

REQUEST FOR PROPOSAL

FRESH FRUIT & VEGETABLE EDUCATION PROGRAM RFP20-016

**Ogden School District
Purchasing Department, Bldg 1, Rm 210
1950 Monroe Boulevard
Ogden, Utah 84401**

**1 Electronic and 5 hard copy submissions are due no later than
Thursday, March 19, 2020 at 2:00pm.**

TABLE OF CONTENTS

I. Intent of Request for Proposal	4
II. Eligibility Requirements	4
1. Business License	4
2. Insurance	4
3. Bonding	4
4. Background Checks for Drivers	4
5. Experiences and References	4
6. Federal Requirements	4
III. General Information	7
A. RFP Information	7
B. GRAMA Confidentiality Claims and Requests	7
C. Oral Presentation	8
D. Site Visits.....	8
E. Contract Clauses	8
F. Written Agreement	9
G. Contract Period	9
H. OSD Inquires and Contracts.....	9
I. RFP Consideration, Award and Right of Rejection	9
J. Addendums	10
IV. Detailed Scope of Service	10
V. Price Proposal Requirements	11
VI. Submitting Your Proposal	11
A. Proposal Delivery	11
VII. Evaluation Criteria	12
Certification of Proposal (Schedule A)	14
Executive Summary (Schedule B)	15
Detailed Response (Schedule C).....	16
Qualifications/Experience (Schedule D)	17
Standard Contract Terms and Conditions (Schedule E)	18
Claim of Business Confidentiality (Schedule F)	25

References (Schedule G)	27
Cost Proposal (Schedule H).....	28
OSD FFVP Schools	30
USDA Nondiscrimination Statement	31

**OGDEN CITY SCHOOL DISTRICT
FFVP PRODUCE CONTRACT FOR CHILD NUTRITION PROGRAM
RFP20-016**

I. INTENT OF REQUEST FOR PROPOSAL

The purpose of this request for proposal is to solicit competitive sealed proposals from qualified suppliers to provide the Child Nutrition, Fresh Fruit and Vegetable Program (hereafter referred to as FFVP) with top-quality, fresh fruit and vegetable items grown locally (Utah), domestically, and in all parts of the world for Ogden City School District (hereafter referred to as OSD) schools and students participating in this nutrition education program. OSD is intending to contract with one qualified Supplier to provide produce for participating schools (see attached list). The number of participating schools could vary annually.

This RFP is designed to provide interested Suppliers with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Suppliers are at liberty and encouraged to expand upon the specifications to evidence service capability under any agreement.

All proposal preparation costs and any associated activities related to this RFP are the sole responsibility of the Supplier. OSD is not liable for any costs incurred throughout the entire selection process.

II. ELIGIBILITY REQUIREMENTS

In order to be eligible to respond to this RFP, an interested Supplier must meet all of the following minimum qualifications:

1. Business License

The interested Supplier must have a current Utah Business License.

2. Insurance

The Supplier must secure and maintain liability insurance (General and Auto) for not less than any limits of liability specified as part of this contract, or required by law, whichever is greater, against claims under the Workmen's Compensation Act and other employee benefit acts for bodily injuries to persons, including death, or damages to property which may arise from or in connection with the performance of the work hereunder. Insurance must be maintained for the duration of the contract, and shall exclude contractual liability insurance as applicable to the Supplier's

obligations. Supplier must provide proof of insurance upon demand by OSD (Policy or Endorsement) and agrees to, at all times, defend, indemnify, hold harmless, and protect the OSD and its employees, representatives, agents, and volunteers from and against any and all claims.

OSD will assume no liabilities for the Supplier including any of the Supplier's representatives, employees or properties.

Any damages occurring during the completion of deliveries, incidental or otherwise, to District or adjacent properties must be repaired at the Supplier's expense, and to the Owner's satisfaction.

3. Bonding

Proposer must provide drivers' bonding information. Please provide the information on who is bonded and up to what amount with submittal.

4. Background Checks for Drivers

Please provide detailed explanation with submittal if all drivers that work with the school district are subject to background checks.

5. Experience and References

Minimum of three (3) years working experience with education facilities, specifically with FFVP. The Proposal shall include a minimum of three (3) references over the past three (3) years. If possible these should be from similar institutions, preferably from school districts that administer the FFVP. Include the name of the organization, location, contact person, telephone number, and email address with submittal. Also include with submittal a sample of Supplier's previously used product information fact sheet (10-minute nutrition education component).

