

## UNIFIED PURCHASING COOPERATIVE

### ICE CREAM & NOVELTIES (IC-2023) SECTION B SPECIAL CONDITIONS & INSTRUCTIONS

#### **1. INTENT OF INVITATION**

It is the intent of this Invitation for Bid to solicit proposals from qualified vendors in order to establish a 24 month contract for the purchase of Ice Cream Products by member districts and schools of the Unified Purchasing Cooperative.

#### **2. UNIFIED PURCHASING MEMBERSHIP**

The Unified Purchasing Cooperative membership is comprised of educational entities, both public and non-public, within Brown, Butler, Clermont, Hamilton counties (OH); Boone, Campbell, Kenton counties, and the Diocese of Covington (KY); and Dearborn, Ohio, Ripley counties (IN). **A membership listing is available on-line at [www.upcov.org](http://www.upcov.org).** The membership listing is provided for informational purposes only and is not to be used for any other purpose, including solicitations and/or vendor calls, unless prior permission has been granted by a specific school district or school.

All purchase orders submitted by members of the Unified Purchasing Cooperative shall be clearly marked as "Members of the Unified Purchasing Cooperative" so as to clearly designate an official member of the Unified Purchasing Cooperative.

#### **3. ESTIMATED QUANTITIES**

Based on past experience, member districts and schools of the Unified Purchasing Cooperative may spend approximately \$450,000 under contracts for dairy products. The Unified Purchasing Cooperative makes no guarantee or assurance that this amount can or will be ordered under this proposed contract. The quantities purchased may vary substantially in accord with demand and other factors. **\*\*Please note: Quantities represent usage amounts from 1 August – 28 February.\*\***

#### **4. CONTRACT TYPE**

This is a fixed price type contract. Member school districts and other entities have agreed to fulfill their purchase requirements of ice cream products from the successful vendor(s) during the contract period. Actual quantities and delivery times will be coordinated with the successful vendor and the members of the Unified Purchasing Cooperative.

The Unified Purchasing Cooperative, by awarding a contract to a successful vendor, shall not itself be responsible for the purchase of any products, or for the duty of members to pay for such products. Instead, the successful vendor(s) shall contract individually with member agencies in accord with the prices and conditions of contracting established with the Unified Purchasing Cooperative through this proposal selection process.

#### **5. PERIOD OF CONTRACT**

Any contract(s) awarded under this vendor selection process shall be in effect from August 1, 2023 through July 31, 2025 (**Two-Year Contract**). It is anticipated that this contract will be awarded not later than June 23, 2023. Vendor agrees that it shall have no cause of actions against the Unified Purchasing Cooperative or its members for lost sales during the retroactive portion of any contract awarded.

#### **6. CONTRACT AWARD**

The award shall be made, if at all, to the lowest and best responsible vendor submitting a responsive proposal. The Unified Purchasing Cooperative reserves the right at all levels in its evaluation process to consider factors other than price and to weigh such other factors as it sees fit, in its sole discretion. Each vendor submitting a proposal shall cooperate fully with the Unified Purchasing Cooperative in any pre-contract investigation deemed necessary by the Unified Purchasing Cooperative to assure that the vendor is willing, able and prepared to perform the contract.

Bids received from bidders not able to, or not willing to, provide equipment as detailed in Section 22 (Equipment) shall be deemed non-responsive.

**7. BID PROTESTS**

An unsuccessful bidder may protest the bid award by submitting in writing said protest within five business days of the bid award. The protest must state the nature and grounds of the protest. The Board of Directors will review the protest and communicate the findings of the Board to the protesting bidder within 30 business days. All administrative remedies with Unified Purchasing Cooperative must be exhausted before the bidder may pursue a protest at the state or federal level.

**8. CONTRACTS IN EXCESS OF \$100,000**

Contracts in excess of \$100,000 shall comply with:

Section 306 of the Clean Air Act (42 U.S.C. 1857) (h)

Section 508 of the Clean Water Act (33 U.S.C. 1368)

Executive Order 117389

Environmental Protection Agency Regulation (40 CFR Part 15)

**9. PRICING**

All prices shall include all costs, including transportation, involved in delivering products to each participating school and location. Pricing shall remain firm for the term of the contract.

