

Instructions to Bidders

INVITATION FOR BIDS/PROPOSALS:

Sealed bids/proposals are being solicited for the merchandise, supplies, services and/or equipment as set forth in this Bid Invitation by the Region III Education Service Center (hereafter called the Service Center) in accordance with the attached specifications, terms and conditions.

Completed bid documents must be received by the Region III Education Service Center, Attn: Purchaser/Accountant, 1905 Leary Lane, Victoria, TX 77901-2899 before the due date to be considered. Late proposals will be returned to the bidder unopened.

Bids must be submitted in a sealed envelope and properly marked with the Bid Number, Product Category, Opening Date and Time as follows:

BID NO. 07-025-08 – NUTRITION SERVICES BID, OPENS JULY 24, 2008 @ 3:30 P.M. The contract time period for this bid is September 1, 2008 through August 31, 2009. However, the Service Center does reserve the right to award bid to a vendor for a longer initial term period than time period stated in the Bid Certification if it is determined to be in the best interest of the Service Center.

Bids may be withdrawn prior to the opening date and time, but only in accordance with Section 17 of the General Terms and Conditions Document entitled "Withdrawal or Modification of Bid." Proposals received without proper signature are not acceptable.

Questions regarding this Bid Invitation should be addressed to the following address at least 3 working days before the bid opening.

Region III Education Service Center
Attn: Purchaser/Accountant
1905 Leary Lane
Victoria, TX 77901-2899
Telephone: (361) 573-0731

General Terms and Conditions

A. General Provisions

1. Bid Preparation and Submission Procedures

Sealed bids will be received until the deadline indicated in the Bid Certification.

Each bid must be submitted in a **SEALED** opaque envelope (or other non-transparent package or container). The outside of the bid envelope (or other package or container) must bear the following information in clear and legible form:

- a) In the upper left-hand corner: print the full name and address of the bidding entity, and the name and telephone number, including the area code, of the person to contact with questions about the bid submission; and
- b) In the lower left-hand corner: "SEALED BID," the bid name, bid number, and submission deadline indicated on the Bid Certification.

Bids may be submitted by U. S. Mail, common carrier, or other courier or delivery service, or by hand delivery. If forwarded by mail or other courier or delivery service, the **sealed** bid envelope, identified as indicated above, should be enclosed in **another envelope** addressed as specified below. The Region III Education Service Center, hereinafter called "Service Center" will not be responsible for bids or related correspondence that are missent, misdelivered, or misplaced. The date/time record of the Service Center staff will be the official time of receipt.

Bids should be addressed and delivered to:

Region III Education Service Center
Attn: Purchaser/Accountant
1905 Leary Lane
Victoria, TX 77901-2899

Bids received after the deadline will not be accepted for consideration, and will be returned unopened. Bids received in an unsealed condition will not be considered. **Faxed bids or related communications will not be accepted.**

A representative of the bidding entity who is authorized to enter into contracts on behalf of the bidding entity must sign bids in ink. The person signing the bid must indicate his/her title along with signature. Bids received without proper signature will not be considered.

Bidders must return all properly signed original documents required in the bid response. Bidders should retain photocopies for their files. Any change made to any written response on any of the bid documents must be made in ink by marking through the original entry and clearly entering the new information alongside the change. Changes should not be made with correction fluid. All changes must be "initialed" by the person making the change, and the name of the person who initialed the change must be noted in a footnote on the same page containing the correction. **Failure to return any document or information requested as part of the bid response may result in the rejection of the entire bid.**

Bidders or their authorized representatives are expected to fully inform themselves as to the terms, conditions, requirements and specifications of this Bid Invitation before submitting bids. Failure to do so will be at the bidder's own risk. The law makes no allowance for errors of omission or commission on the part of bidders; furthermore, the bidder cannot secure relief on the plea of error or ignorance concerning any requirement included in the Bid Invitation.

Vendors who do not bid on this particular bid, but who want to remain on our bid list for future opportunities in this product category should complete, sign, and submit the signature sheet entitled "Bid Certification" with **"NO BID"** indicated on the face of the sheet.

Bidders are welcome to attend the bid opening at the date and time indicated in the Bid Certification, but bidder presence is not required, and no weight or other consideration toward any award decision will be

given to any bidder's attendance or absence at the bid opening. Recaps of the details of the bids received will be available to any interested party upon WRITTEN request. The form and content of the bid recaps will be at the sole discretion of the management and staff of the Service Center. They may be in electronic form.

2. Statement of Inclusion/Applicability

These General Terms and Conditions are applicable to all Bid Invitations issued by the Service Center, and by this inclusion, they become an integral part of any contract which is awarded, or purchase order which is issued in association with this Bid Invitation.

3. General

Throughout this document, the terms "Region III Education Service Center," "Service Center," "Center," etc. are used interchangeably to mean "the collective, Service Center association and the related activities of the management and staff of the Region III Education Service Center."

The section titles contained in this General Terms and Conditions document are for convenience and reference only, and in no way define, describe, extend, or limit the scope or intent of the provisions of any section of this document. The terms "Bid" and "Proposal" may be used interchangeably.

Unless otherwise stated, any listing of factors or criteria in this document does not constitute an order of preference or importance.

Unless otherwise specified, you may bid on any or all items. Answer all questions related to each item on which you wish to bid. For items you do not wish to bid on, you may simply leave the questions for that item unanswered (blank), or you may enter "No Bid" or "N/B." Items will be considered individually and awards will be made on each item independently, except for "related" items for which "compatibility" will be an element of consideration. In such cases, small groups of items will be considered as a unit.