6. Federal Requirements

Interested Suppliers must comply with Federal Code 2 CFR, parts 200.318-326 General Procurement Requirements:

- a) Federal Code 7 CFR Part 220.16 (d) Buy American Agriculture Provisions require the District to purchase, to the maximum extent practicable, domestic commodity or product. For foods that are unprocessed, agricultural commodities must be domestic, and for foods that are processed, they must be processed domestically using domestic agricultural food components that are comprised of over 51 percent domestically grown items, by weight or volume. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the

Northern Mariana Islands are allowed under this provision as territories of the United States.

For compliance and auditing purposes, **the OSD Child Nutrition Program requires in writing from the Supplier delivery invoices and receipts identifying the country of origin as being the United States or its territories, and in the case of a non-domestic product, a limited exception.** Limited exceptions are limited exceptions to the Buy American Provision which allow for the purchase of products not meeting the "domestic" standard (non-domestic) in circumstances when use of domestic products is truly not practicable.

- b) Federal Code 2 CFR 200.321 Buy American Provision supports local and small businesses. The Supplier must take all necessary affirmative steps to assure that Local, Small, Minority, and Women-owned business enterprises and labor surplus firms are used when possible.
- c) Federal Procurement Regulations 7 CFR 210.21, 215.14a, 220.16, 225.17, 226.22, and 250.4(d) direct Child Nutrition Program operators to comply with procurement requirements as outlined in those parts. In addition, all procurements shall be undertaken consistent with State and local requirements.
- d) Appendix II to 2 CFR 200 Contract Provisions for competitive sealed proposals and RFP solicitations for all Federal awards to non-Federal entities. Supplier must abide by all Federal, State and local laws including, but not limited to, employment laws such as *Equal Employment Opportunity*, *Americans with Disabilities Act* and the *Contract Work Hours and Safety Standards Act*. Undocumented (illegal immigrant) labor is not allowed to work on OSD property.
- e) Per Appendix II to 2 CFR 200 Clauses, offers will not be solicited from, contracts will not be awarded to, and existing contracts will not be renewed or otherwise extended for any Proposer in *Debarment or Suspension*. Proposers must submit certification that neither it nor its Principals are presently or within the past ten (10) years debarred, suspended, proposed for Debarment, declared ineligible, or voluntarily excluded from soliciting work by any governmental department or agency. The Proposer must also certify that it has not been terminated during the performance of a contract or withdrew from a contract to avoid termination. If the Proposer cannot certify these two statements, the Proposer shall submit a written explanation of the circumstances for review by the OSD. These certifications shall be submitted with the Proposer's RFP.
- f) Per Appendix II to 2 CFR 200 Clauses, the *Byrd Anti-Lobbying Amendment* prohibits the use of appropriated funds by recipients of a "Federal contract" for purposes of influencing or attempting to

influence Federal officials with the awarding of a Federal contract, grant, or any other Federal award. The Supplier certifies that it has not used and will not use Federal appropriated funds to pay any person or organization for influencing or attempting to influence various government officials in making certain Federal awards.

- g) We are a governmental entity and as such we do not waive any rights granted under the *Governmental Immunity Act of Utah* (Utah Code, Title 63G, Chapter 07).
- i) Supplier must have the ability to service OSD with bi-weekly deliveries, every Tuesday and Thursday typically.
- j) Supplier must have a written food safety Recall Plan that is carefully constructed, tested and evaluated to ensure the efficient removal of questionable-quality products from circulation quickly and effectively.
- k) Supplier must have a written Hazard Analysis and Critical Control Point (HACCP) preventive food safety program that implements current science-based practices to reduce the rise of unsafe food and hazards that could cause food-borne illnesses.
- l) Supplier must have a written Bioterrorism preventive control plan for its facility, and established, science-based standards for the safe production and harvesting of fruits and vegetables including mitigation strategies to prepare and protect the food supply chain at specific vulnerable points.

III. GENERAL INFORMATION

A. RFP Information

The RFP will be posted on the OSD website and SciQuest for response. It is the sole responsibility of all interested Proposers to ensure submittals reflect all details of the solicitation in its entirety.

B. GRAMA Confidentiality Claims & Requests

According to the Utah Governmental Records Access and Management Act (GRAMA), a Proposer may categorize trade secrets, proprietary information, protected records, etc. included in their proposal as classified. All classified information must be properly indicated and marked.

Proposers may submit a redacted copy of their technical proposal along with their complete proposal at the time of submittal. Should a GRAMA request be filed, the redacted copy shall be provided to the Requestor. If no redacted copy is submitted, then the full proposal will be provided without notice to the Proposer.

