

CHILD NUTRITION PROGRAM – NON-FOOD
CS-2024 Cafeteria Smallwares
SECTION B
SPECIAL CONDITIONS & INSTRUCTIONS

1. INTENT OF INVITATION

In accordance with the attached specifications, it is the intent of this solicitation to receive bids from qualified bidders in order to establish a twelve (12) month contract for the purchase of 'Cafeteria Smallwares' 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, Highland, Warren counties (OH); Boone, Campbell, Kenton counties, and the Diocese of Covington (KY); and Dearborn, Franklin, Ohio, Ripley counties (IN). A **membership listing is available on-line at 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

It is estimated that member districts and schools of the Unified Purchasing Cooperative anticipate spending approximately \$27,000.00 against a single contract resulting from this bid. Estimates are provided for planning purposes only and the Unified Purchasing Cooperative makes no guarantee that this amount can or will be ordered by this proposed contract. Any quantities shown are given as a guideline only in preparing bids as they are estimates and may be increased or decreased. ****Please note: Quantities represent usage amounts from 1 August – 29 February.****

4. CONTRACT TYPE

This is a fixed price contract. It provides for fulfilling all actual purchase requirements of Cafeteria Smallwares from the successful bidder(s) during the contract period. Actual quantities and delivery times will be on the basis of timely orders placed by member districts and schools of the Unified Purchasing Cooperative.

5. PERIOD OF CONTRACT

Any contract(s) awarded by this bid shall be in effect for a twelve (12) month period from the effective date of award. It is anticipated that this contract will be awarded not later than June 21, 2023 with an effective date of August 1, 2024 through July 31, 2025.

6. CONTRACT AWARD

Award shall be made in the best interest of the Unified Purchasing Cooperative and its members.

It is the intention of this Invitation for Bid to award contract(s) to the responsive, responsible bidder(s) offering the best overall value, which includes price, service, and quality of product as determined by the Cafeteria Food Services Catalog Committee.

Unified Purchasing Cooperative reserves the right to award contracts on a "line item" basis or to award the entire bid to one bidder.

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 the following or applicable updated version thereof:

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

Successful vendor(s) agree not to offer products sold under the resulting price contract with Unified Purchasing Cooperative at equal or lower prices to other schools who 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.

Pricing shall remain firm for the term of the 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.**

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. PRODUCT AVAILABILITY

This bid anticipates that suppliers will make all arrangements to order, store and have available product in sufficient quantity to meet all orders within a timely manner.

14. FORCE MAJEURE

Except to the obligation to make payment, any delay in or failure of performance by either party to this contract shall not constitute a default under this contract nor give rise to any claim for damage, cost, or expense if and to the extent such delay or failure is caused by an act of God, flood, fire, earthquake or explosion, war, invasion, hostilities, terrorist threats or acts, riot or other civil unrest, government order or law, actions, embargoes or blockades, national or regional emergency, or other similar event beyond the control of the delayed or non-performing party. Notwithstanding the foregoing, a party that is delayed in or prevented from performing for any reason shall promptly notify the other party in writing of the reason for the non-performance and the anticipated extent of any delay or non-performance and shall take diligent steps to minimize the adverse impact of the delay or non-performance.

15. 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.

16. 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.

17. HOLD HARMLESS

The successful vendor agrees to jointly and severally indemnify and hold Unified Purchasing Cooperative and its members, its agents, successors and assigns harmless from and against all liability, loss damage or expense, including reasonable attorney's fees which may be incurred or sustained by reason of failure of the vendor to fully perform and comply with the terms and obligation of any contract resulting from the Invitation for Bid.

18. CHOICE OF LAW AND VENUE

The resulting contract shall be construed under the laws of the State of Ohio and venue in any action to enforce the contract shall be in Hamilton County, Ohio.

19. SUBMISSION OF BID DOCUMENTS

Unless approved prior to submission, all bid pricing must be submitted to bids@upcdrv.org. Any bids submitted using spreadsheets that are not UPC-issued (protected) may be disqualified.

All documents requiring signatures must be either submitted with the bid pricing to bids@upcdrv.org or submitted to the Unified Purchasing Cooperative office before the bid opening time and date.

Bidders electing to submit documents requiring signatures to bids@upcdrv.org must also submit original signed documents in a sealed envelope to the Unified Purchasing Cooperative office within three (3) business days after the bid opening date. Failure to do so will invalidate the bid. These documents shall remain sealed until the date and time of the bid opening.

20. 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 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.