Bidders who do not wish to respond to this Bid Invitation, but who would like to remain on our bidders list for this commodity category should sign and return the "Bid Certification" form with "NO BID" indicated on the face of the form. Failure to adhere to this procedure may result in removal of the bidder's name from our bidder list.

In the case of any trade-in, auction, return, or exchange of property, any references (name, logo, decal, etc.) to the Service Center on the item traded-in, auctioned, returned, or exchanged must be removed by the bidder that is awarded the bid.

Small and Minority Firms, Women's Business Enterprises and Labor Surplus Area firms are especially invited to submit bids.

The term "contract," as used in this document, means the comprehensive collection of:

- a) this General Terms and Conditions document, including any attachments and or amendments thereto,
- b) the Item Specifications included in the Bid Invitation and any subsequent addenda thereto,
- c) the bidder's signed Bid Certification sheet, which must be completed, signed by an authorized representative of the bidding entity, and returned with the bidder's response, along with this ENTIRE Terms and Conditions document and all other forms and information collection pages included with this Bid Invitation,
- d) the bidder's entire response to the Bid Invitation,
- e) the bidder's Notice of Award document,
- f) And any additional terms, conditions, or instructions contained in each individual Purchase Order issued by any member(s) of the Service Center.

Collectively, these documents represent the entire agreement between the parties.

4. Contract Time Period

The time period for purchases covered by a contract resulting from an award under this bid is stated in the Bid Certification. The Service Center reserves the right to award bid to a vendor for a longer initial term period than time period stated in the Bid Certification if it is determined to be in the best interest of the Service Center. Unless otherwise indicated in these General Terms and Conditions, all bid pricing will be firm through the entire contract period.

Upon mutual written agreement of the parties, this contract may be extended beyond the expiration of the contract time period in accordance with section #38 of this General Terms and Conditions document entitled "Extension/Non-Appropriations Clause."

The transfer, assignment, or subcontracting of contracts is prohibited, and the bidder agrees not to sell, assign, transfer, convey, or subcontract any portion of any contract resulting from this Bid Invitation without the prior written consent of the Service Center.

5. Addendum

In the event that any changes to this Bid Invitation occur subsequent to the mailing or other delivery of the original Bid Invitation, the changes or corrections to this Bid Invitation will be made by addendum, and any updated information contained in any addendum will prevail over the information contained in the original Bid Invitation or any previous addendum. Each addendum will be mailed to all entities that are known to have received a copy of this Bid Invitation. The Service Center is the sole authority for the issuance of any addendum related to this bid. Any communications from any person or entity other than the Service Center regarding any matters related to this bid are invalid and will have no influence on this Bid Invitation.

Each addendum must be acknowledged on the acknowledgment form provided with the addendum. Any required acknowledgment form must be submitted along with the submission of any bid response.

6. Specifications

Catalog numbers, brand names, or manufacturer's product or reference numbers used in the item specifications are intended to be descriptive, not restrictive. These references, as well as "approved brands" listed, are intended to identify and indicate the type of product being sought, and establish the level of quality desired. If any conflict exists in the item specifications between the product descriptions and any brand names or model or reference numbers used, the product descriptions will override the brand names or model number references.

In most cases, bids on brands of equivalent nature and quality will be considered, provided they are regularly produced products from a reputable manufacturer. However, in some cases, the Service Center may find it advantageous to standardize equipment and/or supplies by manufacturer in order to achieve efficiencies in procurement, repair, and operation, to match existing stock, or to satisfy other requirements. In these cases, preference will be given to the specific products identified as "approved brands," especially if all other evaluation factors are deemed to be equal. For this reason, where specific brands or models are identified, it is preferable for the bidder to bid on the exact item specified, in addition to an alternate brand or model where desired.

All bids must identify the manufacturer, brand, model, etc. of the article being offered. For bids on "or equal/equivalent" items other than any "approved brand" specified, the bidder must supply a complete description and sufficient data for the Service Center to properly analyze the product being bid. Samples may be requested for items other than "approved brands."

If the bidder fails to identify the manufacturer, brand, model, etc. for any item being bid on, the Service Center will assume the bidder is bidding on the **exact brand and model identified in the specification**, and if awarded, the vendor will be required to furnish the **exact brand names, models, etc. as specified**. **Substitutions will not be allowed.**

The apparent silence of the specifications as to any detail or the apparent omission from any specification of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices shall prevail. All interpretations of the specifications shall be made on the basis of this statement.

If you discover or suspect an error in the item specifications in this Bid Invitation, please note it as part of your bid response. We will attempt to correct errors for future Bid Invitations.

7. Bid Evaluation and Award

All bids received in response to this Bid Invitation which are submitted in accordance with the instructions and restrictions contained in section #1 of this General Terms and Conditions document entitled "Bid Preparation and Submission Procedures" will initially be considered for award; however, initial consideration of any bid will not constitute an assessment of its meeting the necessary qualifications, and any bid may be disqualified at any time during the process of evaluating bids for failure to meet any other terms or conditions contained anywhere else in the Bid Invitation.

The Service Center reserves the right to waive any or all bidding irregularities, formalities, or other technicalities, to be the sole and independent judge of quality and suitability of any products offered, and may accept or reject any bid in its entirety, or may reject any part of any bid without affecting the remainder of that bid, and may award the individual items on this bid in any combination or in any way to best serve the interests of the Service Center as it perceives those interests to be in its sole discretion.

In accordance with current legal requirements the Service Center will give preference to agricultural goods produced and processed in Texas when cost and quality are equal to those of out-of-state products.

