

Green River Regional Educational Cooperative  
Kentucky Educational Development Corporation  
Northern KY Cooperative for Educational Services



Ohio Valley Educational Cooperative  
Southeast/Southcentral Educational Cooperative  
West Kentucky Educational Cooperative

**KPC – KENTUCKY PURCHASING COOPERATIVES**  
**GRREC – KEDC - NKCES – OVEC - SE/SC - WKEC**  
**KENTUCKY EDUCATIONAL DEVELOPMENT CORPORATION (KEDC)**  
**904 ROSE ROAD**  
**ASHLAND, KY 41102-7104**  
**Bidding Department (606) 928-0205**  
[www.kedc.org](http://www.kedc.org) or [www.kybuy.org](http://www.kybuy.org)

**\*\*\* INVITATION TO BID \*\*\***

BID TYPE:	<u>LINE ITEM</u>
BID REFERENCE:	<u>PV-DAIRY-2011-08</u>
BID PUBLIC NOTICE DATE:	<u>June 09, 2011</u>
BID OPENING DATE, TIME:	<u>July 08, 2011, 9:00 AM EST</u>
BID CONTRACT START DATE:	<u>August 01, 2011-July 31, 2012</u>
BID ITEMS:	<u>DAIRY ITEMS</u>

## STANDARD TERMS AND CONDITIONS

1. **BID PURPOSE:** The Kentucky Educational Development Corporation (KEDC) Board of Directors, as the Legal Education Agency (LEA) for the Kentucky Purchasing Cooperatives (KPC) solicits sealed bids that would, if accepted by the KEDC Board of Directors or its designee, establish contracts, with the general and detailed terms, conditions, and specifications contained in these standard terms and conditions and in the bid specific terms and conditions.
2. **INSTRUCTIONS FOR BIDDERS:** These standard terms and conditions along with the bid specific terms and conditions apply to all bids submitted. Any deviations or exceptions are to be explained as a part of the bid proposal. In the event of a discrepancy between the standard and bid specific terms the bid specific terms will govern.

The public notice for this invitation, the invitation itself, and any addendums can be viewed, downloaded, or printed from the Internet at [www.kybuy.org](http://www.kybuy.org) or [www.kedc.org](http://www.kedc.org) on the bid public notice date and until the time and date specified for the bid opening. Bid tabulations will be made by KEDC staff and, after the Board or its designee has taken official action, will be posted to the above websites.

3. **CLARIFICATION:** For clarification or additional information relative to this bid invitation contact the KEDC Member Services Team by email at [KPCMemberServices@kybuy.org](mailto:KPCMemberServices@kybuy.org) or phone (606) 928-0205. For issues related to the online bid application contact eSchoolMall Customer Care at (877) 969-7246. PLEASE DO NOT CONTACT MEMBERS.
4. **AUTHENTICATION OF BID AND STATEMENT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST AND COMPLIANCE WITH THE KENTUCKY MODEL PROCUREMENT CODE:**

By my signature on the bid certification, I hereby swear or affirm under penalty of false swearing as provided by KRS 523.040:

I am the bidder (if bidder is an individual), a partner in the bidder (if the bidder is a partnership), or an

officer or employee of the bidding corporation having authority on its behalf (if the bidder is a corporation).

The costs quoted in the bid response are correct and have been arrived at by the bidder independently and have been submitted without collusion and without agreement, understanding, or planned common course of action, with any vendor of materials, equipment, or services described in the invitation to bid, designed to limit independent bidding or competition.

The contents of the bid or bids have not been communicated by the bidder, or its employees, or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bids and will not be communicated to any such person prior to the official opening of the bid or bids. Contractor certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. The contractor certifies that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.

The Kentucky Educational Development Corporation collective bidding process is conducted consistent with KRS Chapter 45A:345 through 45A:460, the Model Procurement Code and that the contents of the bid proposal and the actions taken by the bidder in preparing and submitting the bid proposal are in compliance with above sections of the Model Procurement Code.

The bidder is legally entitled to enter into contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, gratuities and kickbacks including those prohibited by the provisions of the Model Procurement Code (KRS Chapter 45A). Any employee or official of KEDC or member institution, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or things of value as an inducement or intended inducement, or in the procurement of business, or the giving of business, for or to or from, any person, or in open market seeking to make sales to the membership shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or fine in accord with state and/or federal laws.