21. BRAND NAMES

The brand names specified in the Bid Proposal Form have been found to be acceptable to the Food Service Catalog Committee on the basis of actual use in their School Food Service Program(s). Their use in the Invitation does not preclude your bidding on an "or equal product," unless otherwise specified. The use of the brand name is solely to provide an indication of a product found to be acceptable. Products bid as "equal" will be inspected for conformance with the salient features of the brand names cited.

22. MODIFICATIONS

Modifications, additions, or changes to the terms and conditions of this Invitation for Bid may be a cause for rejection of a bid.

23. SAMPLES

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" column contains a YES.

24. DELIVERY

PROMPT DELIVERY IS A PRIME CONCERN. Member districts and schools of the Unified Purchasing Cooperative do not maintain the bid items in stock. Bidder will be expected to make deliveries at minimum on a weekly basis, and respond to emergency or unforeseen shortages in a prompt manner. Deliveries must be arranged between vendors and individual food service personnel as is most advantageous to both parties.

All articles, materials and papers shall be delivered to the site specified by either the purchase order or the Food Service Director or their authorized designee. The successful bidder shall package and label all deliveries as specified on the purchase order.

Separate purchase orders MUST not be combined.

All deliveries must be made "inside" the designated building, as arranged between the successful bidder and the Food Service Director and must take place within the hours of 6:30 a.m. and 1:30 p.m. unless otherwise arranged by the Food Service Director,

Monday through Friday with the exception of school closings and holidays. 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.

25. DELIVERY VEHICLES

Suppliers shall use only clean sanitary vehicles for delivery of any product. The Unified Purchasing Cooperative reserves the right to reject the use of any equipment used by a supplier or carrier that is not clean and sanitary and suitable for hauling and maintaining product in a wholesome condition.

26. SHORTAGES OR SUBSTITUTIONS

Food Service Directors and personnel must be informed immediately if an order will be shorted or if an item requires substitution. Any substituted items must meet or exceed the specification(s) of the originally ordered product. All substitutions must be made at the contracted price. Any out of stock item(s) will be delivered at no extra charge as soon as the product is received by the contracted vendor, unless otherwise arranged by the Food Service Director or their authorized representative.

Any items discontinued must be reported to the Unified Purchasing Director, in writing, prior to any substitution or discontinuance of product delivery taking place. The Unified Purchasing Director, in conjunction with the Food Service Committee, may within thirty (30) days after receipt of a contractors 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.

27. 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, 2024.

28. INSPECTION

Final inspection of all products will be made by the receiving food service personnel at point of delivery. Product shall be inspected for condition and compliance with the item description. Product deviated from specification will be rejected and replaced with the conforming product at no cost to the Unified Purchasing Cooperative member. If a dispute arises over interpretation of a specification the product shall be held in an appropriate area and an appeal inspection shall be requested from the manufacturer.

29. RECEIVING, INSPECTION AND TESTING

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

30. MINIMUM ORDER REQUIREMENTS

The Unified Purchasing will not consider any bids with a minimum order requirement exceeding \$150.00. In addition, the vendor may assess a \$25.00 minimum delivery charge on orders not meeting the 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 requirement 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.

31. ADMINISTRATIVE FEES

The successful vendor(s) shall be required to pay a 1% (one percent) contract administrative fee to the Cooperative, based on net sales. The fee covers contract award and administration, and any required contract auditing

Vendor(s) shall maintain accurate records and submit quarterly usage reports along with check for administrative fee. The check shall be payable to Unified Purchasing Cooperative, 1007 Cottonwood Drive, Loveland, OH 45140, not later than twenty (20) working days after the end of the contract quarter.

32. NON-BID ITEMS

Members may ask and/or request contract pricing on items not listed in the bid. These requests shall be made to the awarded vendor(s). Pricing shall include delivery.

33. REPORTS

Successful bidder(s) will be required to provide compiled quarterly reports, to the Unified Purchasing Cooperative of all member schools and their purchase activity for each period beginning with the effective contract date of August 1, 2024 through July 31, 2025.

34. MULTIPLE BIDS

Unless otherwise specified, only one price, brand or item number may be proposed for each item on this Invitation for Bid. Bidders must determine their single best offering based on the quality specified. Each line item bid not conforming to this requirement will be rejected.

35. ACCESS TO RECORDS

All contracts over \$10,000 must include a provision to the effect that the SFA, the State agency, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making an audit, examination, excerpts, and transcriptions.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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."

43. 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.

44. 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.

45. 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.