Successful vendor(s) agree not to offer products sold under its price contract with Unified Purchasing Cooperative at equal or lower prices to other schools that are not a part of the Unified Purchasing Cooperative in Brown, Butler, Clermont, Hamilton counties (OH); Boone, Campbell, Kenton counties, and the Diocese of Covington (KY); and Dearborn, Ohio, Ripley counties (IN) during the duration of this contract.

Do not rely on current State of Ohio contract pricing in your response. The successful bidder will be expected to fulfill the obligations of the contract without reference to an expiration date inconsistent with the Unified Purchasing Cooperative's contract expiration. **PRICES SHALL BE F.O.B. DELIVERED.**

Two sets of prices are requested—one set including vendor-furnished equipment and one set not including vendor-furnished equipment. If the bid prices vary, please make copies of Section E and indicate “With Equipment” and “Without Equipment” in the upper right hand corner of the first page.

**10. CONTRACT EXTENSION**

The Unified Purchasing Cooperative reserves the option to extend this contract for one (1) additional contract period. Extension of the contract shall be by mutual agreement in writing.

**11. TERMINATION FOR CAUSE AND CONVENIENCE**

**Termination for Cause:** Except as may be otherwise provided by this document, the awarded contract may be terminated in whole or in part to the awarded contract in the event of failure by the other party to fulfill its obligations under the awarded contract through no fault of the terminating party; provided that no such termination may be implemented unless and until the other party is given:

- at least thirty (30) days written notice (delivered by certified mail, return receipt requested), from the Director of Unified Purchasing Cooperative, of intent to terminate, and
- an opportunity for consultation with the terminating party, followed by a reasonable opportunity, of not more than ten (10) business days or such other reasonable amount of time as may be required under the circumstances, to rectify the defects in products or performance, prior to termination.

**Termination for Convenience:** Unified Purchasing Cooperative reserves the right to terminate the awarded contract prior to the expiration of the term, without cause and without penalty, upon thirty (30) days' written notice, from the Director of the Unified Purchasing Cooperative, to the Selected Distributor.

**12. CONTRACT ASSIGNMENT**

Contract(s) resulting from this Invitation for Bid shall not be assigned in whole or part without written consent of the Director of the Unified Purchasing Cooperative.

**13. VENDOR PRESENCE ON MEMBER PROPERTY**

Vendor agrees that persons working for or on behalf of the vendor whose duties bring them on member property shall obey the rules and regulations that are established by the Unified member and shall comply with the reasonable directions of the Unified member. Vendor's employees shall not use existing areas where not required to perform the work.

Vendor shall be responsible for the acts of his/her employees and agents while on Unified member property. Accordingly, vendor agrees to take all necessary measures to prevent injury and loss to persons or property located on the Unified member property. Vendor shall be responsible for all damages to persons or property cause by vendor or any of his/her agents or employees. Vendor shall promptly repair any damage that he/she or his/her employees or agents may cause to the Unified member property or equipment.

**14. INSURANCE**

The vendor at his/her own cost shall secure and maintain the following minimum insurance coverage:

- Worker's Compensation sufficient to cover all vendor's employees pursuant to Ohio, Indiana and Kentucky statutes.
- Commercial General Liability insurance with the Cooperative named as an additional insured, in the minimum amount of \$500,000 per occurrence with a \$1,000,000 aggregate.
- Comprehensive Automobile Liability insurance including owned, hired and non-owned vehicles, with the Cooperative named as an additional insured in the amount of \$500,000 for a combined single limit per occurrence.
- Professional Liability insurance with the Cooperative named as an additional insured, in the minimum amount of \$500,000 per occurrence.

The vendor shall furnish the Cooperative the Certificates of Insurance or other evidence that insurance is effective, and guarantee the maintenance of such coverage during the term of the contract.

**15. SUBMITTALS**

Bidders shall submit an original and two (2) copies of all pricing.

**16. SPECIAL ORDER ITEMS**

Under no circumstances shall bidders submit bid pricing on "special order" products.

