

Metropolitan Area Planning Council

# Grocery Products for Schools

## Invitation for Bids

IFB #MAPC 2020 Western Grocery

Solicited on behalf of the following Cities and Towns, and School Districts: Agawam Public Schools, Lee Public Schools, Lenox Public Schools, Athol Royalston Regional School District, Ralph C. Mahar Regional School District, Orange Elementary School District, Ware Public Schools, Palmer Public Schools, Pathfinder Regional Vocational Technical High School, Belchertown Public Schools, Monson Public Schools, Pioneer Valley Regional, Franklin County Technical School, Gill-Montague Regional School District, Hampden-Wilbraham Regional School District, Greenfield Public Schools, Ludlow Public Schools, Hadley Public Schools, Hatfield Public Schools, South Hadley, East Longmeadow Public Schools, Smith Vocational and Agricultural High Schools, Northampton Public Schools, Hampshire Regional School District, Westfield Public Schools, Gateway Regional School District, Central Berkshire Regional School District, Southern Berkshire Regional School District and any other districts within Franklin County, Hampshire County, Berkshire County and Hampden County and any other districts within Franklin County, Hampshire County, Berkshire County and Hampden County.



## Legal Notice

The Metropolitan Area Planning Council (MAPC), on behalf of the following Cities and Towns, and School Districts: Agawam Public Schools, Lee Public Schools, Lenox Public Schools, Athol Royalston Regional School District, Ralph C. Mahar Regional School District, Orange Elementary School District, Ware Public Schools, Palmer Public Schools, Pathfinder Regional Vocational Technical High School, Belchertown Public Schools, Monson Public Schools, Pioneer Valley Regional, Franklin County Technical School, Gill-Montague Regional School District, Hampden-Wilbraham Regional School District, Greenfield Public Schools, Ludlow Public Schools, Hadley Public Schools, Hatfield Public Schools, South Hadley, East Longmeadow Public Schools, Smith Vocational and Agricultural High Schools, Northampton Public Schools, Hampshire Regional School District, Westfield Public Schools, Gateway Regional School District, Central Berkshire Regional School District, Southern Berkshire Regional School District and any other districts within Franklin County, Hampshire County, Berkshire County and Hampden County, invites bids for the supply of grocery products to be provided F.O.B. the schools' addresses. MAPC will be the awarding authority of behalf of the Cities, Towns, and their School Districts. A contract will be awarded to the responsible bidder offering the lowest aggregate price for the specified goods. The term of the contract will be from July 1, 2020 to June 30, 2021.

The Invitation for Bids (IFB) may be obtained by contacting Mark Fine by phone at 617-933-0789 or by email at [mfine@mapc.org](mailto:mfine@mapc.org) beginning March 2 2020. Sealed bids are due 12:00 PM April 28, 2020 at the Metropolitan Area Planning Council, 60 Temple Place, 6th Floor Reception, Boston, MA 02111 at which time they will be publicly opened and read. MAPC reserves the right to cancel this bid, waive informalities, and to reject any or all bids.

Advertisements placed as follows:

MAPC Posted: Monday March 2, 2020

COMM Buys Monday March 2, 2020

Goods & Services Bulletin Published: Monday March 2, 2020

Boston Herald Published: Monday March 2, 2020

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## Section 1 - General Information

### 1. OVERVIEW

This is an Invitation for Bids (IFB) issued by the Metropolitan Area Planning Council (MAPC) to secure the provision of goods and/or services on behalf of the Cities, Towns and School Districts listed on the front page of this bid document. The participating school districts have joined together as the Massachusetts School Buying Group (MSBG) for the purposes of securing the products highlighted in this IFB. A listing of the participating school districts including their name, address, enrollment and contact information is provided as part of this solicitation.

The Metropolitan Area Planning Council seeks bids for the purchase of Grocery Products to be provided F.O.B. to the participating schools

### 2. TIMETABLE AND KEY DATES

The dates provided below are important to understand. The deadlines must be followed, both in responding to this IFB and in meeting the contract terms.

|  |                           |
|--|---------------------------|
| Goods & Services Bulletin Published:   | Monday, March 2, 2020     |
| Boston Herald Published:   | Monday, March 2, 2020     |
| Comm Buys Posted:  | Monday, March 2, 2020     |
| MAPC Posted:   | Monday, March 2, 2020     |
| Bid Documents Available by request to MAPC   | Monday, March 2, 2020     |
| Special Order or Alternative Items Requests by email to Coordinator                    | Friday, March 20, 2020    |
| All requested samples due at Franklin County Tech (if necessary)                       | Thursday, April 2, 2020   |
| Participating school districts sampling meeting at Franklin County Tech (if necessary) | Friday, April 3, 2020     |
| Last day to submit formal questions to MAPC  | Wednesday, April 15, 2020 |
| Final formal addenda and question responses provided by MAPC                           | Friday April, 17, 2020    |

|  |                                  |
|--|----------------------------------|
| Bids are due to MAPC offices in Boston                                   | NOON, Tuesday, April 28, 2020    |
| Bid opening at MAPC offices in Boston                                    | 12:30PM, Tuesday, April 28, 2020 |
| Delivery times and arrangements between vendor and districts set         | Monday, June 1, 2020             |
| Vendor item numbers provided to Bid Coordinator on appropriate bid sheet | Friday, June 19, 2020            |
| Bid items in stock and ready for delivery                                | Monday, August 17, 2020          |

### 3. BID DOCUMENTS AVAILABLE

Bid documents will be made available on Monday March 2, 2020, by submitting a request for IFB # MAPC 2020 Western Grocery and providing the prospective bidder's Contact Person Name, Company Name, Address, City, State, Zip, phone and fax numbers, and e-mail address through one of the following means:

- By e-mail to [mfine@mapc.org](mailto:mfine@mapc.org) – preferred method
- By phone to Mark Fine at (617) 933-0789. In order to request by phone you must speak to a live person. Voicemail requests will not be considered official requests.

IFB documents will be emailed unless delivery via U.S. Mail is specified by the Requester.

## Section 2 – Bid Submission

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### 4. BID SUBMITTAL

Bid must be submitted by NOON on April 28, 2020 in a sealed envelope clearly marked on the exterior with the following information:

Metropolitan Area Planning Council

IFB#: MAPC 2020 Western Grocery

Bid for: Grocery Products

Bid Opening Date: \_\_\_\_\_

Bidder's Name: \_\_\_\_\_

All external mailing/shipping packaging containing sealed bid envelopes must be clearly addressed as follows:

IFB#: MAPC 2020 Western Grocery

Metropolitan Area Planning Council

60 Temple Place, 6th Floor

Boston, MA 02111

No proposals will be accepted after this day and time. Vendors are **STRONGLY ENCOURAGED** to attend the opening and be prepared to answer any questions.

Bid envelopes **must contain three (3) originals** of all required documents.

Bids must be signed as follows:

- If the bidder is an individual, by him/her personally;
- If the bidder is a partnership, by the name of the partnership, followed by the signature of each general partner; and
- If the bidder is a corporation, by the name of the corporation, followed by the signature of an authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation with the corporate seal affixed (e.g. Certificate of Corporate Vote).