5. CERTIFICATION CONCERNING DISBARMENT AND SUSPENSION: I certify on behalf of myself, the company and its key employees that I, the company, or its key employees have not been proposed for debarment, debarred, or suspended by KPC, the Commonwealth of Kentucky, or any Federal Agency and are not listed on the Excluded Parties List System provided by the United States Government General Services Administration at [www.epls.gov](http://www.epls.gov).
6. BID FORMS AND RETURN INSTRUCTIONS: KPC has licensed the eSchoolMall (ESM) Sourcing Solutions Suite for secure, confidential, and encrypted electronic bid submission. Bidders must register with ESM prior to bidding by visiting [www.eschoolmall.com](http://www.eschoolmall.com). Once a bidder has registered with ESM they should contact KPC at [KPCMemberServices@kybuy.org](mailto:KPCMemberServices@kybuy.org) and request that the specific bid of interest be published to them. For assistance with registration or technical questions regarding the bid interface contact ESM Customer Care at (877) 969-7246.

All bids must be submitted via the online application and any attachments provided therein. No other form of bid submission (e.g., paper, telephone, facsimile, telegraph, mail, etc.) will be accepted. Bids submitted on company forms may be rejected.

The bidder acknowledges that the bidder has read this invitation, understands it, and agrees to bind by its terms and conditions.

7. **CORRECTION OF MISTAKES:** Bidders are cautioned to re-check their bid for possible errors. No bid can be corrected, altered, or signed after being opened. Errors discovered after public opening cannot be corrected and bidder will be required to accept a bid contract if offered.
8. **ERROR IN BID:** No bid will be altered, or amended after the specified time and date set for the bid opening. The KEDC Board or its designee reserves the right to waive defects and informalities in bids, to reject any or all bids, or to accept any bid as may be deemed to its interest.
9. **WITHDRAWAL OF BID:** All bids shall be valid for a period of thirty (30) days from the bid opening date to allow for tabulation, study, and consideration by the KEDC Board or its designee. A bidder may withdraw a bid, without prejudice, after it has been submitted only if a written request is submitted and received prior to the expiration of the time during which bids may be submitted.
10. **ADDENDUMS:** KPC may issue an addendum to the bid after the bid has been released. In no instance will an addendum be issued within five (5) working days prior to the bid opening.
11. **REVIEW:** After the public opening of proposals received from the Bid Invitation, KEDC staff and member officials will review the results, develop a preliminary tabulation, and may contact bidders for the purpose of clarification only. If necessary, members may purchase from the apparent low bidder pending approval by the KEDC Board of Directors or its designee.
12. **PRE-QUALIFICATION:** KPC reserves the right to pre-qualify a potential contractor, especially any firm which has not previously participated in the KPC bid program. Criteria for qualification shall include:
  - a. **Product Line:** The potential contractor shall provide proof that all items listed in the catalog are in stock or can be quickly obtained.
  - b. **Physical Facilities:** KEDC staff may inspect the potential contractor's warehouse. The warehouse shall be clean and adequate for storing and delivery of products that the potential contractor proposes to supply.
  - c. **Financial Capacity:** The potential contractor shall have financing adequate to purchase items in the most economical quantities. References may be requested to document adequate financial capacity.
  - d. **Service Level:** A successful bidder must have a proven (or believable) record of service, particularly with respect to delivering all items on a regularly scheduled basis, at favorable prices. A distributor may be designated as unacceptable if the requirements listed herein have been previously violated and/or poor communications exist between the seller and the membership. If KEDC does not have adequate historical data to determine the contractor's ability to provide the products bid in a timely manner, then three letters of reference from previous school district customers shall be provided.
  - e. **Accounting Practices:** A potential contractor must clearly demonstrate to KEDC the capacity to provide accurate, reliable, and timely reports in terms of invoices, statements, credits, and usage data.
13. **NON-ASSIGNABILITY OF AWARDED BID:** The bid award will be made only to the individual or entity which actually submits a bid. The awarded bid cannot be conveyed to an awarded bidder's successors or assigns without the prior, express approval of the Board of Directors of KEDC or its designee.
14. **TRANSMITTAL OF ORDERS:** KEDC shall issue purchasing guidelines to KPC members. The members will use formal purchase orders in ordering from the awarded bidder. The successful bidder acknowledges that orders from KPC members may be transmitted from KEDC's office on the member's behalf. The successful bidder may use salespeople for in-person and/or telephone solicitation of orders in accordance with a mutually arrived schedule developed between the members and the awarded bidder.