**17. PROCESSING AND PACKAGING**

The manufacturing facilities from which ice cream products are obtained shall be under continuous inspection of the United States Department of Agriculture. Each item furnished is to be individually packaged or wrapped, sealed and packed in cartons or boxes. Pasteurizing shall be at 150 degrees Fahrenheit for 30 minutes before adding flavors, fruits or nuts. Ice cream and/or ice milk sundae cups shall be provided in the sizes specified.

**18. SUSPENSION & DEBARMENT FORM**

Any person submitting a bid or proposal in response to this invitation must execute the enclosed 'Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions' and enclose it with his/her bid or proposal. If a person is submitting a bid or proposal on behalf of dealers or suppliers who will ship commodities and receive payment from the resulting contract, it is his/her responsibility to see that copy(s) of the form are executed by the dealers or suppliers and are included with his/her bid or proposal. Corrections to the form will not be allowed after the bid or proposal opening time and date. Failure to complete the form in every detail will result in immediate disqualification of the bid or proposal.

**19. BUY AMERICAN PROVISION**

Bidder(s) awarded a contract as a result of the Invitation for Bid shall comply with Federal Regulation 7 CFR 210.21D21 or applicable updated revisions thereof.

School Food Authorities (SFAs) are required to purchase, to the maximum extent practicable, domestic commodities or products. The National School Lunch Act (NSLA) Section 12(n) of the NSLA defines "domestic commodity or product" as an agricultural commodity that is produced in the U.S. and a food product that is processed in the U.S. substantially using agricultural commodities produced in the U.S. The term "substantially" means that over fifty-one (51) percent from American products by weight or volume. Therefore, when school foodservice funds are used to acquire foods, schools must ensure that the items are in compliance with this requirement.

- Federal regulations require that all foods purchased for Child Nutrition Program be of domestic origin to the maximum extent practicable. While rare, two (2) exceptions may exist when:
  - the product is not produced or manufactured in the US in sufficient, reasonable and available quantities of a satisfactory quality, such as bananas and pineapple; and
  - competitive proposals reveal the cost of a domestic product is significantly higher than a non-domestic product.
- **ALL products that are normally purchased by Distributor as non-domestic and proposed as part of this solicitation must be identified with the country of origin.** Distributor shall outline their procedures to notify Schools when products are purchased as non-domestic.
  - Any substitution of a non-domestic product for a domestic product (which was originally a part of the solicitation), must be approved, in writing, by the Food Service Director, prior to the delivery of the product to the School.
  - Any non-domestic product delivered to the School, without the prior, written approval of the Food Service Director, will be rejected.

Distributor must affirm their willingness to assert their best and reasonable efforts to ensure compliance with this federal rule.

**Bidders shall indicate whether products are domestic or imported.** If a domestic product line item price is more than ten percent (10%) higher than an imported line item price, the Cooperative reserves the right to award the line to the bidder offering the imported line item.

**20. STANDARDS**

All products shall be made with wholesome ingredients to meet or exceed the minimum standard definition of product for ice cream, ice milk and/or sherbet as defined by the Ohio State Department of Agriculture. All flavors used for sherbet, ice milk and ice cream shall be high grade, wholesome products. Ice cream mix shall contain not less than 10% butterfat. Notwithstanding compliance with the above standards, products must also pass an evaluation by the Cafeteria Food Supplies Selection Committee as to whether the variety of items offered by the vendor is sufficient, and whether the taste and texture of the products enhance their marketability.

**21. MICROBIAL ANALYSIS**

Certified bacteriological reports are required from each production facility from which product items originate. Total standard plate counts must be less than 10,000 per CC and in conformance with all the legal requirements, and product must be free from all other foreign substances.

**22. EQUIPMENT**

The vendor shall furnish its own freezer cabinets of adequate size, and capable of maintaining a temperature of less than zero (0) degrees Fahrenheit to service those schools which do not wish to provide freezers for the vendor's use. All freezers must meet the National Sanitation Foundation requirements and be of acceptable appearance and free from rust. The successful vendor shall be responsible for all maintenance of its freezers for the duration of this contract without cost to the Unified Purchasing Cooperative or its members, other participants in the Unified Purchasing process. The vendor shall contact the Food Service Director in each school or school district to determine whether it must provide its own freezers, and to arrange installation before the beginning of the 2023/2024 school year. The vendor's provision of freezers at school sites is for the vendor's use only, and is not a lease or rental of equipment to the Unified Purchasing Cooperative or its members. A list of schools that will provide freezer space for the successful vendor is available from the Unified Purchasing Cooperative.