It is not the policy of the Service Center to purchase on the basis of low bid price alone. All bid items are subject to evaluation and approval by the board of the Service Center. In evaluating the bids received and determining the best value for the Service Center, the Service Center may consider any combination of the following criteria: (1) the purchase price; (2) the reputation of the vendor and of the vendor's goods and/or services; (3) the quality of the vendor's goods and/or services; (4) the extent to which the goods and/or services meet the needs of the Service Center; (5) the vendor's location, service and delivery capabilities with preference given to a vendor who can serve a larger geographic area if the price difference does not exceed 5%; (6) the vendor's past performance with the Service Center; (7) student preferences; (8) the warranties offered and the bidder's warranty service history; (9) the probability of continuous availability of the goods and/or services offered; (10) the impact on the ability of the Service Center to comply with any applicable laws or rules, including those relating to the utilization of historically underutilized businesses; (11) the total long-term cost to the Service Center to acquire the vendor's goods and/or services; (12) packaging of the product and in some cases preference is given to a vendor who provides all the components relative to the complete package, and (13) any other relevant factor that a public or private entity could consider in selecting a vendor.

It is understood that the Service Center, through its management, may use all means at their collective disposal to evaluate the bids received on these criteria, and the final decision as to the best overall offer, both as to price and to suitability of the products and/or services offered to fit the needs of the Service Center, will rest solely with the Board of Directors of the Service Center or assigned representative.

Unless otherwise indicated in this Bid Invitation, "all or nothing" bids are not acceptable and will be rejected. The bidder must be willing to accept a partial award for any combination of the items and/or services bid, and must be willing to share the business with any other successful bidders.

The successful bidder(s) will be notified by "Notice(s) of Award" issued by the management of the Service Center.

The Service Center reserves the right to require a performance bond as it is deemed necessary.

B. Performance

8. Quantities

Quantities reflected in this Bid Invitation are estimates based upon the combined projected needs for the Service Center during the contract period. Quantities are the best estimate of anticipated needs available at the time of publication of this Bid Invitation, but the accuracy of these estimated quantities may be affected by numerous factors including, but not limited to, budgetary adjustments, student participation, availability of government commodities or other subsidies, changing market forces, unintentional errors or omissions, and changes in Service Center participation. Actual needs may be greater or less than the estimated quantities provided.

Unless otherwise specified by the bidder, the Service Center will be allowed to purchase up to twenty-five percent (25%) more or up to twenty-five percent (25%) less than the estimated quantities for any item and still obtain the item at the bid price.

Vendors will be notified of significant changes in the estimated quantities, as they become known throughout the contract period.

Successful bidders will be required to monitor consumption rates and bring any exceptions to the attention of the Service Center management as soon as possible. The Service Center will communicate slow-moving items if notified by the vendor. Except for conditions discussed within section #23 of this document entitled "Force Majeure," vendors are required to maintain sufficient inventories to cover the needs of the Service Center with only minimal, occasional, and temporary inability to provide products on a timely basis. Vendors at the close of the contract period agree not to hold the Service Center liable for any inaccuracies in estimated quantities or for any products on hand.

9. Packaging

Unless otherwise provided for in this Bid Invitation, all products supplied under any contract resulting from this Bid Invitation must be packaged in containers that are new, appropriately designed for the products involved, and sturdy enough to protect the products involved in loading, transit, unloading, and storage. Any products supplied under any contract resulting from this Bid Invitation for which palletizing is appropriate must be delivered on standard 48" 4-way pallets in good, serviceable condition.

10. Pricing

All "Line Item" Bids must be for a specific price for the unit of measure specified for that item. The bidder is responsible for clearly noting any differences in proposed packaging and/or units of measure in the bid response, and the bidder shall understand that if the item in question is awarded to the bidder, the quantity specified for that item will be adjusted to achieve an approximately equivalent amount of the product.

In cases where another price is requested for comparison purposes (e.g., "portion price" or "price per ounce"), such price is for comparison purposes only. Purchases will be made in increments of the unit of measure specified. In the case of any discrepancy or error in comparison price calculations, the price for the unit of measure specified will prevail. Excessive errors in comparison price calculations will be sufficient grounds for rejection of the entire bid.

"Discount from Catalog" Bid Invitations require a single discount percentage to be applied to all items in the bidder's published catalog, which must be supplied with the bid response.

"Cost Plus" bids will not be accepted unless otherwise requested in this Bid Invitation.

Bid prices must be firm for acceptance for at least 90 days from bid opening date, unless otherwise specified in this Bid Invitation or in the bidder's response.

If during the term of the contract, a successful bidder's net prices to any or all of its other customers in similar market circumstances for any of the same items awarded under this Bid Invitation are reduced below the contracted price, it is understood and agreed that the benefits of such price reduction shall be extended to the Service Center.

11. Sales Tax

The Service Center is a public jurisdiction that is exempt from sales, excise, and use taxes. Upon request, the Service Center will provide a Tax Exemption Certificate to the vendor. Unless otherwise specified in this Bid Invitation, sales tax will not be included in any bid response or invoice submitted by any vendor unless the vendor has requested a Tax Exemption Certificate from the Service Center in writing and failed to receive the same within a reasonable period of time. The Limited Sales, Excise, and Use Tax Laws recognize the inclusion of tax exemption information as part of a purchase order document to be as binding as if it had been submitted separately, and by responding to this Bid Invitation, the bidder agrees to accept tax exemption information in such form.

12. Delivery and Transportation

Unless otherwise noted in these General Terms and Conditions or the Purchase Order, or unless prior approval has been obtained from the Service Center member placing the order, all deliveries shall be made between the hours of 8:00 A.M. through 11:30 A.M. and 1:30 P.M. through 3:30 P.M. (4:30 P.M. for members other than school districts), Monday through Friday, holidays excepted.