## 5. FORM OF BID – DOCUMENTS AND INFORMATION TO BE PROVIDED

The responsive bidder shall include (3) copies of each of the completed documents and contain all the required enclosures described below.

Bidder must bid on ALL items using the exact brand and manufacturer's code specified, unless an equal item has been approved in advance by the group. Please see the Alternative Item Procedure and the Alternative Item Request Form described in Section 7, see relevant forms attached. If a line has multiple brands approved, the vendor may bid on any of the approved brands at their discretion without additional approval.

Stocked, non - bid item(s) with the same basic identity as bid item(s) shall be provided at the same price as the bid item(s). For example, all stocked GM bowl pack cereals, shall be provided at the bid price of the specific items listed in the bid. This does not apply to non-stocked or special order items.

No bid item shall be deleted, changed or discontinued by the distributor unless previously approved by the MSBG Bid Coordinator.

## 6. GROCERY BID WORKSHEET (ATTACHMENT 1)

All projections are the best aggregate estimates of the individual districts, however there is no guarantee made that districts will purchase these amounts. Variations may occur due to cost, student preference, menu changes and other factors.

Vendors must provide pricing on every line of the grocery bid in order to be considered responsive.

Please enter your company name on the Worksheet tab by double clicking on the tab itself.



For each item on the sheet, please enter following (yellow columns):

- **Special Order** – Select “X” from the dropdown if this line has been approved for special order status. See the Special Order Request Form in Appendix B.
- **Domestic Product** - Select “X” from the dropdown if the item meets the Buy American provision as defined in section 4, or “Exception” for any item qualifying for an exception. (Vendor must provide an exception from the **Buy America Exception sheet** (see below and at Attachment 2) for every line with an exception. If an item has already been checked as domestic, disregard this step for this item.
- **Brand and item to be provided** - enter the brand and item code, if different than the item approved. Any items listed in this column must have prior approval in accordance with the



*Alternative Item Procedure – see the form at Appendix B. For any lines that are “Distributor’s Choice”, please enter your brand and item here.*

- **Actual Case Size** – the number of units in the case, i.e. “200”. If this is the same as the “Base Case Size” you may leave it blank. This will adjust the projection based on differences in pack size. This cell accepts numerical entries only.
- **Price per Case** - enter the price per case, not the unit cost. This applies as well to catch weight meats based on the average pounds listed. For example enter \$27.00 as the case price, not \$1.50 for the price per pound.
- **Comment** – any notes or comments about the item.

When the sheet is completed, please print it on legal size paper, landscape mode, and provide it with your submission.

***Please provide an electronic copy of your sheet on a USB drive at the time of the bid opening.***

## **7. ALTERNATIVE ITEM PROCEDURE**

Each vendor may submit line items “as Equal” to the specified items listed on the bid.

Complete the Alternative Item Request form provided as **Attachment 3** along with supporting information and return it to Mark Fine by e-mail at [mfine@mapc.org](mailto:mfine@mapc.org) on or before Friday, March 20, 2020. Based on this information, the group may request samples. If requested, provide samples to a location determined by the group on or before Thursday, April 2, 2020 for a group sampling on Friday, April 3, 2020. The location for the sampling will be at Franklin County Technical School.

A determination on the acceptability of the product will be made by the group and you will be notified as to the group’s decision. Approved alternatives will be posted so that all vendors may consider bidding these items.

If the participating school districts do not consider the sample to be “Equal”, you will need to bid on the brand specified.

## **8. SPECIAL ORDER PROCEDURE**

After reviewing the bid document, vendors may submit requests to treat up to 10 lines as special order if they are awarded the bid.

Only lines with Projected Usage of 100 or less may be proposed as special order. The group reserves the right to deny any special order request. If a line is denied, it must be stocked if the vendor is awarded the bid.

Any items approved as special order must be delivered no later than 2 weeks from date of order. If interested in submitting items as special order, please submit the **Special Order Request Form** ,

which is **Attachment 4**, to Mark Fine by email at [mfine@mapc.org](mailto:mfine@mapc.org), no later than Friday, March 20, 2020.

The group will respond to your request in a timely fashion.

## 9. BUY AMERICAN EXCEPTION PROCEDURE

Compliance with and enforcement of the Buy American Provision in the National School Lunch Program, requires school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodity or products. There are limited exceptions to the Buy American provision which allow for the purchase of products not meeting the “domestic” standard as described above (“non-domestic”) in circumstances when use of domestic products is truly not practicable. These exceptions should be used as a last resort:

- The product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; and or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product. **For this BID, significant is defined as 10% or more expensive than a like non-domestic item.**

The participating school districts will accept non-domestic items only if they meet one of the two criteria above.

For each line of the bid, please indicate in the Grocery Bid Worksheet that the item to be provided (whether the original item or an approved alternate) satisfies the criteria for a “domestic commodity or product” as defined above, by selecting “X” from the dropdown arrow in the Domestic Product column. In the event that an item is supplied is not of U.S. origin, the vendor shall indicate this on the worksheet by selecting “Exception” from the dropdown arrow in the Domestic Product column. If an item has already been checked as domestic, disregard this step for this item.

Documentation of each exception shall be provided by the Vendor using the **Buy American Exception form which is at Attachment 2**. Please provide these exceptions as PDF files, one for each item, on your USB drive when you submit your bid on April 28, 2020.

The winning vendor shall work with the Bid Coordinator after the award to secure proof of domestic origin for all bid items that are indicated as being domestic.

## 10. REQUIRED BID DOCUMENTS

All bids are required to contain the following forms fully completed and signed (see relevant forms in the Appendices at the end of this document):

1. General Bid Form
2. Statement of Competency

3. Certificate of Non-Collusion
4. Certificate of Tax Compliance
5. Certificate of Compliance for Federally Funded Procurement
6. Conflict of Interest Certification
7. Certificate of Compliance with M.G.L. c. 151B
8. Certificate of Non-Debarment
9. Lobbying Activities
10. Equal Opportunity Requirements
11. HUB Certification
12. Acknowledgement of Specifications
13. Right to Know Law Page
14. List of Subcontractors (if necessary)

#### **11. MODIFICATIONS TO BIDS**

A bidder may correct, modify, or withdraw a bid by written notice received by MAPC, prior to the time and date set for the bid opening. Bid modifications must be submitted in a sealed envelope, clearly labeled "Modification No. \_\_\_\_." Each modification must be numbered in sequence and must reference the original IFB and must be signed by the same person who signed the General Bid Form or a surrogate so authorized in writing.

After the bid opening, a bidder may not change any provision of the bid in a manner prejudicial to the interests of MAPC, and the participating Cities, Towns and School Districts.

#### **12. PROVIDING A HACCP PLAN**

The vendor must submit written documentation accompanying their submission stating and defining their HACCP food safety program – sending their full HACCP plan is the best way to satisfy this requirement. Submission of this information is a minimum requirement and failure to do so may result in the bid's disqualification.

