorized by Title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p> | <p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone: _____</p> <p>Date: _____</p>                 |                                                                                                                           |

Federal Use Only:

Authorized for Local

Reproduction Standard Form—  
LLL

DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET SF-LLL-A

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_



## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Use of SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

Identify the status of the covered Federal action.

Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1<sup>st</sup> tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) Number, Invitation for Bid (IFB) Number; grant announcement number; the contract, grant or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

- (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
- (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

Check all that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

Check all that apply. If other, specify nature.

Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

Check whether or not a SF-LLL-A Continuation Sheet(s) is attached. List number of sheets if yes. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-00046), Washington, DC 20503.

**Exhibit F: ANTI-COLLUSION AFFIDAVIT**

**ANTI-COLLUSION AFFIDAVIT**

STATE OF ( )

COUNTY OF ( )

\_\_\_\_\_, of lawful age, being first sworn on oath say, I authorized by the bidder to submit the attached bid. Affiant further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any state official of employees to quantity, quality, or price in the prospective contract, or any other terms of said prospective official concerning exchange of money or other thing of value for special consideration in the letting of contract; that the bidder/contractor had not paid, given or donated, or agreed to pay, give or donate to any officer or employee either directly or indirectly in the procuring of the award of a contact pursuant to this bid.

Signed \_\_\_\_\_

Subscribed and sworn before me this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public (or Clerk or Judge) \_\_\_\_\_

My commission expires \_\_\_\_\_

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**CERTIFICATION REGARDING**  
**DRUG-FREE WORKPLACE REQUIREMENTS (GRANTS)**  
**ALTERNATIVE I - FOR GRANTEEES OTHER THAN INDIVIDUALS**

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*), 7 CFR Part 3017, Subpart F, Section 3017.600, Purpose. The January 31, 1989, regulations were amended and published as Part II of the May 25, 1990 *Federal Register* (pages 21681-21691). Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the grant.

*(Before completing Certification, read instructions on page 2)*

**Alternative I**

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about –
  - (1) The dangers of drug abuse in the workplace;
  - (2) The grantee's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted –

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Check  if there are workplaces on file that are not identified here.

Organization Name \_\_\_\_\_

Award Number or Project Name \_\_\_\_\_

Name and Title of Authorized Representative \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

### INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the grantee is providing the certification set out on pages 1 and 2.
2. The certification set out on pages 1 and 2 is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).
6. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled" substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) all "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).