Unless otherwise noted in this Bid Invitation or in the Purchase Order, the bidder must deliver products awarded under this Bid Invitation within ten (10) working days after receipt of a Purchase Order. The vendor must immediately notify the primary contact person at the Service Center placing the order, by telephone and/or fax, if any delays occur. The Service Center member placing the order will have the option to cancel the order if it is unable to accept the delay. At the discretion of the Service Center member placing the order, items received after the due date, for which the Service Center member has not been notified regarding the delay, may be returned at the vendor's expense with no penalty to the Service Center.

Repeated failure to meet delivery dates will constitute a breach of contract by the vendor, and may result in the initiation of actions covered in section #22 of this General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination" and the associated financial impacts attached thereto, as well as jeopardize any future business from the Service Center.

All freight, delivery, and handling charges are the responsibility of the bidder, and all bid prices must be quoted freight prepaid, F.O.B. destination, and shall include all freight, delivery, and handling charges, including unloading and inside deliveries where required. This bid package includes the quantities (if this is a line-item bid) and the number of delivery locations at the time this Bid Invitation was mailed.

Cartons must be marked as indicated on the Purchase Order. Each shipment must include a packing list and waybill or delivery ticket.

If the vendor is delivering products out of more than one warehouse or distribution center, all warehouses or distribution centers involved in the distribution plan MUST carry or have timely access to all awarded items and MUST be able to respond to orders in a timely manner. Unless otherwise specified in this Bid Invitation, product substitutions are not allowed, and the involvement of multiple distribution centers will not be construed as to alter the restrictions against product substitutions. In the event the vendor uses multiple distribution centers, the Service Center will have ONE CONTACT PERSON for overall contract management relative to any contract resulting from any award under this Bid Invitation, and the Service Center WILL NOT be required to deal with multiple vendor contacts for overall contract management.

When the needs of the Service Center require immediate response, the right to pick up products awarded under this Bid Invitation on an “over the counter” basis must be available for the majority of the items awarded to a bidder. Under such circumstances, the Service Center’s personnel may pick up products at the vendor’s warehouse location at the bid price with no minimum purchase required.

Except for items that have hidden defects or that do not meet specifications, title to all products shall pass to the Service Center upon receipt and acceptance at the time of delivery.

13. Quality

Unless otherwise indicated in the Bid Invitation, all items bid must be new and in first class condition and must conform to the highest standards of manufacturing practice, including containers suitable for shipment and storage. Unless otherwise requested, the Service Center will not accept “factory seconds” or otherwise inferior goods, and reserves the right to return any such item(s) within thirty (30) days of receipt at vendor’s expense.

All electrical items must meet all applicable OSHA standards and regulations, and must bear the appropriate listing from US, FMRC, NEMA, or U L Laboratories.

Materials Safety Data Sheets (MSDS) on chemicals or any other products customarily requiring MSDS Sheets must be provided the Service Center. MSDS Sheets must be delivered along with the first shipment to the Service Center within the contract period. Promptly and at no additional costs the bidder will provide additional Materials Safety Data Sheets to the Service Center. Providing a web site access location to MSDS information is an acceptable alternative.

In an effort to obtain quality products and services, the Service Center may give preference to vendors that are ISO certified. This will contribute to ensuring that vendors will meet Service Center’s product use expectations.

14. Product Inspection, Testing, and Defective Items

All products supplied under this contract should arrive in the best possible condition and will be subject to inspection, testing, and approval by the Service Center. Tests may be performed on any samples submitted as part of the bidding or evaluation process, or on samples taken from any regular shipment. In the event any product tested fails to meet or exceed all requirements of the bid item specifications or the General Terms and Conditions of the Bid Invitation, the cost of the samples used and the cost of the testing shall be borne by the supplier, and upon notification to the vendor, the defective product(s) will be picked up and replaced by the vendor within five (5) business days or on the next service date, whichever is sooner, without charge for the replacement(s) or delivery. The Service Center, without expense to the Service Center as outlined above, may dispose of defective products that are not picked up and replaced by the vendor. Repeated incidents of delivery of products that fail to pass product inspection and/or testing by a vendor will warrant cancellation of the contract in addition to the remedies outlined above. Furthermore, future business from the Service Center could be jeopardized.

Products damaged in shipment will be considered as defective products and will be subject to the same remedies outlined above.

The failure of any consumable products (food items) to meet specifications or acceptable chemical or bacterial levels may result in cancellation of the contract in addition to the remedies outlined above. Furthermore, future business from the Service Center could be jeopardized. All products in the Service Center’s warehouse at the time of any such cancellation must be picked up and credit issued to the Service Center.

Latent defects discovered after delivery and acceptance of any products may result in revocation of the acceptance.

The management and staff of the Service Center shall have access to any supplier's place of business during normal business hours for the purpose of inspecting merchandise.

15. Samples

If samples are needed for bid evaluation, they will be requested as part of the Bid Invitation or in a separate communication. Unless otherwise indicated in the request for the samples, the samples must be received by the requestor within 72 hours from the time of the request.

Samples must be furnished free of expense to the Service Center. Samples must be labeled with the Service Center Bid Name and Number, Item Number, Product Identification Number(s), and the name of the bidding entity. Do not include samples with the bid response unless otherwise instructed in the Bid Invitation.

All samples will be retained by the Service Center for a sufficient length of time for proper evaluation. If not destroyed or consumed during examination or testing, samples will be returned to the bidder at the bidder's expense, but only upon written request submitted with the samples at the time the samples were submitted. However, notwithstanding the above, samples from the successful bidder may be retained permanently by the Service Center for the purpose of determining that the quality and workmanship of the delivered items are comparable to the samples. The Service Center shall incur no liability for any samples that are damaged, destroyed or consumed during examination or testing.