#### **13. ESTIMATED QUANTITIES**

Estimates of purchases are indicated on the Grocery Bid Worksheet, providing information from each participating school district based on projected usages. Actual quantities may be adjusted due to government regulations, delivery of federal commodities including, but not limited to Net off Invoice

allocations and brown box commodities, student preference changes, or meal program participation changes.

This IFB recites estimated quantities to be supplied by the vendor, which may or may not be purchased during the Contract period. Neither the participating school districts nor MAPC guarantees a minimum or maximum number of purchases through this IFB. Nothing in this IFB shall be interpreted as a restriction upon an eligible party from buying any item or similar product by any other means, from any other vendor(s), or from the selected vendor at any time during the contract term. No enforceable obligation exists under any resulting Contract beyond an individual Member's appropriated funds.

The Bid Coordinator is not responsible for membership changes that might take place during the bid award or deviations in purchase amounts from the projected volume/estimated quantities.

#### **14. COMPLIANCE WITH IFB**

Bidders must comply with all requirements of this IFB in order to be eligible for contract award.

Minor informalities will be waived or the bidder will be allowed to correct them. If a mistake in a bid is evident and the intended bid is clear on the face of the Bid Price Form, the mistake will be corrected to reflect the intended correct bid and the bidder will be notified in writing. The bidder may not withdraw such a bid. MAPC may reject or a bidder may withdraw a bid if the mistake is clearly evident on the face of the Bid Price Form, yet the intended correct bid is not similarly evident.

Conditional bids will not be accepted. A conditional bid is one that imposes any condition or conditions on a bid or changes the price or any other provision of a bid in a manner prejudicial to the interests of the jurisdiction or fair competition.

#### **15. QUESTIONS**

Bidders are requested to immediately and thoroughly review the IFB and Specifications and promptly notify MAPC of any ambiguity, inconsistency, or error which they may discover. Direct all inquiries or questions to Mark Fine via email at [mfine@mapc.org](mailto:mfine@mapc.org). No substantive inquiries will be accepted after Wednesday, April 15, 2020 beyond those that seek simple clarifications about the bid. Responses to inquiries that affect all bidders will be issued as addenda. MAPC will not provide, authorize or honor any alleged oral interpretations.

If questions are received after April 15, 2020, MAPC, in its sole discretion, will determine if additional addenda are required and whether to alter the bid due date. MAPC will advise all prospective bidders of such activity.

MAPC reserves the right to disqualify any bidder that it believes to be interfering with this procurement by raising irrelevant, nuisance, or diversionary issues in order to delay or render the procurement invalid, whether timely or not.

Failure of any bidders to read and become familiar with any portion of this IFB will not relieve them from any of the obligations described herein, whether they may be required during review of the bids, or performance required under a contract.

## **16. ADDENDA**

Responses to inquiries regarding interpretation or clarification that affect all bidders and corrections or changes to the IFB will be issued as Addenda. Addenda will be distributed via email to all parties that MAPC is aware have obtained the IFB using the contact information provided to MAPC. A copy of any addendum issued will be on file at MAPC. Absence of “failure” messages electronically transmitted from addressee’s site will serve as confirmation of delivery of addenda. Bidders should contact Mark Fine via e-mail, phone or fax if they believe an addendum has not been received. The last addenda is expected to be provided no later than Friday April 17, 2020.

A copy of all addenda that are issued should be included in the bid package and each addendum should be initialed in the bottom left corner of the first page of the document by the bidder.

## **17. BID OPENING**

Sealed bids will be accepted at MAPC, 60 Temple Place, 6th Floor, Boston, MA 02111 until 12:00 PM as read on the clock in the 6th floor MAPC lobby on Tuesday, April 28, 2020. They will be publicly opened and read aloud at 12:30pm. Bids will be made available for inspection on-site for a reasonable period of time after all bids are opened.

**Unforeseen Deterrents** - If at the time of the scheduled bid opening, the designated site is unavailable due to circumstance beyond the control of MAPC, the bid opening will be automatically postponed (with or without notice to potential bidders) until 12:00 PM at the same location on the next normal business day. In the event the same location cannot be used to accommodate a postponement, the bid opening will be formally postponed with notification to all parties provided the bid documents by MAPC. Bids will be accepted until any postponement time.

## Section 3 - Bidder Qualification Requirements

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### 18. PERFORMANCE CAPABILITIES

Bidders must be capable of providing the specified goods and/or services on schedule, in working order, in an intact and undamaged condition, and providing any support services in a professional and workmanlike manner.

Time of performance is critical to this IFB. Bidders must reassure MAPC of their capacity to perform within the timeframe set out in this IFB.

### 19. EXPERIENCE

Bidders must demonstrate competency in the business of providing the goods and/or services specified in this IFB by conformance with the following criteria:

- a. Bidders must be authorized sellers of Grocery Products.
- b. In business for a minimum of 1 year.
- c. Provision of the specified goods and/or services is consistent with normal lines of business.
- d. Incorporated to do business in Massachusetts or registered with the Office of the Secretary of the Commonwealth's Corporation Division as a Foreign Corporation and should provide proof.
- e. Bidders that do not meet these minimum qualifications will not be considered.

### 20. SUBCONTRACTORS

The use of subcontractors is acceptable. If the bidder intends to perform any or all work related to this contract through subcontractor(s), said subcontractor(s) names, business affiliations, and addresses must be attached with the bid and referenced to the appropriate work to be performed. Bidders agree to be responsible to ensure the legal and contractual compliance of named subcontractor(s). Use of subcontractor(s) not named in the bidder's bid is prohibited.

### 21. INSURANCE

The selected vendor shall at all times during the term of the contract maintain insurance in full force and effect acceptable to MAPC and the participating school districts. The selected vendor agrees to furnish MAPC with certificates of insurance or other evidence satisfactory to MAPC if requested.

### WORKER'S COMPENSATION

Workers Compensation & Employers Liability  
amended.

Per M.G.L. c. 149, s. 34 and c. 152 as

**COMMERCIAL GENERAL LIABILITY**

Personal Injury

\$500,000 each occurrence

\$1,000,000 aggregate

Property Damage

\$500,000 each occurrence

\$1,000,000 aggregate

**VEHICLE LIABILITY**

Personal Injury

\$500,000 each person

\$1,000,000 aggregate

Property Damage

\$300,000

## Section 4 - Award and Contract

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### 22. RULE OF AWARD

The grocery bid, including all NOI and Fee for Service items, will be awarded to a single responsive and responsible vendor for the 2020-2021 school year based on the aggregate bottom line total of the grocery bid worksheet, however, the MSBG reserves the right to reject any bid in part or in whole based on past performance of the vendor and/or the best interests of any or all of the members of the group.

### 23. TIMEFRAME FOR AWARD

The bid award will generally take place no later than a week after the bid opening date at which time all parties will be notified. All bid prices submitted in response to this IFB must remain firm for the entire contract period.

### 24. RESERVED RIGHTS

MAPC reserves the right to:

1. Cancel this IFB at any time, with or without notice to prospective bidders. Reasonable efforts will be made to give timely notice.
2. Accept or reject, in whole or in part, any and all bids as permitted by law.
3. Award contracts as it deems best serves the interest of MAPC and/or the Cities, Towns and School Districts.
4. Act as its own reference and make such investigation as it deems necessary to determine the ability of the bidder to perform prior to execution of the contract.
5. Waive or adjust non-statutory bid requirements before or after bids are opened in whatever ways it deems best serves the interests of the participating school districts.