KEDC has licensed the ESM Direct Buy module for the KPC online catalog. At KEDC's option, the vendor shall 1) provide an interface between their existing website and KEDC's online catalog utilizing "punch-out", and/or 2) provide a listing of all items on the contract in an electronic format specified by KEDC (including description, pricing, picture of item, etc.) to be imported into KEDC's online catalog, and/or 3) accept faxed orders, and/or 4) accept e-mailed orders. The vendor shall accept orders electronically from KEDC and/or KPC members. The

vendor is responsible for the initial and on-going accuracy of item information in the on-line catalog and for all programming and configuration costs on their existing web site for Option 1 and for all costs associated with compiling the data file containing the list of items in the bid contract for Option 2. KEDC may provide setup assistance at an additional charge.

15. **QUANTITIES:** It shall be understood that the bid contract will not obligate KPC or its members to purchase from the Bid Contract.
16. **ITEM SUBSTITUTION AND OUT-OF-STOCK BACK-ORDERS:** No substitutions are allowed without prior written authorization from the member. Member must be notified if item is out of stock, backordered or if timely delivery cannot be made. Upon member notification, the contractor must receive written directions from the member on how to proceed, i.e. cancel, process, etc.
17. **WARRANTY:** The awarded vendor shall make available and honor all manufacturer's warranties, both standard and extended, to all KPC members.
18. **RETURNS:** The successful bidder must provide a Return Material Authorization within 1 working day of the request by KPC member. Returned materials shall be restocked at no charge to the member (special order and custom crafted items excluded).
19. **RECALLS:** The contractor shall notify KPC and its members immediately of any products recalls. Any products that have been recalled and have been delivered shall be issued a credit and/or a comparable substitute immediately. All costs associated with voluntary and involuntary product recalls shall be borne by the awarded vendor.
20. **PENALTY:** The designated supplier(s) reciprocally agrees to provide total requirements as listed herein, thereby minimizing occurrences when a member may have to seek other interim product sources. Failure to deliver 100% of stock items -- within 10 business days -- shall be considered a default.
21. **PRODUCT AND SAFETY INFORMATION:** The successful bidder shall provide upon request by any member, the most recent MSDS information sheets for any products the vendor may deliver to said member. It is the vendor's responsibility to comply with all local, state, and federal regulations.
22. **LIABILITY:** The contractor agrees to protect, defend, and save harmless KEDC, KPC, and members from any suits or demands for payment that may be brought against it for the use of any patented material, process, article, or device that may enter into the manufacture, construction, or form a part of the work covered by either order or contract; and contractor further agrees to indemnify and save harmless KEDC, KPC, and members from suits or actions of every nature and description brought against it for, or on account of any injuries or damages received or sustained by any party or parties by, or for any of the acts of the contractors, his servants or agents.
23. **VELOCITY REPORTS:** Velocity reports in an electronic format (Microsoft Excel, Access, or SQL) specified by KPC shall be issued to KPC upon request. Contractor shall compile velocity reports by member. The reports shall indicate purchasing entity, vendor item number, manufacturer item number, item description, quantity sold, and dollar value of each item sold. KEDC will routinely request procurement data from participating KPC members to verify velocity report accuracy.
24. **CONTRACT SUSPENSION:** KPC may, at its sole discretion, suspend a contractor for a period of up to 90 days to investigate alleged instances of breach of contract or non-compliance. The contractor is prohibited from accepting new orders from KPC members while suspended, however, orders already in process can be completed. If the Awarded Bidder is found to be in breach of contract or non-compliant, the contract is rendered null and void. The Awarded Bidder agrees that they have no legal recourse of any nature against KEDC, KPC, or its member entities except for payment of goods, supplies and services that are due for prior purchases which

were permitted to be sold by the Awarded Bidder under this bid. The decision of KPC regarding suspension and/or termination is final.

25. **WARNING AND TERMINATION OF CONTRACT:** KEDC may terminate the contract if the contractor fails to perform at the service level specified in the bid document. Contracts may be terminated at any time with 30 days notice or at the discretion of KEDC, in a shorter period of time, if the terms of the contract are violated in any way. In the event of termination, the members shall not be liable to any costs other than the cost of items delivered and accepted prior to the termination date. The contractor may terminate the contract if the members fail to meet mutually agreeable and specified payment terms.

Each party shall follow the following procedure if the contract is to be terminated:

Step 1 - Issue a warning letter outlining the violations and state the length of time to correct the problem(s).