Failure by any bidder to submit samples when requested will result in the items in question not being considered for award to that bidder.

16. Warranties

By submission of a bid, the bidder warrants that the bidder is an authorized dealer, distributor, or manufacturer for the product(s) being offered, that all items being bid conform to the specifications for which the items are being offered, and that all items supplied under any contract related to this Bid Invitation will be free from all defects in material, workmanship, and title.

A minimum of 90-days product guarantee or the manufacturer's standard commercial warranty, whichever is greater, shall apply to all products purchased under this Bid Invitation. This warranty shall provide for replacement of defective merchandise, parts, and labor, and shall include pick-up of the defective merchandise from the specified Service Center's location and delivery of the replacement(s) to the same location. The warranty shall be effective from the date of acceptance of the merchandise.

17. Withdrawal or Modification of Bid

Subject to the restrictions discussed below, the Service Center will consider a WRITTEN request from any bidder that the bidder be allowed to withdraw any bid submitted, but ONLY IN ITS ENTIRETY, and ONLY UNTIL THE DUE DATE AND TIME FOR BID SUBMISSION as stated in the Bid Certification included with this Bid Invitation. A representative of the bidding entity who is authorized to enter into contracts on behalf of the bidding entity must manually sign any request for the withdrawal of any bid in ink, and the person signing the request must indicate his/her title along with his/her signature. No bid may be withdrawn after the date and time that bids are due as specified in the Bid Certification. Only bids that have been submitted consistent with the instructions relating to packaging and labeling of the bid will be considered for withdrawal.

If there is any question in the mind of the management or staff of the Service Center regarding the identity of the bid or the identity of the bidder relating to any request for the withdrawal of any bid, the Service Center will refuse to allow the withdrawal of the bid. Withdrawal of any bid allowed by the Service Center will require the completion and signature of a written receipt by the bidder's representative satisfactory to

the management or staff of the Service Center before the bid will be released. The decision of the management or staff of the Service Center relating to any matters concerning bid withdrawal will be final.

If a bidder requests to withdraw a bid and the Service Center allows the withdrawal of the bid, the bidder may resubmit the bid, or submit a new bid, up until the due date and time for bid submission as stated in the Bid Certification included with this Bid Invitation, provided any new submission meets all the qualifications of bid submission included in these General Terms and Conditions.

If a bidder resubmits a bid that was withdrawn and makes changes to any document in the bid package, an authorized agent of the bidder must initial all alterations made to any bid document.

All bids in the possession of the Service Center at the time bids are due shall be deemed final, conclusive, and irrevocable, and no bid shall be subject to withdrawal, amendment, or correction after the due date and time for bid submission as stated in the Bid Certification included with this Bid Invitation.

18. Substitutions

The Service Center will not accept any substitutes after item(s) have been awarded as specified, unless such substitutions are deemed to be in the best interest of the Service Center, and unless prior agreements have been reached and reduced to writing regarding such substitutions. Substituting without the prior approval of the Service Center member placing the order will constitute a breach of contract by the vendor which may result in the initiation of actions covered in section #22 of this General Terms and Conditions document entitled “Remedies for Non-Performance of Contract, and Contract Termination” and the associated financial impacts attached thereto, and may jeopardize any future business from the Service Center.

19. Deviations from Item Specification or General Terms and Conditions

Any and all limitations, exceptions, qualifications, special conditions, or deviations from these General Terms and Conditions or any of the item specifications, including the offering of any alternate to the “approved brand and/or model” (where identified) must be clearly noted in detail by the bidder at the time of submission of the bid. The absence of such limitations, exceptions, qualifications, special conditions, or deviations being submitted in writing with the bidder’s response will hold the bidder accountable to the Service Center to perform in strict accordance with all these General Terms and Conditions and all the item specifications as written, including any “approved brands and/or models” identified. The bidder should be aware that the submission of any such limitations, exceptions, qualifications, special conditions, or deviations with the bid response may place the bidder at a competitive disadvantage or otherwise prevent the Service Center from considering the bid on the affected item(s).

Any deviation from any of the item specifications, including the delivery of any product other than the specific brand and model of the product awarded, will be grounds for rejection of the product(s) when delivered, and will expose the vendor to the remedies identified in section #22 of this General Terms and Conditions document entitled “Remedies for Non-Performance of Contract, and Contract Termination” and may jeopardize future business from the Service Center.

20. Contracts and Purchase Orders

A response to this Bid Invitation is an offer to contract with the Service Center based upon the Item Specifications and the General Terms and Conditions contained in the Bid Invitation. Bids do not become contracts unless and until they are both accepted by the Service Center through an Award Notice to the Bidder, and put into effect by the issuance of a Purchase Order(s) signed by an authorized representative of the Service Center.

This contract shall collectively include (1) the General Terms and Conditions and the Item Specifications included in the Bid Invitation and any subsequent addenda thereto, (2) the bidder’s signed Bid Certification

sheet and any other data collection sheets included with the Bid Invitation, (3) the bidder's entire response to the Bid Invitation, (4) the bidder's Notice of Award document, (5) and any additional terms, conditions, or instructions contained in each individual Purchase Order. All the binding agreements should be submitted as part of the bid packet. The contract shall be interpreted by and governed under the laws of the State of Texas.