C. Oral Presentations

An oral presentation by a Proposing Supplier to clarify their submitted proposal may be required at the sole discretion of OSD. However, OSD may award a contract based on the initial proposals received without discussion with the Supplier. If oral presentations are required, they will be scheduled after the submission of proposals.

D. Site Visit

An on-site visit to the Supplier's facility to inspect order processing and system software capabilities will be required. Visits may be scheduled after the submission of proposals.

E. Contract Clauses

Any contract arising from the RFP will include the following clause:

- a) OSD may terminate the contract for any reason, at any time, (with or without written notice) if the Supplier fails to perform (*Cause*) or if it is in the best interest of the District (*Convenience*);
- b) OSD requests assignment of rights to recover damages from any antitrust violations;
- c) Supplier will accept liability for doors left open, loss of product, or theft if building is not secured after departure;
- d) Supplier will take responsibility for any damages to building(s) or property caused by trucks and/or drivers.
- e) Liquidated damages as appropriate;
- f) As per Force Majeure, an "Act of God" or an extreme natural, unforeseeable event such as disease, drought, flood, frost, or harsh weather presenting challenges to the produce industry that no person has any control of may necessitate reasonable price adjustments. Therefore, in a time of product shortage or crop failure due to an "Act of God", the Supplier will contact the OSD Child Nutrition Program through certified mail explaining the shortage (and including documentation to substantiate the extreme circumstances) and the need to re-negotiate pricing of effected product(s) within a reasonable amount of time, not to exceed thirty (30) days of the known shortage. The proposal will be re-evaluated enacting Force Majeure, "Act of God" clause. However, if unauthorized pricing changes occur, the Supplier agrees to reimburse the cost difference to the District Child Nutrition Program.
- g) Alcohol, tobacco or e-cigarettes are not permitted on OSD property.

F. Written Agreement

The awarded Supplier must enter into a written service agreement with OSD to provide real services required by the District for the term of the contract. The contract must be performed in accordance with OSD Standard Terms and Conditions (Schedule E).

G. Contract Period

This agreement shall commence on July 1, 2020 by acceptance of the Board of Education and continue for one (1) year. Each proposal must include an option whereby the Board of Education, at its sole discretion, can extend the contract for four (4) additional years on the same terms, prices, and conditions set forth in the proposal. If the option is not exercised, then the contract shall automatically expire at the end of the contract term. Notice to exercise this option must be given at least thirty (30) days prior to the end of the contract term. OSD requires flexibility with days and expenditures of ordering as this is a federal grant (August to May or until FFVP monies are spent).

H. OSD Inquiries and Contacts

Questions, Interpretations, clarifications or communication regarding this RFP must be submitted on SciQuest and must be submitted before noon on March 12, 2020.

No OSD Employee, Board Member, or evaluation committee member should be contacted concerning this RFP during the selection process. Failure to comply with this requirement may result in disqualification.

I. RFP Consideration, Award and Right of Rejection

The Proposer's past performance history, organization, equipment and demonstrated ability to perform and complete the required Services in the manner and within the time limit specified will be elements along with the Supplier's ability to budget (each allotted school's FFVP funds to include a minimum of two (2) flexible serving days per week throughout the school year) considered by OSD in the letting of the contract, if any award is made.

OSD reserves the right to reject any and all proposals by reason of this paragraph or to waive any non-statutory informality. OSD further reserves the right to make the contract award deemed by OSD to be in the best interest of the District. Ogden City School District's decision to accept or reject the contract shall be final.

J. Addendums

If it becomes necessary to revise this RFP in whole or in part, an addendum will be posted on OSD's website and SciQuest. After the contract is awarded, if an addendum is deemed necessary the addendum will be sent to the Supplier.

IV. DETAILED SCOPE OF SERVICE

The awarded Supplier is expected to fulfill the following requirements:

1. Must be able to accommodate bi-weekly (Tuesday & Thursday) deliveries to approximately ten (10) participating OSD schools before 9:00 a.m. (or specific delivery time required as per school needs) on the scheduled delivery dates. These locations may vary throughout the course of the contract.
2. Must provide product information fact sheets (**10-minute nutrition education components**) for the Fruit and/or Vegetable items provided bi-weekly through email (print ready) to all schools involved in the program. Schools involved in the FFVP program will use the fact sheets as an elementary level, in-classroom teaching tool to educate the students more about the items they are sampling. Nutrition information will be included on these fact sheets including information and facts about the benefits of specific Fruits and Vegetables to the body and mind. Information learned could be, but is not limited to, origination of the produce, grafting or cross hibernation processes, planting/growing methods, climate needed for growth, etc.
3. All processed items will have at least 30/60 serving cups per case. Also, on all processed items, the Supplier will provide whole fruit or vegetable to be delivered to each participating school at no additional charge so that the students can learn and visualize what the whole Fruit or Vegetable looks like.
4. Produce must be XF/Grade A products unless a Choice Grade exception has been approved. Such cases include if the Supplier does not have enough to accommodate the amount of produce requested and to eliminate stickered fruit.
5. As new produce becomes available, it will be added to the list of available fruits and vegetables.
6. The Supplier must have refrigerated transportation services that abide by all food safety precautions in order to insure the safety and quality of the product. Meet **all** HACCP and ServSafe criteria to ensure safe foods.
7. Selected Supplier's employee will work directly with the specific selected FFVP employee from OSD. Together they will ensure that quality FFV will meet the educational needs of OSD students.
8. Fruits and Vegetables for FFVP will include, *but are not limited to*, fresh: Apple slices, Apricots, Asian pears, Baby bananas, Baby kiwi, Baby Purple Brussel sprouts, Bananas, Blackberries, Blood oranges, Blueberries, Bosc pears, Broccoflower bites, Broccoli bites, Broccoli cups, Cabbage bites, Cape gooseberry, Cauliflower bites, Caviar limes, Cantaloupe, Cara Cara oranges, Celery bites, Cherries, Colored carrots, Crimson Gold apple, Cripps Pink

apples, Diced Butternut squash, Donut peach, Dragon fruit, Edamame, Fall Glo tangerines, Fragrant pears, Gala apples, Gold Nugget tangerines, Gold Pineapple cups, Granny Smith apples, Grapes, Grape tomatoes, Green Gage plums, Halos clementines, Honey Crisp apples, Honeydew, Honeydew bites, Jazz apple, Jicama bites, Jonathan apple, Jumbo Seedless Black grapes, Jumbo Stem strawberries, Kumquats, Mango slices/bites, Mango/Coconut slices bagged, Mini carrots, Mini carrots 2 oz bags, Mini Persian cucumbers, Mini Sweet chilies, Mini Sweet peppers, Miradol Papaya cups, Murcott tangerines, Nectarines, Opal apples, Peaches, Persimmon, Pineapple cups, Pummelo wedges, Purple asparagus, Rambutan, Red pears, Red plums, Red Rome apples, Seckel pears, Star Crimson Red pears, Starfruit, Stem berries, Sugar plums, Sugar Snap peas, Sweet Potato bites, Tindora Baby cucumbers, Veggie cup, Watermelon radish, White Asparagus bites, White peaches, Whole bunched carrots, Ya pears, Yellow Tear Drop tomatoes. *Any other Fruit and Vegetable that is tasty, nutritious and beneficial to a child.*
NOTE; Affordable, pre-packaged FFV are encouraged and appreciated as are FFV that are affordable, new and interesting to a child (a FFV they may not have seen or tried before).

V. PRICE PROPOSAL REQUIREMENTS

Pricing for all FFVP produce items will guarantee availability of FFVP funds with a minimum of two (2) serving days per week throughout the school year for SY July 1, 2020 through June 30, 2021.

No minimum dollar amount will be required for delivery of product.

No fuel surcharges will be allowed.

Official cost proposal see Schedule H.

VI. SUBMITTING YOUR PROPOSAL

A. Proposal Delivery

Proposers should submit as per instructions on SciQuest.

All proposals shall be submitted in hardcopy and electronic form before 2:00 p.m. Thursday, March 19, 2020.

- a. 5 Hardcopy sealed proposals must be delivered to Ogden School District Purchasing Department, 1950 Monroe Blvd., Ogden, Utah, 84401, Attention: Bldg 1, Room 210. Reference RFP20-016 and Fresh Fruit & Vegetable Education Program on the outside of the sealed envelope.**

- b. **1 electronic copy on a flash drive will also be delivered to the above.**
- c. **No Electronically submit proposals on SciQuest.**
- d. **Cost Proposal in a separately sealed envelope.**

Proposals received after that time will not be accepted.