Step 2 - Issue a letter of intent to cancel contract, if the problem(s) is not resolved by a given date.

Step 3 - Issue a letter to cancel contract.

In the event the physical facilities of the contractor are destroyed or a labor dispute makes performance under the terms of the contract impossible, the contractor shall not be held liable by KPC or the members.

26. **OTHER CONDITIONS:**

- A. Contractors shall be in compliance and will comply with any and all local, state, and federal laws and regulations related to this bid and the rendering of goods and /or services.
- B. This contract shall be governed in all respects as to validity, construction, capacity, performance, or otherwise by the laws of the Commonwealth of Kentucky.
- C. Contractors providing services under this bid invitation, herewith assure KEDC they are conforming to the provisions of the Civil Rights Act of 1964 as amended.
- D. Kentucky Sales and Use Tax Certificate of Exemption Form will be issued upon request.
- E. Contractor shall comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with the contractor's performance of work under this contract, contractor agrees not to discriminate against any employee(s) or applicant(s) for employment because of race, color, national origin, age, sex, disability, or religious creed.
- F. In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (800) 795-3272 or (202) 720-6382 (TTY). USDA is an equal opportunity provider and employer.
- G. Contractor agrees to retain all books, records, and other documents to this agreement for three years after final payment. KEDC and its members, its authorized agents and/or state/or federal representatives shall have full access to, and the right to examine any or said materials during said period which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions. If the investigator or audit is in progress, records shall be maintained until stated matter is closed.

- H. Contractor shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C.) 187 [h], Section 508 of the Clean Water Act (33 U.S.C. 1368, Executive Order 11738 and Environmental Protection Agency (EPA) regulations, (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included in the EPA list of violated facilities.
- I. Contractor shall comply with all mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- J. By signing this document, the contractor certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. The contractor certifies that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.
- K. Prohibition against conflicts of interest, gratuities, and kickbacks: Any employee or official of KEDC or member institution, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or things of value as an inducement or intended inducement, or in the procurement of business, or the giving of business, for or to or from, any person, or in open market seeking to make sales to the membership shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or fine in accord with state and/or federal laws.
- L. The bidder is legally entitled to enter into contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, including those prohibited by provisions of KRS 164.390, KRS 61.092-61.096, and KRS 42.990.
- M. The provisions of KRS 365.080 and KRS 365.090 which permit the regulation of resale price by contract, does not apply to sales to the State.
- N. The bidder is fully knowledgeable of KRS 45A.335-45A.490, Kentucky Model Procurement Code, including the provisions for violation of the Code. KRS 45A.455 prohibits conflicts of interest, gratuities, and kickbacks to employees of KEDC or member institutions in connection with contracts for supplies or services whether such gratuities or kickbacks are direct or indirect. KRS 45A.990 provides severe penalties for violations of the laws relating to gratuities or kickbacks to employees that are designed to secure a public contract for supplies or services.
- O. KEDC reserves the right to reject any and/or all bids and to waive informalities.

## **BID SPECIFIC TERMS AND CONDITIONS**

1. **PARTICIPATING MEMBER INSTITUTIONS:** Any institution that is a member of KPC and/or a bidding member of the KEDC, GRREC, NKCES, OVEC, SESC, or WKEC Educational Cooperatives (hereinafter referred to as member or members) is eligible to utilize the Bid Contract; however this does not mean that all members will participate. A bidder will not be required to sell to or serve all eligible members. Any bidder that cannot serve all members is required to complete the Service Area Excel spreadsheet indicating the members the bidder can serve. If this list is not returned then the bid contract will be available to all members.

KPC has contacted each member district to inquire as to their intent to participate in this bid opportunity. The results of this survey can be found in the Service Area Excel spreadsheet. The following survey responses were received: 1) Yes – District intends to participate, 2) No – District does not intend to participate, 3) Undecided – District is uncertain whether it will participate, and 4) No Response – District did not respond to the survey. District participation in all KPC bid opportunities is strictly voluntary and subject to change. KPC and all KPC member institutions reserve the right to waive defects and informalities in bids, to reject any or all bids, or to accept any bid as may be deemed to its interest.

2. **PRICING:** Bid Contracts may be awarded to multiple bidders. Contract prices shall remain in effect for the entire contract term (12 months). Additional discounts and/or special pricing are encouraged and may be accepted when consistent with other terms and conditions of the contract and offered equally to all members marked to be served by the Bid Contract.

Fuel surcharges and other similar charges are not permitted.