**23. PRODUCT AVAILABILITY / PENALTY**

The successful bidder(s) shall maintain inventory of awarded items in sufficient quantity to meet all order requirements in a timely manner. Failure to do so may result in contract cancellation.

**24. GEOGRAPHICALLY RESTRICTED PROPOSALS**

Vendors may elect to propose to serve a limited geographical area or areas, but only if such areas are defined in this Invitation for Bid. Vendors must indicate on the Bid Proposal Form the area numbers they are bidding on.

**25. PRODUCT SPECIFICATIONS**

In the event that the Unified Purchasing Cooperative's specifications do not precisely state the brand, size and packaging for each product, the vendor shall precisely state this information for each item quoted. If the Invitation for Bid, after completion by the vendor, does not clearly specify brand names, sizes, packaging and the vendor's order numbers for each product, the proposal may be rejected. It is fundamental that all products quoted shall be furnished and properly labeled as to the contents according to all USDA requirements, regulations and guidelines.

**26. SAMPLES FOR EVALUATION**

The Unified Purchasing Cooperative reserves the right to request samples of any and all products quoted or later proposed for substitution in order to determine their quality and marketability. Such samples, when required, must be submitted at no expense to the Unified Purchasing Cooperative, and it is anticipated they will be used or consumed during the testing procedure.

Bidders must submit samples for line items for which the "Sample Required" box is checked (✓).

**All samples must be delivered by Friday, May 5, 2023. All items should be delivered to the UPC office, 1007 Cottonwood Drive, Loveland, OH 45140 (Entry B) between 7:00a – 11:00a. Deliveries made after 11:00a will not be accepted and the proposed item will not be considered.**

**DISTRIBUTORS must deliver all samples in one delivery. Multiple deliveries from the same distributor are not allowed.**

**27. PACKAGING, MARKING & HOLDING QUALITY OF PRODUCT**

Standard high commercial packaging and markings are required. Brick ice cream, ice milk and/or sherbet will be so cut, handled, wrapped and packed that they will not soften or be crushed when packed or stacked, or stick to each other or to their container or lining. Finished products will be well-frozen and otherwise in prime condition when delivered. All products delivered must comply with the applicable requirements of local and state departments of health.

**28. DELIVERY AND DELIVERY VEHICLES**

Vendors shall use only properly insulated, mechanical temperature-controlled refrigeration delivery equipment capable of maintaining continuous temperatures to protect the product. In addition, the Unified Purchasing Cooperative reserves the right to reject the use of any vehicle utilized by a supplier or carrier that is not clean and sanitary and suitable for hauling and maintaining products in a fresh, wholesome and attractive condition. All delivery vehicles must meet the National Sanitation Foundation requirements.

Prompt delivery, both as to regularly scheduled and special orders, in accord with the varying requirements of individual participants in the Unified Purchasing Cooperative, is a prime concern under this contract, and under the individual contracts with those participants. Because time is of the essence in delivery and service, for both health and marketing purposes, delivery shall be made only in vehicles and by drivers under the exclusive control of the vendor, and performance of this contract shall at all times take precedence over other uses of such vehicles by the vendor.

All deliveries must be made "inside" the designated building, as arranged between the successful bidder and the Food Service Director. Deliveries must take place between the hours of 6:30 a.m. and 1:30 p.m., Monday through Friday with the exception of school closings and holidays unless otherwise arranged by the Food Service Director. If the normal delivery day happens to fall on a holiday or on a day the school is closed, an alternate delivery date must be approved by the Food Service Director.

**29. DELIVERY TICKETS, INVOICES AND PAYMENT**

Payment will ordinarily be paid monthly by the 15th of each month following the month of actual delivery of products. In order to facilitate payment, vendors must adhere to the following instructions:

- (a) Each delivery must be accompanied by an invoice or delivery ticket that clearly indicates:
  - (1) Name of supplier
  - (2) Purchase order number
  - (3) Itemized list of products
  - (4) Date of delivery
- (b) There shall be sufficient copies to allow a minimum of two (2) copies of the delivery ticket to be left with the authorized individual receiving for the member school as designated by the Food Service Director.
- (c) Any rejections or merchandise returned must be recorded by individual accepting the return on behalf of the vendor on all copies of the accompanied delivery ticket. One copy is to be left with the authorized individual representing the member school or in a location designated by the Food Service Director.