All information requested must be completed, Schedules A-H attached and submitted in a sealed envelope by the date and time listed above. *Neither faxed or emailed proposals will be accepted.*

VII. EVALUATION CRITERIA

The District will evaluate each proposal submitted based on responsiveness to the District's overall needs. The award of contract, if made, will be the Supplier who is responsive and responsible to all administrative and technical requirements of the RFP; who has demonstrated competence and qualifications in regards to providing the services required; the cost and prices for the services offered; and who receives the highest rating based upon all of the criteria set forth in the RFP.

The process of award will be by committee. The committee will base their evaluation on the criteria listed below then apply a score based on the weighted value of that criteria. The Supplier receiving the highest score will be awarded the contract.

A Supplier must use the following schedules, or copies thereof, in submitting a proposal. The schedules must be completed in their entirety. Other materials that support these schedules may be included in the proposal document.

5 Points: Responsiveness – The completeness and conformity of the proposal response to the RFP requirements. Including but not limited to:

- Schedule A, Certification of Proposal – Complete
- Schedule B, Executive Summary – Complete
- Schedule C, Detailed Response – Complete
- Schedule D, Qualifications/Experience – Complete
- Schedule E, Standard Contract Terms and Conditions – Complete
- Schedule F, Claim of Business Confidentiality – (If necessary)
- Schedule G, References– Complete
- Schedule H, Cost Proposal– Complete (Separately sealed envelope)

The completed schedules will be rated against the evaluation criteria outlined herein.

10 Points: Executive Summary (Schedule B)

10 Points: Detailed Response (Schedule C)

25 Points: Qualifications/Experience (Schedule D)

20 Points: References (Schedule G)

30 Points: Cost Proposal (Schedule H) (Separately sealed envelope)

CERTIFICATION OF PROPOSAL

We have read Child Nutrition RFP20-016 and fully understand its intent. We certify that we have adequate personnel and resources to fulfill the proposal requirements. We further understand that our ability to meet the criteria and provide the required services shall be judged solely by OSD evaluation committee members.

We further certify that, since the receipt of this RFP, no contact, discussion, or negotiations have been made nor will be made regarding this proposal with any OSD employee, board member, or evaluation committee member other than the listed contact people in the RFP. We understand that any such contact could disqualify this proposal.

We further certify that we are properly licensed to conduct business within the scope of this RFP, in the State of Utah.

We certify that all schedules and addenda contained herein shall be considered part of the entire RFP response and that the complete document submitted shall be considered a legally binding document.

Submitted by:

Business Name

Authorized Signature

Name and Title

Telephone

Email

Date

EXECUTIVE SUMMARY

Provide a one or two page executive summary to briefly describe the Supplier's proposal. This summary should highlight the major features of the proposal. It must indicate any requirements that cannot be met by the Supplier. The District should be able to determine the essence of the proposal by reading the executive summary. Protected information requests should be identified in this section.

*If additional space is needed, please attach to this document.

DETAILED RESPONSE

This section should constitute the major portion of the proposal and must contain at least the following information.

- A. A complete narrative of the Supplier's assessment of the work to be performed, the Supplier's ability and approach, and the resources necessary to fulfill the requirements. This section should demonstrate that the Supplier understands the desired overall performance expectations. Clearly indicate any options or alternatives proposed.

*If additional space is needed, please attach to this document.

QUALIFICATIONS/ EXPERIENCE

Provide a detailed response describing all abilities, skills and related experiences pertinent to the purpose and scope of this RFP.

*If additional space is needed, please attach to this document.

STANDARD CONTRACT TERMS AND CONDITIONS

1. AUTHORITY: Provisions of this contract are pursuant to the authority set forth in Utah Code §§ 63G - 6a Utah Procurement Code; as amended, Utah Administrative Code R33. Administrative Services, Purchasing and General Services; and/or Ogden School District's Purchasing and Procurement Policy; and related statutes which govern DISTRICT'S purchase of goods and services.

2. CONTRACT JURISDICTION, CHOICE OF LAW, & VENUE: Provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this contract or breach thereof. Venue shall be in Ogden City, in the Judicial Court for Weber County.

3. LAWS AND REGULATIONS: CONTRACTOR and any and all supplies, services and equipment furnished under this contract will comply fully with all applicable Federal and State laws and regulations, including licensure and certification requirements.

4. RECORDS ADMINISTRATION: CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for payments made to CONTRACTOR for costs authorized by this contract. These records shall be retained by CONTRACTOR for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. CONTRACTOR agrees to allow DISTRICT, State, and Federal auditors and DISTRICT staff, access to all records to this contract for audit, inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

5. CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION

SYSTEM": The Status Verification System, also referred to as "E- Verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation for Bids or to the Multiple Stage Bid.