Bidders are to provide one price for each item in the Excel spreadsheet and list the KPC member(s) they propose to service. The bidder shall provide each item on this bid to all KPC members at the same price. Bidders **MAY NOT** submit multiple prices for the same product by KPC member (i.e., Regional Bidding is **NOT** acceptable).

Should an awarded bidder negotiate or bid a lower price for an item included in this bid with any KPC member public school district, the bidder agrees to provide the product to all KPC members they propose to serve at the lower price. For example: District A and District B are both KPC members. Bidder is proposing to serve District A and not serve District B on their KPC bid documentation. The Bidder is providing service to the area where District A and District B reside. Bidder then establishes a price with District B for items that are on the KPC bid thru negotiation or a school district bid that is lower than the bid price with KPC. The lower prices provided to District B become the bid price for District A and all KPC members served by that bidder. Bidders may request in writing one exemption per contract period for the above pricing clause. Exemptions must be requested on company letterhead and submitted to KPC, 904 Rose Road, Ashland KY 41102.

3. **AWARD:** After the review of the bid proposals, the KEDC Board may accept one or more bid contracts based on the needs of the members. Multiple bid contracts may be accepted based on brand, districts served, and any other consideration in the interest of the members. A bidder whose bid proposal is accepted shall hereinafter be called contractor. The bid proposals will be evaluated based on the points awarded to each contract using the following scale and is subject to KRS 45A.490 to 45A.494, Reciprocal preference for Resident Bidders.

#### CRITERIA FOR EVALUATION OF BID

Each of the following elements will be weighted accordingly.

<b>1. Product Cost</b>	<b>20%</b>
<b>2. Delivery Schedule</b>	<b>20%</b>
<b>3. Past Performance</b>	<b>20%</b>
<b>4. Past Product Quality</b>	<b>20%</b>
<b>5. Variety of Products</b>	<b>20%</b>

4. **CONTRACT PERIOD:** The bid contract will be for twelve months. The contract may be extended on an annual basis by KEDC not to exceed five years in total including the first year of the contract. The determination to renew the contract beyond the initial year will be determined in part by the performance of the contractor as reflected by performance evaluations. KEDC may periodically provide evaluation summaries to the contractor. (Evaluation Form attached). KEDC shall notify the contractor of its intent to extend or not to extend the contract by March 25 of each year. If KEDC notifies contractor of intent to extend the contract by one year, contractor shall either respond by April 10 that it does not intend to extend the contract, or respond by April 10 with any necessary price increases or decreases for the extended year. If price increases submitted are deemed excessive by KEDC then KEDC shall have cause to not extend the contract. All price increases shall be accompanied by proper documentation of price increase to the contractor. Proper documentation shall include market bulletin(s) from an independent source, manufacturer's invoices, and freight bills. Price change notifications and contract pricing terms will follow the same pattern outlined above for any years in which this contract is extended.

KEDC reserves the right to extend the term for up to 180 days to continue a source of supply until new or replacement contracts are completed. Since this bid request is subject to multiple contracts being accepted, KEDC reserves the right to renew and/or solicit additional bids for subsequent contract periods. Any contract extension is contingent upon written agreement of KEDC and the contractor. The bid will not be automatically extended beyond any current year unless expressly approved by KEDC. KEDC reserves the right on any contract extension to revise, update, or supplement the contract terms and conditions including the assessment of administrative fees to the contractor as needed to cover the cost of KEDC servicing the bid contract, bidding program, or procurement service for the members.

5. **DELIVERIES:** The successful bidder will be expected to have each delivery checked by the appropriate cafeteria personnel and to leave two (2) signed copies of the itemized delivery ticket with them. **NO SUBSTITUTIONS PERMITTED WITHOUT THE APPROVAL OF THE NUTRITION SERVICES DIRECTOR OR HIS/HER DESIGNEE.** Bidder is expected to keep a reasonable stock of bid items on hand. All copies of invoices and statements, by school, should be sent to the District Business Office.

Deliveries shall be made to the individual school as requested by the lunchroom managers in quantities designated by them.

Deliveries shall be made into the individual schools and placed in the milk cooler or refrigerator in the respective schools as needed and directed by school principal or lunchroom manager. Acceptable delivery times are to be negotiated between the contractor and each participating district.

Daily delivery slips shall be left at each school to be signed by the manager, verifying delivery. Credit memos are to be left at each school for any unused milk picked up by bidder.