Any discrepancy in billing shall be reported to the vendor upon its discovery by the participating schools or school district, and each party shall cooperate fully in correcting errors.

**30. SHORTAGES OR SUBSTITUTIONS**

Any discontinued items must be reported to the Unified Purchasing Cooperative, in writing, prior to any substitution or discontinuance of product delivery. The Unified Purchasing Cooperative may within 30 days after receipt of a contractor's written notification of product change, cancel without liability to either party, any portion of the contract affected by the requested notice of change and undelivered at time of cancellation. Should a vendor substitute or discontinue items without good cause, the Unified Purchasing Cooperative may, at its option, cancel the contract and permit member school districts to independently purchase dairy products for the remainder of the contract period.

**31. PRICE ADJUSTMENTS**

As indicated, prices are to be firm for the term of the contract; however, it is understood that vendor costs may increase on certain items during the contract period.

In the event of a price increase passed to the vendor from the manufacturer, the vendor has two options:

- (a) The vendor may absorb the cost and retain the contracted item(s) for the term of the contract.
- (b) The vendor may request that the Cooperative rebid the items in question and the vendor will risk losing the items for the remaining term of the contract.

If rebidding is requested, the items to be rebid will be included in the Cooperative's "Mid Year Bid for New Products". This will be the only time items can be rebid during the contract period. To have items included in the mid year bid, the vendor shall submit a list of items not later than October 1, 2023.

**32. RECEIVING, INSPECTION AND TESTING**

Final inspection of all products will be made by the receiving food service personnel at point of delivery. All products shall be inspected for condition, wholesomeness and compliance with the item description at the time of delivery. Products that deviate from specifications may be rejected and a replacement demanded, at no cost to the Unified Purchasing Cooperative member.

If a dispute arises over interpretation of a specification, the product shall be isolated in an appropriately temperature controlled area, and an inspection may be requested from the Unified Purchasing Cooperative and/or the Ohio Department of Agriculture as appropriate.

The receiving Unified Purchasing member reserves the right to reject any and all product delivered, which in the opinion of the member or its authorized representative, does not comply with all bid requirements, and all materials so rejected shall be removed and replaced promptly by the bidder at no cost to the Unified Purchasing Cooperative member.

**33. TERMS OF PAYMENT**

Payment shall normally be made on or before the 15th day of the month following the month of receipt of an invoice for products delivered. However, the terms of any agreement between the vendor and an individual school or school district shall prevail.

**34. SALES REPRESENTATION**

Both service and cost are an important part of the award process. All members are entitled to a designated sales representative. The sales representative shall call on the member as satisfactorily arranged between the representative and the food service director or their designee.

**35. REPORTS**

Successful vendor(s) will be required to supply quarterly usage reports to the Unified Purchasing Cooperative beginning with the effective day of contract, August 1, 2023 through July 31, 2025. Reports must show a compilation of all Unified Purchasing Cooperative members participating in this contract.

**36. MAINTENANCE OF RECORDS**

The successful bidder(s) agree to retain all records and documents pertaining to this Invitation for Bid for three (3) years after final payment has been received.

**37. SERVICE TO NEW MEMBERS**

The successful bidder(s) shall be required to service all members that join Unified Purchasing Cooperative during the contract period or any extension thereof.

**38. MINIMUM ORDER REQUIREMENT**

The Unified Purchasing Cooperative considers a \$125.00 minimum delivery requirement to be fair and reasonable. In addition, the vendor may assess a \$25.00 minimum delivery charge on orders not meeting this minimum delivery requirement. The minimum delivery requirement will not be imposed on shortages or backordered items, or on orders that do not meet the minimum requirements as a result of shortages or backorders, as these situations are beyond the control of the Unified Purchasing Cooperative members. It will be the responsibility of the successful bidder to promptly deliver any shortages or backordered items with no additional costs imposed.