5.1 Status Verification System

1. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named CONTRACTOR has registered and is participating in the Status Verification System to verify the work eligibility status of the CONTRACTOR 'S new employees that are employed in the State of Utah in accordance with applicable immigration laws including UCA § 63G-12-302.

2. CONTRACTOR shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including UCA § 63G -12- 302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

3. DISTRICT will not consider a proposal for award, nor make any award where there has not been compliance with this section.

4. Manually or electronically signing the Proposal is deemed CONTRACTOR'S certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA § 63G-12-302.

5.2 Indemnity Clause for Status Verification System

1. CONTRACTOR (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, DISTRICT and its officers, employees, agents, representatives and anyone the DISTRICT may be liable to, against any claim, damages or liability arising out of or resulting from violations of Section 5 of this Contract whether violated by employees, agents, or contractors of the following: (a) CONTRACTOR; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the CONTRACTOR or Subcontractor may be liable.

2. Notwithstanding Section 5.2.1. above, Design Professionals or Designers under direct contract with DISTRICT shall only be required to indemnify DISTRICT for a liability claim that arises out of the Design Professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the Design Professional shall be required to indemnify the DISTRICT in regard to subcontractors or sub consultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

6. **CONFLICT OF INTEREST:** CONTRACTOR represents that none of its officers or employees are officers or employees of the DISTRICT, unless disclosure has been made in accordance with U.C.A. § 67 -16 -8.

7. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** CONTRACTOR shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind DISTRICT to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for DISTRICT, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to CONTRACTOR by DISTRICT. CONTRACTOR shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from DISTRICT for these contract services. Persons employed by DISTRICT and acting under the direction of DISTRICT shall not be deemed to be employees or agents of CONTRACTOR.

8. **INDEMNITY CLAUSE:** CONTRACTOR agrees to indemnify, save harmless, and release DISTRICT, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the acts or negligence of CONTRACTOR'S officers, agents, volunteers, or employees, but not for claims arising from

DISTRICT'S sole negligence. The parties agree that if there are any Limitations of CONTRACTOR'S Liability, including a limitation of liability for anyone for whom CONTRACTOR is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.

9. EMPLOYMENT PRACTICES CLAUSE: CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, CONTRACTOR agrees to abide by Utah's Executive Order, dated December 13, 2006, which prohibits sexual harassment in the work place.

10. SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.

11. RENEGOTIATION OR MODIFICATIONS: This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by authorized parties hereto, and attached to the original signed copy of the contract. Automatic renewals will not apply to this contract.

12. DEBARMENT: CONTRACTOR certifies that neither it nor its principals are presently nor have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If CONTRACTOR cannot certify this statement, attach a written explanation for review by the DISTRICT. CONTRACTOR must notify the District Director of Purchasing within 30 days if debarred by any governmental entity during the contract period.

13. TERMINATION: Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, for cause by either party, in advance of the specified termination date, upon written notice being given the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

14. NON -APPROPRIATION OF FUNDS: CONTRACTOR acknowledges that DISTRICT cannot contract for the payment of funds not yet appropriated by the Utah State Legislature, Utah State Board of Education or District Board of Education (BOARD). If the

DISTRICT becomes subjected to a legislative change, revocation of statutory authority, lack of appropriated funds or availability of funds which would render CONTRACTOR'S delivery or performance under the contract impossible, or unnecessary, this contract will be terminated, either in whole or in part. If funding to DISTRICT is reduced due to an order by the Legislature or Governor, or is required by State law, or if federal funding (when applicable) is not provided, or requires any return or "give-back" of funds required for DISTRICT to continue payments, or if the BOARD mandates any cuts or holdbacks in spending, DISTRICT may terminate this contract or proportionately reduce the services and purchases of obligations and the amount due from DISTRICT upon 30 days written notice. Where funding is controlled entirely by DISTRICT, before discontinuing funding, DISTRICT, at its discretion, will make efforts to; a) identify other goods/services that perform substantially the same functions; b) identify if any funding is available through a reallocation or reprogramming of other appropriated or non -appropriated funds, and c) make its best efforts to request and secure such funds from the appropriate entities (collectively, a "Non-Appropriation"). If a Non -Appropriation occurs, DISTRICT shall remit all amounts due to CONTRACTOR through the date of termination. DISTRICT shall not be in default under this contract for nonpayment and will not be liable for any future commitments, penalties, or liquidated damages.