### 25. CONTRACT TERM AND PRICING

This solicitation is seeking fixed pricing for the 2020-2021 school year, beginning July 1, 2020 and ending June 30, 2021. A signed contract with MAPC will result from this IFB. The Contract will be in effect from July 1, 2020 until June 30, 2021.

A sample copy of MAPC's standard contract can be found in Appendix B. Bidders must be willing to sign MAPC's contract. MAPC will not accept a bidder's own terms & conditions.

Except as provided elsewhere in this IFB, there will be no change in the terms and conditions, bid prices, or products offered during the contract periods.



Use of resulting contracts is voluntary. The issuance of this solicitation does not constitute or imply a firm commitment by any eligible party to purchase equipment, goods or services from any contracted vendor. Accordingly, ability to perform, price competitiveness, and product quality are key to sales. Nothing in this IFB shall be interpreted as a restriction upon an eligible party from buying any item or similar product by any other means, from any other Vendors, at any time during the Contract term.

Eligible parties will be the buyers under contract(s) awarded through this IFB. All transactions between eligible parties and contracted vendor(s) will be solely between those parties. Neither MAPC, the participating municipalities nor any other eligible party will be held liable by the vendor(s) or another eligible party for any loss or liability, other than payment for delivered products as may be limited herein, incurred as a result of this procurement.

This contract will be awarded and administered by MAPC on behalf of the participating municipalities/school districts. Any eligible party that purchases the goods of a selected vendor under any resulting contracts will be responsible for managing and directing the work of the selected vendor for all purchase orders and work orders initiated by the municipality. If for some reason, a participating municipality/school district finds that any provisions of the signed contract are not being observed by the selected vendor, they can seek remedy directly from said vendor and notify MAPC of any issue relating to non-performance under the signed contract.

## Section 5 - Product and Performance Terms

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### 26. QUALITY REQUIREMENTS AND PERFORMANCE STANDARDS

Grocery Products of high quality are required to be furnished and delivered inside the cafeteria storerooms.

All items offered shall be of the required pack and brand specified in this IFB or a proposed alternative pack and shall be subject to all federal and state regulations applicable thereto. Prices are to be submitted for U.S. grades and noted on the Grocery Bid Worksheet by the bidder.

The right is reserved to request samples of any or all items for which a bid is submitted for testing in determining awards; samples to fully represent the items proposed. The brand and grade offered and accepted shall be supplied during the entire contract period, and no substitution shall be made except upon written approval of the Member District Food Service Directors.

Quantities of items are estimated and not guaranteed to be purchased in full during the contract period. This is particularly true in the event surplus commodities are furnished by the U.S. Department of Agriculture.

Vendors must bid on all items and such pricing shall include delivery charges, prepaid by the vendor.

Bidders shall utilize only properly insulated, mechanically or thermostatically temperature controlled refrigerated transport equipment. Such equipment must be capable of maintaining temperature to protect products. Districts reserve the right to reject the use of any trucking equipment by a carrier if it is not in a clean, sanitary condition and suitable for the hauling of all goods. All delivery personnel must demonstrate good customer service and should be neat and clean with good grooming practices.

Vendors must have a Hazard Analysis Critical Control Point Program (HACCP) for all areas of service and products including but not limited to: purchasing, temperature control, receiving, holding, storage, transportation and delivery. All HACCP records must be documented and available for review.

If the contracted vendor fails to comply with the requirements of this section, "Performance Standards", the Participating municipality or school district shall have the right to cancel its purchase without recourse by the vendor, provided the municipality/school district serves the vendor with a written demand to perform, citing its intent to cancel its purchase order and invoke this IFB provision if performance does not occur within three full business days of delivery of the demand. Such notice may be conveyed by e-mail, fax or other method that verifies delivery by electronic or witnessed means.

Additionally, failure on the part of the vendor awarded the proposal to comply with any of the above terms contained in this IFB and the resulting contract could result in:

- A letter of nonperformance documenting the specific issues involved and the actions necessary to resolve the situation(s);
- Voiding the proposal award in whole or in part; and/or;
- Eliminating the vendor from future award consideration

## **27. PRODUCT INFORMATION**

The winning vendor shall assist the Bid Coordinator in securing all required nutritional, ingredient and CN information as requested, in a timely manner

## **28. COMMODITY PROCESSING**

For a bidder to be considered responsive, they must be certified in Massachusetts to distribute USDA commodity items through both the Net Off Invoice and Fee for Service Value Pass Through methods. Additionally, districts must be able to assign distribution to the winning vendor through K12 Foodservice and Processor link.

## **29. NET OFF INVOICE**

Lines that are subject to a NOI PTV will be indicated on the bid worksheet with a Bold Green font. Vendors are to enter the commercial bid prices on the bid worksheet in Price per Case column. The spreadsheet will calculate the net cost to districts who have diverted that commodity in the Net Price column. Districts who have not diverted that commodity or whose allocation has run out will pay the full commercial price.

It is the responsibility of each district to notify the State of Massachusetts of their intention to divert each commodity, and to assign the winning distributor in either K12 Foodservice or Processor link.

If a district diverts a commodity, and their allocation is fully used during the course of the bid award, they will pay the commercial price for the remainder of the award.

## **30. FEE FOR SERVICE**

Several participating school districts will be processing the following beef items through Fee for Service, for example:

- o BEEF, COARSE GROUND FRZ CTN-60LB – 100154

The group has procured and evaluated the items that will be processed. These are listed on the Fee for Service Item Summary tab of the Grocery Bid worksheet. This tab includes the total MSBG projection for each item. After the bid award, each district shall provide the winning distributor with their monthly usage information from their DESE Diversion Summaries.

A drayage (delivery and storage) fee for the total number of Fee for Service cases projected is requested on the Grocery Bid worksheet on the last line, titled Drayage charge for Fee for Service. This projection is the sum of all Fee for Service cases on the Fee for Service Item Summary tab. Distributors must bid the same fixed drayage fee for all cases.

Monthly delivery of Fee for Service items shall be arranged and agreed to between the winning distributor and each foodservice director.

The winning distributor shall bill each district for the number of cases delivered each month times the drayage fee entered on the Drayage charge for Fee for Service line. There shall be no other costs from the distributor to the Recipient Agency district.

Each manufacturer shall bill the Recipient Agency district for the number of cases delivered at the net cost from Column S on the Fee for Service Item Summary tab.

Districts may procure additional Fee for Service at their discretion outside the scope of this solicitation.

### **31. WARRANTY**

Vendors warrant (1) that the goods they sell are merchantable, (2) that they are fit for the purpose for which they are being purchased, (3) that they are absent any latent defects, and (4) that they are in conformity with any sample that may have been presented to the Participating municipalities/school districts.

### **32. METHOD OF ACQUISITION**

At the discretion of each Participating municipality, commercial credit cards (e.g. American Express, MasterCard, etc.) may be used to make purchases. All contract pricing will remain in effect, as will the buyers' tax exempt status.