Bidder should state number of deliveries to be made to schools during a month (where not specified) and day of week deliveries will be made in order for lunchroom managers to properly schedule delivery date requests on their Purchase Orders.

It is understood that deliveries are not to be made when school is not in session (Election Day, Holidays, in service days, etc.) with exception of the opening of school. Calendars will be provided to the successful bidders to designate off-school days. When school is cancelled because of inclement weather or other emergency situation the school system reserves the right to accept the delivery, authorize another acceptance signature, or to cancel the delivery.

All products or services procured from the Bid Contract are to be delivered free of freight charges (FOB destination).

The designated supplier(s) agrees to provide total requirements as listed herein, thereby minimizing occurrences when a school district may have to seek other interim product sources. Failure to deliver 100% of the items on the core item list within 48 hours shall be considered default.

6. **DELIVERY CRATES:** Crates used to deliver products must be picked up by the vendor within fifteen days of the date of delivery. Crates left at a KPC member's site longer than fifteen days become property of the KPC member and may be disposed of in any manner deemed necessary.
7. **PAYMENTS:** Each member shall be responsible for making payment to the contractor, unless KEDC has been established as the Purchasing Agent for the contractor, in which case, KEDC will coordinate orders and payments directly to the contractor with the individual members being the ship to party. Normally, members pay bills only after approval from the member board which meets monthly. KEDC reserves the right to negotiate upon mutual agreement to serve as Purchasing Agent for any Bid Contract including charging an administrative fee to the contractor.
8. **PROMPT PAYMENT DISCOUNT:** Vendor may provide a prompt payment percentage discount for invoice payments postmarked less than 30 days from the invoice date. The discount may take the form of either a deduction from the total invoice or a check in an amount equal to the same. Example: 1% discount for invoices postmarked within 10 days of the invoice date.
9. **ADMINISTRATIVE FEE:** The vendor's price will include an administrative fee of one and one quarter percent (1.25%) on all purchases made by members under this contract that the vendor will remit to KEDC on a quarterly basis (monthly at KEDC's discretion). The vendor will also compile and provide to KEDC a monthly report showing all purchases made by members under this contract in a format provided by KEDC. The vendor will make all administrative fee payments to KEDC by the 25<sup>th</sup> of the succeeding month and all checks are to be made payable to KEDC and sent to KEDC, 904 Rose Road, Ashland, KY 41102-7104. The vendor may not add this or similar fees as a line item on the customer's invoice.
10. **MILK BID SPECIFICATIONS:** Milk is required in the Kentucky School Systems Nutrition Services Program to be furnished and delivered in accordance with the following:
  - A. There are approximately 177 school days during which milk will be needed. In addition, we will need milk at some schools during the Summer Lunch Program.
  - B. All milk is to be pasteurized and homogenized. All milk shall be produced, processed, handled and distributed in accordance with laws and regulations of the Kentucky Department of Health. Any deviation from this standard shall be considered sufficient cause for cancellation of the contract.
  - C. Coolers/Refrigerator/Freezers must be stocked with clean, undamaged, and ready to serve products.

- D. Products included in this bid remain property of the bidder until sold to the end consumer. All unused, spoiled, or defective products shall be returned to bidder and a credit shall be issued to the member district.
- E. The successful bidder must be equipped and able to deliver sufficient quantities as may be used in each school of the Kentucky School Systems and must be prepared to deliver additional quantities above the normal use in emergencies and on short notice.
- F. As determined on a district by district basis, the successful bidder will supply and maintain milk coolers. Vendor supplied coolers must be restored to operation within twenty-four hours of a service request or replaced with a comparable cooler.
- G. The Board of Education may terminate the contract for any or all of the following reasons, or any other reason that a court would consider as sufficient for termination of the contract.
  - 1) That the milk does not meet the standards prescribed above.
  - 2) That the service rendered as to deliveries, etc., is unsatisfactory.
  - 3) That the milk does not properly satisfy the students and others who use it, as may be evidenced by an unusual amount of complaints or small sales, or any other valid indications that the milk does not properly satisfy its users.
  - 4) That the successful bidder fails to carry out the specifications, conditions, and/or convenience and obligations which he has made or owes to the Board of Education
- H. Milk must meet all current state and federal guidelines for butterfat content. Milk must meet the standards prescribed by the State Board of Health and the Kentucky School Systems Board of Health, and must otherwise be satisfactory.
- I. Awards will be based on both **Escalator and Firm Prices**. District will have the option of purchasing from the firm or escalator price. Nutrition Services Directors will sign a form stipulating which price package they will be using annually. A copy of this form will be sent to each awarded vendor and one copy will be kept on file here at the KEDC Offices. Districts will be informed that they will have to stay with this choice (Firm or Escalating) for the duration of the contract (12 months).
- J. All prices shall be firm for thirty (30) days, after which prices for milk may **escalate/de-escalate** in accordance with changes in the Class I Skim Milk Price per hundred weight and Butterfat price per pound as announced in the Federal Milk Market Order No. 5 (or whichever Milk Market Order applies to your geographic area). Prices per half-pint delivered may be raised/lowered according to the announced changes by USDA in Skim Price per hundred weight and Butter price per pound.