21. Invoices, Packing Lists, and Payment

Packing Lists or other suitable shipping documents must accompany each shipment and must identify (a) the name and address of the vendor, (b) the name and address or delivery location of the receiving entity, (c) the Purchase Order Number, and (d) detailed descriptive information identifying the item(s) delivered, including quantity, item number, product code, item description, number of containers, etc.

All Invoices must reflect (a) the name and address of the vendor, (b) the name and address or delivery location of the receiving entity, (c) the appropriate Purchase Order Number, and (d) detailed descriptive information identifying the item(s) delivered, including quantity, item number, product code, item description, etc., and must include a properly signed copy of the delivery receipt. Invoices must be mailed directly to the ordering member of the Service Center.

The Service Center will not be held responsible for any products delivered or invoiced without a valid current Purchase Order Number.

The payment terms stated on each individual Purchase Order will be the controlling factor in the determination of payment terms. Each Invoice should include the vendor's normal payment terms in the event that any Purchase Order fails to address the subject.

In any case, payment will be made only after satisfactory delivery and acceptance of merchandise in good order, including the necessary documentation indicated above, and only after receipt of a correct Invoice from the vendor, including the necessary information indicated above.

At the option of the Service Center, invoices with incorrect prices or other errors or inconsistencies will not be paid until corrected, whether by credit memo(s) or issuance of a corrected invoice. At the option of the Service Center, invoices may be corrected upon receipt and payment may be made based upon their corrections.

22. Remedies for Non-Performance of Contract, and Termination of Contract

If the vendor cannot comply with the terms and conditions in fulfilling its contract as anticipated, the vendor must supply the same products or services contracted from other sources at the contract price. The vendor's delay in the above will constitute the vendor's material breach of contract, whereupon the Service Center may terminate the vendor's contract for cause as provided by the remainder of this section.

Unless this contract is extended by mutual agreement of the parties beyond the expiration of the contract time period as stated on the Bid Certification sheet, this contract shall terminate upon the expiration of the contract term as stated on the Bid Certification sheet.

If any delay or failure of performance is caused by a Force Majeure event as described in section #23 of this General Terms and Conditions document entitled "Force Majeure," the Service Center may, in its sole discretion, terminate this contract in whole or part, provided such termination follows the remaining requirements of this section.

Except as otherwise provided for within the General Terms and Conditions of this document, this contract may be terminated in whole or in part by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party; provided that no such termination may be implemented unless and until the other party is given (1) at least ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity

for consultation with the terminating party, followed by a reasonable opportunity, of not more than ten (10) working days, to rectify the defects in products or performance, prior to termination.

Valid causes for termination of this contract will include, but are not limited to:

- a) the vendor's failure to adhere to any of the provisions of the General Terms and Conditions of this Bid Invitation,
- b) the vendor delivering any product(s) that fails to meet the Item Specifications included in this Bid Invitation relating to the awarded product(s),
- c) the vendor delivering any substitution(s) of product(s) different than those originally bid and awarded without the prior written approval of the Service Center placing the order,
- d) the vendor's failure to meet the required delivery schedules as identified in the contract documents, or
- e) The vendor's violation of any other provision contained within these General Terms and Conditions or any attachment thereto which provides for contract termination as a remedy.

Notwithstanding anything contained in this section, in the event of the vendor's breach of any provision in this contract, the Service Center reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of the Service Center, including, but not limited to, the purchase of other products of like type and quality from other sources in the open market. In the event the Service Center elects to purchase other products from other sources, the Service Center will invoice the vendor for any increased costs to the Service Center, and the vendor agrees, by submission of a bid response, to promptly pay any such charges invoiced.

In the event the Service Center terminates this contract, in whole or in part, for any reason provided for within the contract, the Service Center reserves the right to award the canceled contract, or any portion thereof, to the next lowest or best bidder as it deems such award to be in the best interest of the Service Center.

Any contract termination resulting from any cause other than a Force Majeure event will be deemed valid reason for not considering any future bids from the defaulting vendor.

In the performance of this contract, time is of the essence and these General Terms and Conditions are of the essence.

23. Force Majeure

The term Force Majeure shall include, but is not limited to, governmental restraints or decrees, provided they affect all companies in the vendor's industry equally and are not actions taken solely against the vendor; acts of God (except natural phenomena, such as rain, wind or flood, which are normally expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics; riots; war; rebellion; or sabotage.

The parties to this contract will be required to use due caution and preventive measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred shall rest on the party seeking relief under this section. The party seeking relief due to Force Majeure will be required to promptly notify the other party in writing, citing the details of the Force Majeure event, and will be required to use due diligence to overcome obstacles to performance created by the Force Majeure event, and shall resume performance immediately after the obstacles have been removed, provided the contract has not been terminated in the interim.

Delay or failure of performance, by either party to this contract, caused solely by a Force Majeure event shall be excused for the period of delay caused solely by the Force Majeure event, provided the affected party has promptly notified the other party in writing. Neither party shall have any claim for damages against the other resulting from delays caused solely by Force Majeure.

The Service Center will not be responsible for any costs incurred by the vendor because of the Force Majeure event unless the Service Center has requested, in writing, that the vendor incur such costs in

connection with any delay or work stoppage caused by the Force Majeure event, and the Service Center has agreed in such writing to incur such additional costs.

Notwithstanding any other provision of this section, in the event the vendor's performance of its obligations under this contract is delayed or stopped by a Force Majeure event, the Service Center shall have the option to terminate this contract in accordance with section #22 of this General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination." Furthermore, this section shall not be interpreted as to limit or otherwise modify any of the Service Center's rights as provided elsewhere in this contract.