### **33. ORDERING AND DELIVERY OF GOODS**

Delivery dates and times will be agreed upon by the district and the winning vendor by the date specified in the Key Dates section. Deliveries arriving outside times agreed upon may result in refusal of delivery or billing of distributor for excess labor charges.

All items will be delivered to an inside storage location acceptable to the receiver. Districts are not required to accept any product that is visibly damaged or adulterated in any manner. The winning vendor shall replace any item received in unacceptable condition at no cost to the ordering facility in a timeframe acceptable to the district.

The highest minimum amount for delivery will be no more than \$750.00 AVERAGE per district, per delivery day. For example, a district has 3 schools receiving deliveries on a given day. School 1 delivery is \$4000, school 2 is \$1500, and school 3 is \$700, the district average for that day is \$2066.

Product must be delivered at the correct internal temperature (frozen 0 degrees, refrigerated 34-40

degrees, and dry goods at room temperature). All products are to have a sufficient code date for normal usage.

School food directors or their designee must be notified before delivery if any products are unavailable. Substitutions are to be provided of the same or superior quality at the bid price. The director must approve all substitutions.

The vendor must provide full credit on and pickup of food incorrectly ordered or delivered by the next regular delivery. Full credit must be given, in a timely fashion, for foods that are discovered missing from the order, damaged, spoiled, adulterated, or expired.

Special orders may be considered by the group on some items. Please see the Special Order Procedure referenced in Section 2 and the Special Order Request Form at Appendix B.

### **34. INTERNET ORDERING SYSTEM**

The winning vendor is to provide an internet-based ordering system. Training requested by any district is to begin no later than 2 weeks after the request is made.

### **35. RETURNS**

The awarded vendor will guarantee that upon inspection, any defective or inferior supplies shall be replaced without additional costs to the Participating municipality/school district. The vendor will assume any additional cost accrued by the Participating municipality/school district due to defective or inferior supplies.

### **36. PRODUCT RECALL**

The awarded vendor must, upon receipt of a recall notice from the manufacturer or government, notify the MSBG coordinator immediately by e-mail. Appropriate credit must be given for all recalled products.

### **37. INVOICING/DELIVERY SLIPS**

A delivery slip must be left at each school upon delivery, complete with the unit price, extensions and totals. The delivery slips must be left with the Food Service Manager or designee within each of the schools. Delivery slips must be signed by the Food Service Manager or designee before responsibility will be accepted for payment of bills for these schools. If a delivery slip is not signed and the product delivered is in excess of what has been ordered, the Participating municipality/school district will be required to only pay for the amount ordered.

### **38. PAYMENT BY ELIGIBLE PARTIES**

MAPC is not an eligible party under this IFB or any resulting contract(s). Neither is it a party to any resulting transactions, nor can it be held liable for false representations or non-payment by eligible parties.

Eligible parties are not obligated to make payment to vendors other than in a manner consistent with their normal payment schedules and as bound by normal commerce. Payments shall be made in U.S. dollars. Vendors may not require cash payment nor accept cash for any transaction associated with this IFB.

### **39. REBATE AND COUPON INFORMATION**

The winning vendor assumes responsibility to pass on all rebate and coupon information to all members of the participating school districts.

### **40. CONTRACT ADMINISTRATION FEE**

The awarded Vendor will be required to pay to MAPC a Contract Administration Fee of \$2400 within 45 days of the execution of the Master Contract with MAPC. This fee covers the advertising costs of the procurement and the time and resources expended by MAPC staff in developing the procurement and supporting the procurement process.

### **41. AUDITING**

The participating school districts retain the right to audit distributor's invoices for any and all bid items. The audit may take place at any location suitable to the MSBG, including the offices of the distributor. The distributor will be given no less than 2 weeks' notice to assemble all relevant documents for review.

### **42. BID COORDINATION**

The participating Cities, Towns and School Districts receive the support of a Bid Coordinator, Tim Goossens, [tgoossens@food4schools.com](mailto:tgoossens@food4schools.com), to determine the products they seek to purchase through this IFB. The awarded vendor is required to work with the Bid Coordinator in managing product changes.

No bid item shall be deleted, changed or discontinued by the distributor unless previously approved by the Bid Coordinator.

The awarded vendor shall assist the Bid Coordinator in securing all required nutritional, ingredient and CN information as requested, in a timely manner.

MAPC is strictly the procurement agent for this Bid and is not responsible for the activities of the Bid Coordinator used by the participating school districts.

### **43. RESPONSIBILITIES OF PARTICIPATING SCHOOL DISTRICTS**

As per 7 CFR 210.21 Subpart E, participating school districts in their role as school food authorities are the party that must comply with the requirements of 7 CFR Part 3016 and 7 CFR Part 3019 as applicable, which implement the applicable Office of Management and Budget Circulars, concerning the procurement of all goods and services with school food service account funds. While the

contract for purchases made through this IFB will be held by MAPC with the awarded Vendor on behalf of participating school districts, use of this contract by participating districts does not relieve them from their obligations under federal law and regulation. School food authorities remain responsible for settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the federal school lunch program. MAPC will support participating school districts in whatever way it can to satisfy such issues.

## Section 6 – Applicable Laws

### 44. APPLICABLE LAWS

This procurement is conducted in conformance with M.G.L. c. 7, s. 22B and M.G.L. c. 30B and federal procurement regulations for the National School Lunch Program (see 7 CFR 210.21) and federal funds procurement generally (see 2 CFR 200.317-326). As per regulations, National School Lunch Program operators must ensure all costs are necessary, reasonable, allocable, and allowable per 2 CFR 200.403(a) and the applicable cost principles in 2 CFR part 200, subpart E, and that all procurements are conducted in a manner providing full and open competition consistent with Federal procurement standards in 2 CFR 200.318-326 and in applicable Program regulations at 7 CFR Parts 210.21, 215.14a, 220.16, 225.17 and 226.22. Failing to conduct a competitive procurement process is in violation of Federal regulations.

Government entities are generally exempt from Massachusetts sales tax and U.S. excise tax. Vendors should require that Buyers provide a tax-exempt certificate with their orders.

### 45. BUY AMERICAN PROVISIONS

Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a provision, Section 12(n) to the NSLA (42 USC 1760(n)), requiring school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodity or product. Section 12(n) of the NSLA defines “domestic commodity or product” as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States. “Substantial” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States. The Buy American provision (7 CFR Part 210.21(d)) is one of the procurement standards SFAs must comply with when purchasing commercial food products served in the school meals programs.

There are limited exceptions to the Buy American provision which allow for the purchase of products not meeting the “domestic” standard as described above (“non-domestic”) in circumstances when use of domestic products is truly not practicable. These exceptions should be used as a last resort:

- The product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; and or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product. **For our purposes, we are defining significant as 10% or more expensive than a like non-domestic item.**

The group will accept non-domestic items only if they meet one of the two criteria above.