Any changes (up or down) in price must be announced to the Director of Nutrition Services within the week following the issuance of the Milk Market Order announcement and must be accompanied by a copy of the announcement and conversion calculations used by the supplier to arrive at the amount of increase/decrease.

## 11. GENERAL FOOD BID CONDITIONS:

### A. Purchase of Food and Non-Food Items not specifically provided in KEDC Bid.

- 1) KEDC schools may exercise their rights to purchase all non-bid items, except produce, from the contractor that has been awarded a group of items, which is most closely associated with the non-bid item.
- 2) Purchase of food and non-food items not covered by the bid shall be at the price mutually agreeable between the contractor and the school and shall include delivery of the product as part of the agreed upon price.
- 3) This section of the contract shall relieve schools from the need to obtain quotes from other companies for non-bid food and non-food items as long as the items purchased are closely related to the items covered by the bid. The schools shall not use this provision to obtain competitive pricing for non-related items.

### B. PRODUCT REQUIREMENTS

1) Item Identification (ID): The item bids listed herein are not specifications. Product identifications are limited to requirements that can be verified upon delivery. U.S. Grades are generally not specified unless there is an inspection certificate accompanies a grade shield on the container or the product. The use of pre-approved brands makes it unnecessary to use detailed specifications.

2) Product Protection Guarantees: School districts have automatic product protection recourse against suppliers for products that are misrepresented. According to federal regulations, the supplier whose name and address appear on the package is the responsible party. Contractors are expected to take immediate action to correct any situation in which product integrity is violated.

3) Import Products: Products that are canned or packed outside of the United States will not be accepted. Please note this rule applies to "Private Label" as well as other labels. Exceptions to this rule are for pineapple, mandarin oranges, olives, tuna, and coffee. The Nutrition Labeling and Education Act of 1990, mandates that the country of origin for both domestic and imported food products be identified on the product labels.

4) Brands: The "Approved Brand" space on the item identification indicates:

a. When the word, "Packer Label" appears in the approved brands, bidders may bid any label. When the word, "Private Label" appears in the approved brands, bidders may bid brands shown in the Chart of Brands. For canned and frozen fruits and vegetables, the potential contractor shall bid the appropriate label for the grade specified. Where a grade is not specified under Private Label in the bid document, the bidder shall offer a quote based on the 1st Quality label only.

b. Pre-Approved Brands: Where a manufacturer's name and product number are listed under approved brands, the bidder may only propose those products in the list. In the instance where a pre-approved brand is packed also under a Private Label, the

bidder must present documentation from the manufacturer at the time of the opening in order to bid the Private Label version of the product.

c. Unacceptable Brands: KEDC may specifically designate a brand as unacceptable even if blanket approval is implied. This is done by stating specifically the brand will not be acceptable if bid.