**39. NON-DISCRIMINATION**

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 Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992 (Voice). Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer.

**40. HISTORICALLY UNDERUTILIZED BUSINESSES (HUB)**

Per 2 CFR §200.321 contracting with Minority & Women's Business Enterprise (MWBE), Small Business Enterprise (SBE), and Labor Surplus Area (LSA) firms both as prime and subcontractors is encouraged.

a. The non-federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

b. Affirmative steps must include:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises

- v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce
- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (i.) through (v.) of this section.

The prime contractor must take the affirmative steps outlined above. It will be the responsibility of the prime contractor to pre-qualify subcontractors offered as Small and Minority Business, Women's Business Enterprise, and Labor Surplus Area Firm participants. These entities must meet the same minimum standards and requirements as the prime contractor. Proposers shall indicate on their submitted proposals whether they are a Small and Minority Business, Women's Business Enterprise, or Labor Surplus Area Firm and with whom they are certified, e.g. City, State, Federal, and include a copy of the certificate(s)/documentation with the proposal response, this includes Historically Underutilized Business (HUB) Certificates issued by the State of Ohio's Minority Business Enterprise program, or State equivalent.

**41. OHIO ETHICS**

Contractor represents that it and its employees engaged in the administration or performance of this Contract are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws. Contractor further represents that neither Contractor nor any of its employees will do any act that is inconsistent with such laws.

**42. NUTRITIONAL INFORMATION**

Manufacturer's nutritional information labels shall be furnished on all items awarded to the successful bidder(s). The successful bidder(s) shall submit this information to the Cooperative in a PDF format, on a "thumb drive", not later than August 1, 2023. The information shall be in sequential order using the Unified Purchasing Cooperative Product Code. The Cooperative will upload this information onto its website (upcov.org) for member access.

**43. SILENCE OF SPECIFICATIONS**

The apparent silence of specifications and any supplemental specifications as to any detail or the omission from the specifications of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and correct type, size and design. All interpretations of these specifications shall be made on the basis of this statement.

**44. COMPLIANCE WITH LAWS**

Vendor shall comply with all Federal, State and local laws, statutes, ordinances, rules, and regulations, including, if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. For the entire duration of this contract/agreement, Vendor shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Agreement. When required or requested by Unified Purchasing Cooperative, Vendor shall furnish the Cooperative with satisfactory proof of Vendor's compliance with this provision.

**45. EQUAL EMPLOYMENT OPPORTUNITY**

To the extent applicable, the successful vendor must comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**46. DAVIS-BACON ACT**

As amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also

include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**47. 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.

**48. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**49. FOOD RECALL, MARKET WITHDRAWALS & SAFETY ALERT & CITATIONS REQUIREMENT TO NOTIFY PROCEDURES**

Vendor must comply with all federal, state and local requirements relating to food safety and food recalls. Vendor must have procedures in place to respond effectively to a food recall. The procedures must include accurate and timely communications to SFAs as well as mechanisms to identify and remove recalled products from SFA sites in an expedient, effective and efficient manner. Vendor must maintain all documentation required for immediate and proper recall notification with regard to full and split cases. Vendor must also ensure that any storage facilities it uses are in compliance with all federal, state and local requirements relating to food safety and health (including obtaining any required health inspections) and to procedures for responding to a food recall, as applicable. *The successful vendor must submit their food recall procedures and identify two points of contact for the AGENCIES.* In the event of a recall, AGENCIES’ points of contact are:

Linda Eichenberger  
[linda@upcdrv.org](mailto:linda@upcdrv.org)  
513-674-4598

Rich Pingilley  
[rich@upcdrv.org](mailto:rich@upcdrv.org)  
513-674-4599

The Unified Purchasing Cooperative requires all awarded vendors to provide immediate written notice for any bid product that has been recalled, withdrawn from the market, or subject to a safety recall by any local, state or federal agency. In addition, any written sanitation citation issued by any local, state or regulatory agency in a production facility where a bid product is processed shall be provided to the Unified Purchasing Cooperative. The Unified Purchasing Cooperative reserves the right to immediately terminate a vendor contract for failure to disclose a citation, recall, market withdrawal or safety alert.