For each line of the bid, please indicate that the item to be provided (whether the original item or an approved alternate) satisfies the criteria for a “domestic commodity or product” as defined above, by



selecting “X” from the dropdown arrow in the Domestic Product column. In the event that an item is supplied is not of U.S. origin, the vendor shall indicate this on the worksheet by selecting “Exception” from the dropdown arrow in the Domestic Product column. If an item has already been checked as domestic, disregard this step for this item.

Documentation of each exception shall be provided by the Vendor using the **Buy American Exception form which is Attachment 2**. Please provide these exceptions as PDF files, one for each item, on your USB drive.

The winning vendor shall work with the Bid Coordinator after the award to secure proof of domestic origin for all bid items that are indicated as being domestic.

#### **46. FEDERAL CONTRACTING REGULATIONS APPLICABLE TO VENDORS**

**Debarment and Suspension (Executive Orders 12549 and 12689)** — A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** — Vendors may not use 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. Vendors must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

**Equal Employment Opportunity** – Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

**Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)** – Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be

required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

## Appendix A – Required Forms

The following forms on the pages below are required for submitting a bid.

### General Bid Form

The accompanying Forms & Documentation are hereby submitted as a Bid in response to the subject IFB. All information, statements and prices are true, accurate, and binding representations of the Bidder's intentions and commitments in responding to this IFB.

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

\_\_\_\_\_  
Contact Person

\_\_\_\_\_  
Street

\_\_\_\_\_  
Phone

\_\_\_\_\_  
City, State, Zip

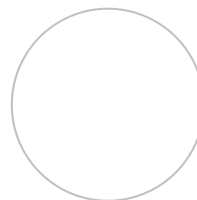
\_\_\_\_\_  
Fax

\_\_\_\_\_  
Email

Bidder acknowledges receipt of the Invitation for Bids (IFB) and Addendum No(s).\_\_\_\_\_, dated \_\_\_\_\_, and submits the attached Bid for this Invitation for Bids to the Metropolitan Area Planning Council (MAPC), on the authority of the undersigned and as dated below who by signing confirms and pledges to abide by and be held to the requirements of this IFB and its resulting contract, to perform any tasks and deliver any documents required, and to execute a Contract with the MAPC.

Authorized Agent of the Bidder:

\_\_\_\_\_  
Signature (blue ink please)



\_\_\_\_\_  
Printed Name

(If a corporation, attach certificate of vote or  
apply corporate seal here)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date:

---

## Statement of Competency

I hereby certify that the Bidder meets or exceeds the competency criteria set out in this IFB.

I further attest to the following assertions:

- The Bidder has been in business for a minimum of 1 years.
- Provision of the items specified in this IFB is consistent with the Bidder's normal lines of business.
- The Bidder is incorporated, and if required licensed, to do business in Massachusetts.

Authorized Agent of the Bidder:

\_\_\_\_\_  
Signature (blue ink please)

\_\_\_\_\_  
Name (as used for tax filing)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
SS# or Federal ID#

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## Certificate of Non-Collusion

As required under Chapters 233 and 701 of the Massachusetts Acts and Resolves of 1983 and as required under M.G.L. c. 30B certification must be made to the following by signing in the space indicated below. Failure to offer such signature will result in rejection of the Bid.

“The undersigned certifies under penalties of perjury that this Bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word person shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group or individuals.”

Authorized Agent of the Bidder:

---

Signature (blue ink please)

---

Printed Name

---

Title

---

Name (as used for tax filing)

---

SS# or Federal ID#

---

Date

---

## Certificate of Tax Compliance

“Pursuant to M.G.L. c. 62C, s. 49A, I certify under the penalties of perjury that to my best knowledge and belief the undersigned has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.”

Authorized Agent of the Bidder:

---

Signature (blue ink please)

---

Printed Name

---

Title

---

Name (as used for tax filing)

---

SS# or Federal ID#

---

Date

## Conflict of Interest Certification

The Bidder hereby certifies that:

1. The Bidder has not given, offered, or agreed to give any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of a Contract pursuant to this IFB.
2. No consultant to, or subcontractor for, the Bidder has given, offered, or agreed to give any gift, contribution, or offer of employment to the Bidder, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a Contract by the Bidder.
3. No person, corporation, or other entity, other than a bona fide full time employee of the Bidder has been retained or hired to solicit for or in any way assist the Bidder in obtaining a Contract pursuant to this IFB upon an agreement or understanding that such person, corporation or entity be paid a fee or other compensation contingent upon the award of a Contract to the Bidder.
4. Bidder understands that the Massachusetts Conflict of Interest Law, M.G.L. c. 268A, applies to the Bidder and its officers, employees, agents, subcontractors, and affiliated entities with respect to the transaction outlined in the Invitation for Bids.
5. Bidder understands that the Bidder and its officers, employees, agents, subcontractors, and affiliated entities, shall not participate in any activity which constitutes a violation of the Massachusetts Conflict of Interest Law or which creates an appearance of a violation of the Massachusetts Conflict of Interest Law.

Authorized Agent of the Bidder:

\_\_\_\_\_

Signature (blue ink please)

\_\_\_\_\_

Printed Name

\_\_\_\_\_

Title

.

\_\_\_\_\_

Name (as used for tax filing)

\_\_\_\_\_

SS# or Federal ID#

\_\_\_\_\_

Date

## Certificate of Compliance with M.G.L. c. 151B

The Bidder hereby certifies that it is in compliance with and shall remain in compliance with Massachusetts General Laws (M.G.L.) c. 151B and shall not discriminate on any prohibited basis outlined therein. The Bidder also hereby certifies that it shall comply with any and all applicable Commonwealth of Massachusetts Supplier Diversity Office (SDO) thresholds that have been established in conjunction with this Invitation for Bids.

Authorized Agent of the Bidder:

\_\_\_\_\_  
Signature (blue ink please)

\_\_\_\_\_  
Name (as used for tax filing)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
SS# or Federal ID#

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## Certificate of Non-Debarment

The Bidder hereby certifies that it is presently not debarred, suspended, or otherwise prohibited from practice by any federal, state, or local agency, and that, should any proceeding arise in which it is debarred, suspended, or otherwise prohibited from practice by any federal, state, or local agency, the Bidder shall inform the MAPC and involved municipalities within one (1) business day of such debarment, suspension, or prohibition from practice.

Authorized Agent of the Bidder:

\_\_\_\_\_  
Signature (blue ink please)

\_\_\_\_\_  
Name (as used for tax filing)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
SS# or Federal ID#

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## Lobbying Activities

### Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

\_\_\_\_\_  
Authorized Representative Name (Printed)

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

---

## Equal Opportunity Requirements

I certify that all information, statements, and pricing made in my Bid are true, accurate, and binding representations of the Bidder's intentions and commitment in responding to this IFB. Any such representations that exceed the minimum requirements of the IFB constitute legal obligations on the part of the Bidder to perform as stated and that failure to so perform may be used by MAPC as grounds to terminate the my contract.

I certify that pursuant to 28 CFR Part 42.204 (d) my employment practices comply with Equal Opportunity Requirements and comply with 28 CFR Part 42.202.; that my organization complies with the Americans with Disabilities Act.