15. SALES TAX EXEMPTION: DISTRICT's sales and use tax exemption number is 12057251-002 -STC. The tangible personal property or services being purchased are being paid from DISTRICT funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of DISTRICT, unless otherwise stated in the contract.

16. WARRANTY (This paragraph is NOT applicable to architect, engineering, and construction service providers): CONTRACTOR agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to DISTRICT under this contract for a period of one (1) year, unless otherwise specified and mutually agreed upon elsewhere in this contract. CONTRACTOR acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, CONTRACTOR warrants that: 1) the product will do what the salesperson said it would do, 2) the product will live up to all specific claims that the manufacturer makes in their advertisements, 3) the product will be suitable for the ordinary purposes for which such product is used, 4) the product will be suitable for any special purposes that DISTRICT has relied on CONTRACTOR'S skill or judgment to consider when it advised DISTRICT about the product, 5) the product has been properly designed and manufactured, and 6) the product is free of significant defects or unusual problems about which DISTRICT has not been warned. Remedies available to DISTRICT include the following: CONTRACTOR will repair or replace (at no charge to DISTRICT) the product whose nonconformance is discovered and made known to CONTRACTOR in writing. If the repair and/or replaced product prove to be inadequate, or fails of its essential purpose, CONTRACTOR will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies DISTRICT may otherwise have under this contract.

17. INSURANCE: CONTRACTOR must carry insurance with policy limits no less than \$1,000,000 per incident and \$3,000,000 in aggregate. CONTRACTOR must provide proof of insurance to DISTRICT and must add DISTRICT as an additional insured with notice of cancellation.

18. PUBLIC INFORMATION: CONTRACTOR agrees that the contract and related Sales Orders and Invoices will be public documents, and may be available for distribution. CONTRACTOR gives DISTRICT express permission to make copies of the contract, related Sales Orders and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except as for sections identified in writing and expressly approved by DISTRICT'S Purchasing department, CONTRACTOR also agrees that CONTRACTOR's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. Permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

19. DELIVERY: Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by CONTRACTOR. Responsibility and liability for loss or damage will remain with CONTRACTOR until final inspection and acceptance when responsibility will pass to DISTRICT except as to latent defects, fraud and CONTRACTOR's warranty obligations.

20. ORDERING AND INVOICING: All orders will be shipped promptly in accordance with the delivery schedule. CONTRACTOR will promptly submit invoices (within 30 days of shipment or delivery of services) to DISTRICT. DISTRICT contract number and/or release number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. Prices paid by DISTRICT will be those prices listed in the contract. DISTRICT has the right to adjust or return any invoice reflecting incorrect pricing or upon which DISTRICT contract number and/or release number is not listed.

21. PROMPT PAYMENT DISCOUNT: Offeror may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. CONTRACTOR shall list payment discount terms on invoices. The prompt payment discount will apply to payments made with DISTRICT Purchasing or Travel Card (major credit card); and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.

22. PAYMENT: Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 60 days from the date a corrected invoice is received by the appropriate DISTRICT official, CONTRACTOR may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus 2%, computed similarly as the requirements of U.C.A. § 15-6-3. The IRS rate is adjusted quarterly, and is applied on a per annual basis, on the invoice amount that is overdue. All payments to CONTRACTOR will be

remitted by mail, electronic funds transfer, or DISTRICT Purchasing Card (major credit card).

23. PATENTS, COPYRIGHTS, ETC.: CONTRACTOR will release, indemnify and hold DISTRICT, its officers, agents and employees harmless from liability of any kind or nature, including CONTRACTOR 's use of any copyrighted or un -copyrighted composition, secret process, patented or un -patented invention or appliance furnished or used in the performance of this contract.

24. ASSIGNMENT/SUBCONTRACT: Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of DISTRICT.

25. DEFAULT AND REMEDIES: Any of the following events will constitute cause for DISTRICT to declare CONTRACTOR in default of this contract: 1) nonperformance of contractual requirements; 2) material breach of any term or condition of this contract. DISTRICT will issue a written notice of default providing a ten (10) day period in which CONTRACTOR will have an opportunity to cure. Time allowed for cure will not diminish or eliminate

CONTRACTOR's liability for damages. If the default remains, after CONTRACTOR has been provided the opportunity to cure, DISTRICT may do one or more of the following: 1) exercise any remedy provided by law; 2) terminate this contract and any related contracts or portions thereof; 3) impose liquidated damages, if liquidated damages are listed in the contract; 4) suspend CONTRACTOR from receiving future solicitations.