### C. Terms of Reference Specific to Product Identification

- 1) IMPS: The National Association of Meat Purveyors developed Institutional Meat Purchase Specifications. The packer must be willing to certify to the contractor and/or KEDC that the product meets the IMP specifications. Numbers that have a very specific meaning in identifying the product designates IMPS.
- 2) Vegetable Protein Products (VPP): VPP is used herein to refer to Textured Vegetable Protein since TVP is a trademark of the Archer Daniels Midland Corporation. The ratio of meat to VPP is referred to as percent meat with VPP rather than percent of VPP. Items with VPP must carry on the main face label the following: "This item contains Vegetable Protein Product(s) which are authorized as an alternative food in the Child Nutrition Programs." If a product has a CN label then the VPP statement is not required.
- 3) Breeding of Meat and Poultry Products: Identifications as listed for meat and poultry require 25% breeding at time of pack. Federal regulations require that breeding for meat and poultry cannot exceed 30% without modifying the name of the product. Contractors are required to furnish dated certificates from packers showing the packer's specifications on range of breeding. If the product has a CN label, certification is not necessary.
- 4) Fish Inspection and Grading: Fish as identified herein must bear the PUFi Shield or USDC Grade Shield. Raw fresh-water fish that are not normally packed under federal inspection are exempt.
- 5) Raw or Cooked: Meats, poultry and seafood are deemed to be raw (uncooked) unless the term "cooked" is used. The term "Cooked" implies fully cooked unless a lesser degree of doneness is specified. The term "precooked" implies that additional cooking is necessary before service.
- 6) IQF: The term, "Individually Quick Frozen" or IQF essentially means that parts can be removed individually from packages. The term "quick" means frozen "at the time" in freezer tunnel, either by blasts, nitrogen or carbon dioxide.
- 7) CN Label: When a product is CN labeled the packer to conform to the nutritional requirements of the USDA Food & Nutrition Service certifies it.
- 8) Grades: The grades specified herein for fruits, juices, and vegetables refer to "packer grades" except as specifically indicated otherwise. Packer grades are designated by color codes or brand names as showing the accompanying chart.

9) Standards of Identity: All products must conform to U.S. minimum standard requirements. Three important federal regulations pertaining to canned foods listed below are, along with other federal and state regulations, automatically part of the proposal requirements:

a. Net Container Quantity: The minimum net quantity of all products in cans and jars shall be in accord with Section 401 of Federal Food, Drug, and Cosmetic Act regarding the individual specifications for standard of fill for the product prescribed in 21 CFR Part 100-169.

b. Fill of Containers: All products shall be filled as full as practical under good commercial packing practices without impairment of quality and otherwise accord with Section 401 of the Federal Food Drug, and Cosmetics Act.

c. Drained weights: Drained weights of "wet pack" items shall conform to good industry practices and the minimum requirements of the Federal Food, Drug, and Cosmetics Act for drained weights. Except for whole tomatoes, drained weights are not a factor of USDA Grade.



United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

Southeast  
Region

77 Forsyth Street, S.W.  
Atlanta, GA 30303

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**Reply to**  
**Attn. of:**SESN-207  
**Subject:**

**NSLP 94-10: Buy American Requirement**

To: All State Child Nutrition Directors  
Southeast Region

It has come to the U.S Department of Agriculture's (USDA) attention that school food authorities (SFA) may be using Federal funds to purchase foreign foods, e.g. canned peaches, even though the law, Federal Regulations, and local specifications prohibit this practice. USDA, therefore, wants to reiterate the "Buy American" requirement, which (1) benefits our children by ensuring that high-quality foods are available in school lunch programs, and (2) supports American agriculture.

As you are aware, Section 3 (h) of the Commodity Distribution Reform Act and WIC Amendments of 1987, and Section 250.23 of Federal Food Distribution Program regulations mandate that recipient agencies, including SFA's participating in the National School Lunch Program (NSLP), purchase, whenever possible, only food products that are produced in the U.S. A "food product produced in the U.S." is defined as "an unmanufactured food product produced in the U.S. or a food product that is manufactured in the U.S." In addition to exemptions set forth in the law for specific States and territories, and unusual or ethnic food preferences, the regulations identify two other situations which warrant a waiver to permit purchases of foreign products: (1) the product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; and (2) competitive bids reveal the cost of a U.S. product is significantly higher than the foreign product. These circumstances are the only exceptions to Section 3 (h).

It is imperative that each SFA comply with the "Buy American" requirement by purchasing food products produced in the U.S. for its school feeding programs. Subject to the exemptions cited above, such purchases must at least be proportionate with the extent of Federal funding in the SFA's school food service account. Therefore, given reports of foreign products in school feeding programs, we request that you remind the SFA's in your State of the "Buy American" requirement and ask them to (1) check their purchasing specifications to ensure adequate procurement of U.S. food products, (2) remind their vendors and distributors of the "Buy American" requirement, and (3) examine product packaging. The Nutrition Labeling and Education Act of 1990 mandates that the country of origin for both domestic and imported food products be identified on the product labels.

Should you or your staff have any questions regarding this matter, please contact Rosie Daugherty or Brian Frasier of the School Programs Section at (404) 730-2631.

NENA P. BRATIANU  
Regional Director  
Special Nutrition Programs

KPC- Kentucky Purchasing Cooperatives  
KEDC, GRREC, NKCES, OVEC, SESC & WKEC Cooperatives  
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