Authorized Agent of the Bidder:

---

Signature (blue ink please)

---

Printed Name

---

Title

---

Name (as used for tax filing)

---

SS# or Federal ID#

---

Date

## HUB Certification

Historically Underutilized Business (HUB) Certification Vendors submitting bids that have been certified as Historically Underutilized Business (HUB) entities (Minority, Small Business, Woman Owned), are asked to indicate their HUB status when responding to this Invitation for Bid. I certify that my company has been certified as a Historically Underutilized Business (HUB). (Attach a copy of the HUB Certification to this form.)

---

Company Name

---

Authorized Representative Name (Printed)

---

Authorized Signature      Date

## Right to Know Law Page

Any Bidder who receives an order or orders resulting from this invitation, agrees to submit a Material Safety Data Sheet (MSDS) for each toxic or hazardous substance or mixture containing such substance, pursuant to M.G.L. c. 111F, s. 8, 9, 10 and the regulations contained in 454 CMR 21.06 when deliveries are made. The Bidder agrees to deliver all containers properly labeled pursuant to M.G.L. c. 111F, s. 7 and the regulations contained in 454 CMR 21.05. Failure to submit an MSDS and/or label on each container will place the Bidder in noncompliance with the Purchase Order. Failure to furnish MSDSs and/or labels on each container may result in civil or criminal penalties, including bid debarment and action or prevent the Bidder from selling said substances or mixtures containing said substances within the Commonwealth. All Bidders furnishing substances or mixtures subject to M.G.L. c. 111F are cautioned to obtain and read the Law and Rules and Regulations referenced above. Copies may be obtained from the State House Bookstore, State House, Room 117, Boston, MA 02133 (617-727-2834) for a fee.

FAILURE TO COMPLY WITH THESE REQUIREMENTS COULD RESULT IN THE CANCELLATION OF YOUR CONTRACT.

Authorized Agent of the Bidder:

\_\_\_\_\_  
Signature (blue ink please)

\_\_\_\_\_  
Name (as used for tax filing)

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
SS# or Federal ID#

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## Appendix B – Sample Contract

The following pages contain a sample contract that MAPC will enter into with the selected vendor.

### **SAMPLE** CONTRACT FOR GOODS AND SERVICES

BY AND BETWEEN

**METROPOLITAN AREA PLANNING COUNCIL**

AND

**INSERT VENDOR's NAME**

This AGREEMENT, dated \_\_\_\_\_, is made and entered into by and between the **Metropolitan Area Planning Council** ["**MAPC**"], a public body politic and corporate, established by Chapter 40B, Sections 24 through 29 of the Massachusetts General Laws, with its principal office at 60 Temple Place, Boston, Massachusetts 02111, acting as the collective purchasing agent for the Cities, Towns and School Districts ["**Buyers**"], pursuant to Chapter 7, Section 22B of the Massachusetts General Laws and without liability to **MAPC**, and Insert **Vendor's Correct Legal Name** ["**Vendor**"], with its principal office at **Vendor's Address**.

Witnesseth that the parties AGREE as follows:

#### Article I

##### General Description of the Work

1. Pursuant to the Terms and Conditions of this AGREEMENT, including any Additional and Special Terms and Conditions listed in Exhibit C, the Invitation for Bids ["**IFB**"] – **IFB No. MAPC 2020 Western Grocery** attached in Exhibit B; and the **Vendor's** Bid attached in Exhibit E, **MAPC** hereby engages the **Vendor** to provide the following goods and/or services to the **participating school districts listed on the front of the IFB document**: Grocery Products.

#### Article II

##### Services of the Vendor

2. The **Vendor** will provide the goods and/or services as described in the **IFB** cited in Article 1 (above).
3. The Vendor shall report, and be responsible, to MAPC or its designee as set forth on Exhibit A.
4. There shall be no amendment to this AGREEMENT without the written approval of **MAPC**. **MAPC** shall be under no obligation to pay for any goods provided or services performed by the **Vendor**.

5. The **Vendor** represents and warrants to **MAPC** as follows:

- i. That it and all its personnel (whether employees, agents or independent **Vendors**) are qualified and duly licensed as required by law and/or local municipal code to provide services and/or goods required by this AGREEMENT.
- ii. That it further agrees to perform services in a professional manner adhering to a reasonable standard of care and in accordance with all applicable State or Federal laws, rules and regulations.
- iii. That it will obtain any and all permits, bonds, insurances and other items required for the proper and legal performance of the work.
- iv. That it is not a party to any AGREEMENT, contract or understanding, which would in any way restrict or prohibit it from undertaking or performing its obligations hereunder in accordance with the terms and conditions of this AGREEMENT.

### Article III

#### Performance of the Vendor

6. In the performance of service under this AGREEMENT, the **Vendor** acts at all times as an independent contractor. There is no relationship of employment or agency between **MAPC**, on the one hand, and the **Vendor** on the other, and neither party shall have nor exercise any control or direction over the method by which the other performs its work or functions aside from such control or directions as provided in this AGREEMENT which the parties view as consistent with their independent **Vendor** relationship.
7. The **Vendor** agrees to be responsible for and warrantee the work of any subcontractors it hires and that are listed in Exhibit D and will ensure their compliance with all legal, quality and performance requirements of the Invitation for Bids ["**IFB**"] – IFB No. MAPC 2020 Western Grocery attached in Exhibit B; and the **Vendor's** Bid attached in Exhibit F. The **Vendor** may not use subcontractors not named in Exhibit D without the prior written consent of **MAPC**, which will not unreasonably be withheld.

### Article IV

#### Time of Performance

8. Time shall be of the essence in relation to **Vendor's** performance under this AGREEMENT. **Vendor** shall complete performance as promised in its quote that accompanies the **Buyer's** purchase order or other document confirming its authorization to the **Vendor** to proceed. Reasonable extensions shall be granted by the **Buyer** at the written request of the **Vendor**, provided the justifying circumstances are documented by and are beyond the reasonable control of **Vendor** and without fault of **Vendor**. In the event of such an extension, all other terms and conditions of this AGREEMENT, except the dates of commencement and completion of performance, shall remain in full force and effect between the parties unless modified in writing.
9. In the absence of such an extension, liquidated damages shall be due the Buyer in the amount of 0.1% (one-tenth of one percent) of the face value of the **Vendor's** quoted or modified purchase

price for each day performance exceeds the promised date(s). Such liquidated damages may be acknowledged in **Vendor's** final invoice or taken by **Buyer** as a deduction to such final invoice.

10. Any dispute in the amount of liquidated damages shall be submitted to arbitration by either **Buyer** or **Vendor** through the American Arbitration Association within 10 (ten) business days of written notice given by the party declaring impasse. **Vendor** and **Buyer** agree to fully comply with the arbitrator's decision within a reasonable time.

#### Article V

##### Revisions in the Work to Be Performed

11. If during the **Vendor's** Time of Performance, **Buyer** requires revisions or other changes to be made in the scope or character of the work to be performed, **Buyer** will promptly notify **Vendor** in writing. For any changes to the scope of work, **Vendor** shall provide **Buyer** with a written quote of change in price and/or change in time of performance and shall proceed with such changes only upon written consent of **Buyer**, which shall be construed as a modification to **Buyer's** original purchase order.
12. **Buyer** will neither unreasonably request revisions nor unreasonably withhold final acceptance of delivered products.