24. Non-Collusion Certification

By signing this bid, the bidder certifies that, to the best of his/her knowledge:

- a) neither the bidder nor any business entity represented by the bidder has received compensation for participation in the preparation of the item specifications or the General Terms and Conditions related to this Bid Invitation,
- b) this bid or proposal has been arrived at independently and is submitted without collusion with any other bidder, with any competitor or potential competitor, or with any other person or entity to obtain any information or gain any special treatment or favoritism that would in any way limit competition or give any bidder an unfair advantage over any other bidder with respect to this bid,
- c) the bidder has not accepted, offered, conferred, or agreed to confer, and will not in the future accept, offer, confer, or agree to confer, any benefit or anything of value to any person or entity related to the Service Center in connection with any information or submission related to this bid, any recommendation, decision, vote, or award related to this bid, or the exercise of any influence or discretion concerning the sale, delivery, or performance of any product or service related to this bid,
- d) neither the bidder, nor any business entity represented by the bidder, nor anyone acting for such business entity, has violated the Federal Antitrust Laws or the antitrust laws of this State with regard to this bid, and this bid or proposal has not been knowingly disclosed, and will not be knowingly disclosed to any other bidder, competitor, or potential competitor prior to the opening of bids or proposals for this project,
- e) No attempt has been or will be made to induce any other person or entity to submit or to not submit a bid or proposal.

The person signing this bid or proposal certifies that he/she has fully informed himself/herself regarding the accuracy of the statements contained in this certification.

25. Lobbying

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000, or loan or loan guarantee over \$150,000, as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

- a) 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 an 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 Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant loan, or cooperative agreement.
- b) 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.

- c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, 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.

26. Assignment - Delegation

No responsibility or obligation created by this contract shall be assigned or delegated by the vendor without written permission from the Service Center. Any attempted assignment or delegation by the vendor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

27. Certifications Regarding Legal, Ethical, and Other Matters

By signing this bid, the bidder certifies that:

- a) he/she has read and understands all the General Terms and Conditions in this document, and agrees to be bound by them, and is authorized to submit bids on behalf of bidder,
- b) the bidder has noted any and all relationships that might be conflicts of interest and included such information with his/her bid response,
- c) the bid submitted conforms with all item specifications, these General Terms and Conditions, and any other instructions, requirements, or schedules outlined or included in this Bid Invitation,
- d) if this bid is accepted, in whole or in part, the bidding entity will furnish any item(s) awarded to them under this Bid Invitation to the Service Center at the price bid, and in accordance with the item specifications and the terms and conditions contained in this Bid Invitation,
- e) the bidding entity has, or has the ability to obtain, such financial and other resources, including inventories, as may be required to fulfill all the responsibilities associated with this bid,
- f) the bidding entity has a high degree of integrity and business ethics, and a satisfactory record of performances, and has not been notified by any local, state, or federal agency with competent jurisdiction that its standing in any matters whatsoever would preclude it from participating in this bid, it would in no other way whatsoever be disqualified to bid or receive any award or contract related to this bid, and the bidder will comply with any reasonable request from the Service Center to supply any information sufficient to substantiate the bidding entity's ability to meet these minimum standards,
- g) concerning paragraph "f)" above, the bidding entity has identified and disclosed in this written bid response any and all known or suspected matters that would disqualify it from participating in this bid or receiving any award or contract related to this bid, recognizing that the bidder's failure to identify and disclose any such matters constitutes its affirmation that no such matters exist, and that failure to disclose in this bid response any such matters which do exist is a material breach of contract which will void the submitted bid or any resulting contracts, and subject the bidder to removal from all bid lists, and possible criminal prosecution,
- h) the bidding entity has obtained, and will continue to maintain during the entire term of this contract, all permits, approvals, or licenses, necessary for lawful performance of its obligations under this contract,
- i) the prices, prompt payment discount terms, delivery terms, distribution allowances, and the quality and/or performance of the products offered in the bid response are and will remain the same or better than those offered to the vendor's most favored customer under equivalent circumstances,
- j) The bidding entity will comply with all laws relating to intellectual property, will not infringe on any third party's intellectual property rights, and will indemnify, defend, and hold the Service Center harmless against any claims for infringement of any copyrights, patents, or other infringements related to its activities under this contract,

- k) the bid submitted complies with all federal, state, and local laws concerning these types of products or services, and the bidding entity will continue to comply with any applicable federal, state, and local laws related to the bidding entity's activities in connection with this contract,
- l) the bidding entity will maintain, at the bidding entity's expense, any insurance necessary to protect the Service Center from all claims for bodily injury, death, or property damage that might arise from the performance by the bidding entity or the bidding entity's employees or its agents of any service required of the bidding entity under this contract; however, the existence of such insurance will not relieve the bidding entity of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided for by law,
- m) the Service Center shall not be liable to the bidder for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) in the event that the Service Center declares the bidder in default,
- n) He/she understands that signing the bid with any false statement is a material breach of contract which will void the submitted bid or any resulting contracts, and subject the bidder to removal from all bid lists, and possible criminal prosecution.
- o) Vendors must comply with the State of Texas Conflict of Interest requirement. For more information please refer to Texas Ethics Commission website or Region III Purchasing website.

Unless otherwise provided for in this Bid Invitation, any written notice or other communication required by this bid or by law will be conclusively deemed to have been given and received on the second business day after such written notice has been deposited in the U. S. Mail, properly addressed, and with sufficient postage affixed thereto, provided such notice shall not prevent the giving of actual notice in any other manner.