#### Article VI

##### Term of Agreement

13. The term of this AGREEMENT shall commence on July 1, 2017 and will continue until June 30, 2018, or until otherwise terminated as provided by this AGREEMENT or the **IFB**.
14. **MAPC** reserves the right at its sole discretion to extend the contract for up to two (2) additional one-year terms ending June 30, 2019 and June 30, 2020 respectively.
15. In the event new contracts have not been procured and awarded before the end of a 2nd contract extension, **MAPC** reserves the right at its sole discretion to extend the contract for an additional period of time until new contracts have been procured and awarded. However, in no instance shall any contract term, including extensions, exceed three (3) years in total.
16. The **Vendor** agrees to perform promptly upon execution of this AGREEMENT and will diligently and faithfully perform in accordance with the provisions hereof.

#### Article VII

##### Orders, Fees, Invoices, and Payments

17. Orders, fees, invoices, and payment shall be processed and paid as specified in Section 5- Terms & Conditions of the **IFB**.

#### Article VIII

##### Assignment



18. Neither party shall assign, transfer or otherwise dispose of this AGREEMENT or any of its rights hereunder or otherwise delegate any of its duties hereunder without the prior written consent of the other party. Any such attempted assignment or other disposition without such consent shall be null and void and of no force and effect.

#### Article IX

##### Indemnification

19. The **Vendor** agrees to indemnify and save **MAPC** and the **Buyers** harmless from any and all manner of suits, claims, or demands arising out of any errors, omissions or negligence by the **Vendor** (including all its employees or agents) in performing under this AGREEMENT, or any breach of the terms of this AGREEMENT, which constitute an obligation of the **Vendor**. The **Vendor** shall reimburse **MAPC** and the **Buyers** for any and all costs, damages, and expenses including reasonable attorney's fees which **MAPC** and the **Buyers** pays, or becomes obligated to pay, by reason of such activities or breach. The provisions of this Section shall be in addition to and shall not be construed as a limitation on any other legal rights of **MAPC** and the **Buyers** expressed or not expressed in the **IFB** and with respect to this AGREEMENT.

#### Article XI

##### Insurance

20. Before performing under this AGREEMENT, the **Vendor** shall obtain, and shall maintain throughout the term of this AGREEMENT, insurance at limits specified in the **IFB** and provide written documentation of such in the form specified in the **IFB** as requested in Exhibit E.
21. The **Vendor** shall give **MAPC** 20 days (twenty) written notice and copies of documentation in the event of any change or cancellation of coverage.

#### Article XII

##### Termination of Agreement

22. Either **MAPC** or the **Vendor** may terminate this AGREEMENT for cause upon written notice given by the non-defaulting party. For the purposes of this provision, "cause" shall include the failure of a party to fulfill its material duties hereunder in a timely and satisfactory manner.
23. **MAPC** shall have the right to terminate this AGREEMENT for its convenience upon fourteen (14) calendar days of written notice.
24. Following termination of this AGREEMENT, the parties shall be relieved of all further obligations hereunder except that:
25. **MAPC** shall not be liable for payments for the services and/or expenses or lost profits of the **Vendor** in the event of termination.
26. The **Vendor** shall remain liable for any damages, expenses or liabilities arising under this AGREEMENT (including its indemnity obligations) with respect to work performed pursuant to the AGREEMENT.

### Article XIII

#### Entirety of Agreement

27. This AGREEMENT, together with its Exhibits, the **IFB** referenced above and its Addenda, the required supplemental documents and any additional exhibits, constitute the entire AGREEMENT between **MAPC** and the **Vendor** with respect to the matters set forth therein and may not be changed (amended, modified or terms waived) except by a writing signed by both parties. Any notices required or allowed shall be sent by receipt-verified mail, e-mail, fax or courier to the persons designated in Exhibit A.
28. The provisions of the **IFB** and the **Vendor's** Bid are incorporated herein by reference. In the event of any conflict among the Contract Documents, the documents shall be construed according to the following priorities:

|                   |                                 |
|-------------------|---------------------------------|
| Highest Priority: | Amendments to Contract (if any) |
| Second Priority:  | Contract                        |
| Third Priority:   | Addenda to the IFB (if any)     |
| Fourth Priority:  | IFB                             |
| Fifth Priority:   | Vendor's Bid                    |

### Article XIV

#### Severability

29. In the event any provision of this AGREEMENT is found by a court of appropriate jurisdiction to be unlawful or invalid, the remainder of the AGREEMENT shall remain and continue in full force and effect.

### Article XV

#### Governing Law and Jurisdiction

30. This AGREEMENT shall be governed by, construed and enforced in accordance with laws of the Commonwealth of Massachusetts. **MAPC**, **Vendors**, and **Buyers** agree to submit their respective jurisdiction and venue to the state and federal courts in the Commonwealth of Massachusetts to resolve any disputes or disagreements that may arise under any provision of this AGREEMENT.

### Article XVI

#### Notice

31. Except as otherwise expressly provided in this AGREEMENT, any decision or action by **MAPC** relating to this AGREEMENT, its operation, or termination, shall be made only by **MAPC** or its designated representative identified in Exhibit A.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed by their duly authorized officers on the date written below.

For **MAPC** by or on behalf of the Cities, Towns and School Districts participating in this IFB and so listed in the document.

X \_\_\_\_\_

Signature

\_\_\_\_\_

Name

\_\_\_\_\_

Title

For the **VENDOR**:

X \_\_\_\_\_

\* Signature

\_\_\_\_\_

\* Title

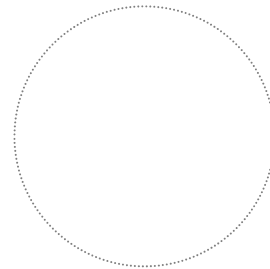
\_\_\_\_\_

\* Name

\_\_\_\_\_

Date

\* Date



\* Affix Corporate Seal

(or mark "n/a")

EXHIBIT A

Notice Addressees

For **MAPC:**

Marc Draisen

Name

Executive Director

Title

MAPC

Organization

60 Temple Place

Street Address

Boston, MA 02111

City, State, ZIP

617.451.2770

Phone

mdraisen@mapc.org

E-mail

For the **VENDOR:**

\_\_\_\_\_

\* Name

\_\_\_\_\_

\* Title

\_\_\_\_\_

Organization

\_\_\_\_\_

\* Street Address

\_\_\_\_\_

\* Street Address

\_\_\_\_\_

\* Phone

\_\_\_\_\_

\* E-mail

\_\_\_\_\_

EXHIBIT B

Invitation for Bids #

EXHIBIT C

Special Terms & Conditions

1. None

EXHIBIT D

Subcontractors

1. None

EXHIBIT E

Other Documents:

1. Insurance Guarantee(s)\_\_(to be provided for Contract execution)



EXHIBIT E

Vendor Bid:

**Vendor's Complete Bid**

\* \* \* \* \*