28. Debarment, Suspension and Other Responsibility Matters

As requested by Executive Order 12549, Debarment and Suspension, and implemented at 15 CFR Part 26, for prospective participants in primary covered transactions, as defined at 15 CFR Part 26, Sections 26.105 and 26.110 – 1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by an Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

By signing this bid, the bidder certifies that the vendor is in compliance with federal, state and local guidelines. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

29. Compliance with Clean Air and Water Act

By signing this bid, the bidder certifies that the vendor is in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as Amended (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15 as required under OMB Circular A-102, Attachment O, Paragraph 14(1) regarding reporting violations to the grantor agency and to the United States Environment Protection Agency Assistant Administrator of the Enforcement.

30. Compliance with Energy Policy and Conservation Act

By signing this bid, the bidder certifies that the vendor is in compliance with all applicable standards, orders, regulations and policies related to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871). [53 FR 8044, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19641, Apr. 19, 1995]

31. Records Retention

By signing this bid, the bidder understands that the Service Center, the Texas Education Agency, 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 the specific contract, for the purpose of audits, examinations, excerpts, and transcriptions.

The bidder is required to retain pertinent records for five years after the Service Center makes final payment and all other pending matters are closed.

32. Equal Employment Opportunity (EEO) Disclosures

By submission of a bid, the bidder agrees that in the performance of any contract resulting from any award under this bid, the bidding entity will comply with all applicable equal employment opportunity laws and regulations, including, but not limited to an agreement not to deny any benefit to, exclude from any opportunity, or discriminate in any way against, any applicant, employee, or any other person because of age, color, creed, gender, handicapping condition, marital status, national origin, political affiliation or belief, race, religion, or veteran status.

Bidder further agrees that the bidding entity is and, during the period of any contract resulting from any award under this Bid Invitation will remain, in compliance with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41CFR Part 60).

The occurrence of any prohibited discrimination will constitute vendor's breach of contract due to a substantial failure by the vendor to fulfill its obligations, whereupon the Service Center may terminate the vendor's contract for cause as provided by section #22 of this General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination."

33. Venue

This agreement will be construed and governed according to the laws of the State of Texas. Both parties agree that venue for any litigation arising from this contract shall lie in Victoria County, Texas.

34. Catalogs

For "discount from catalog" bids or other bids based on industry or other "benchmark" pricing lists or tables, it will be the responsibility of the successful bidder(s) to provide the Service Center with a complete, updated catalog and/or price list for all items awarded within five (5) working days of receipt of a Notification of Award. Subsequent additions, deletions, or changes in product specifications may be submitted to the Service Center when they become available.

35. Waiver

No claims or rights arising out of a breach of this contract can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

36. Interpretation – Parol Evidence

This writing is intended by the parties as a final expression of their agreement and a complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties and no usage of the trade shall be relevant to supplement or explain any terms used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Texas Business & Commerce Code is used in this agreement, the definition contained in the Code shall be controlling.

37. Right to Assurance

Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

38. Extension /Non-Appropriations Clause

This contract may be extended for two additional years with a two-year extension unless sooner terminated in accordance with the provisions of this Contract if the vendor and the Service Center mutually agree, no increases in costs are incurred except for the growth of the Service Center, and the maximum allowable escalation price is capped by consumer price index increases.

Non-appropriations for renewal of contract will be in accordance with the Local Government Code 271.903 and 271.005 (b) concerning non-appropriation clauses for multi-year contracts. The Service Center reserves the right to rescind the contract at the end of the fiscal year if it is determined that funding is not available to extend the contract.

The Service Center periodically requests from its legislative body or funding authority funds used to pay expenses under this Contract and if such legislative body or funding authority does not approve funding, the Service Center may, upon written notice to Contractor effective 60 days after the giving of such notice, be released of its obligation.

39. Proposal Acceptance

The period for acceptance of this proposal will be sixty (60) calendar days unless a different period is indicated by the bidder.

40. Addition of New Members

It is the intent of this solicitation that new cooperative members may purchase identical items at the same unit pricing and the same general terms and conditions, subject to applicable state and federal laws. Additional freight charges can be quoted when new member is added. New dealership can be added at this time to service the new member.

41. Questions Regarding Bid

Questions or requests for additional information concerning this bid or the specifications should be addressed to:

Region III Education Service Center
Attn: Purchaser/Accountant
1905 Leary Lane
Victoria, TX 77901-2899
Telephone: (361) 573-0731

PUBLIC NOTICE OF BID

The Region III Education Service Center requests bids/proposals for the following item(s) until the date and time shown:

BID NO. 07-025-08 – NUTRITION SERVICES BID, OPENS JULY 24, 2008 @ 3:30 P.M. The contract time period for this bid is September 1, 2008 through August 31, 2009. However, the Service Center does reserve the right to award bid to a vendor for a longer initial term period than time period stated in the Bid Certification if it is determined to be in the best interest of the Service Center.

Bids/proposals will be opened at the Region III Education Service Center, Victoria, Texas. Late bids will be returned unopened.

The Service Center will consider the following factors in determining whom to award a contract: purchase price; reputation of vendor and vendor's goods and services; quality of vendor's goods or services; extent to which goods or services meet Service Center's needs; vendor's past relationship with the Service Center; impact on ability of the Service Center to comply with laws and rules relating to historically underutilized businesses; long term cost to the Service Center to acquire vendor's goods or services; and any other relevant factor specifically listed in the request for bids.

Itemized specifications may be obtained by contacting the Purchaser/Accountant at the Region III Education Service Center, 1905 Leary Lane, Victoria, Texas 77901-2899, calling (361) 573-0731 or by going online at www.esc3.net/r3biz/. The Service Center reserves the right to reject any and/or all proposals and to accept any proposal deemed by the Service Center as being most beneficial to the Service Center, and to waive all formalities in requesting proposals.