26. FORCE MAJEURE: Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. DISTRICT may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

27. PROCUREMENT ETHICS: CONTRACTOR understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the DISTRICT is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the DISTRICT, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization. (U.C.A. § 63G-6a-2304.5).

28. CONFLICT OF TERMS: CONTRACTOR Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on CONTRACTOR 'S website, terms listed in a CONTRACTOR quotation/sales order, etc. In the event of any conflict in the contract Terms and Conditions, the order of precedence shall be: 1) Attachment A: District Standard Contract Terms and Conditions; 2) District Contract Signature page(s), 3) District Special Terms and Conditions; 4) Contractor Terms and Conditions.

29. ENTIRE AGREEMENT: This agreement, including all Attachments and documents incorporated hereunder, and the related DISTRICT solicitation constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on CONTRACTOR'S work plans, cost estimate forms, receiving tickets, or any other related standard forms or documents that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of DISTRICT. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

By signing below, you agree to the above listed terms and conditions.

Signature of Vendor Representative Date

Signature of OSD Representative Date

Revision date: February 20, 2019

Schedule F

CLAIM OF BUSINESS CONFIDENTIALITY

Pursuant to Utah Code Ann., Subsections 63-2-302(1) and (2), and in accordance with Section 63-2-308, _____ (company name) asserts a claim of business confidentiality to protect the following information submitted as part of a Request for Proposals.

This claim is asserted because this information requires protection as it includes:

☐ trade secret as defined in section 13-24-2 (“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use: and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy).

☐ commercial information or non-individual financial information obtained from a person if: (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future: [and] (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

This statement of reasons supporting the claim of business confidentiality applies to the following information in this proposal:

Page	Paragraph	Reason

Please use additional sheets if needed.

Schedule F (Continued)

CLAIM OF BUSINESS CONFIDENTIALITY

You will be notified is a record claimed to be protected herein under Utah Code Ann, § 63-2-304(1) or (2) is classified public or if the governmental entity determines that the record should be released after balancing interests under Utah Code Ann. § 63-2-201(5)(b) or Utah Code Ann. § 63-2-401(6). See Utah Code Ann. § 63-2-308.

Signed: _____

Date: _____

Printed Name and Title

REFERENCES

Supplier will provide a minimum of three (3) references over the past four (4) years. If possible these should be from similar institutions, preferably from school districts that administer the FFVP. The District reserves the right to independently research and evaluate references of the references provided.

1. Company Name _____

Contact Name _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

Email _____

2. Company Name _____

Contact Name _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

Email _____

3. Company Name _____

Contact Name _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

Email _____

COST PROPOSAL

Please calculate your price for the following scenarios **as of Feb 20, 2020**. This is a sample scenario only to provide the evaluation committee with costs to assess and compare proposals.

SUPPLIER NAME: _____

Week 1: "Sweetie" Apple – Grade XF/A (serving size = 1 each)

Bonneville Elementary: 550 servings

Lincoln Elementary: 560 servings

Odyssey Elementary: 730 servings

TO Smith Elementary: 565 servings

Price per serving size: \$_____

Servings per case: _____

Week 2: Persian Cucumber – Grade XF/A (serving size = 1 each)

Bonneville Elementary: 550 servings

Lincoln Elementary: 560 servings

Odyssey Elementary: 730 servings

TO Smith Elementary: 565 servings

Price per serving size: \$_____

Servings per case: _____

Week 3: Kumquat – Grade XF/A (serving size = 2 each)

Bonneville Elementary: 550 servings

Lincoln Elementary: 560 servings

Odyssey Elementary: 730 servings

TO Smith Elementary: 565 servings

Price per serving size: \$_____

Servings per case: _____

INSURANCE: Attach a copy of your current Liability Insurance.

UTAH BUSINESS LICENSE: Please attach current copy of license.

Respectfully Submitted,

Name of Bidder

Title

Authorized Signature

OSD FFVP SCHOOLS

Address and Contact information:

Bonneville Elementary
490 Gramercy Ave
Ogden, UT 84404

Heritage Elementary
373 South 150 West
Ogden, UT 84404

Hillcrest Elementary
130 North Eccles Ave
Ogden, UT 84404

Horace Mann Elementary
1300 9th Street
Ogden, UT 84404

Lincoln Elementary
1235 Canfield Drive
Ogden, UT 84404

New Bridge Elementary
2150 Jefferson Ave
Ogden, UT 84401

James Madison Elementary
2563 Monroe Blvd
Ogden, UT 84401

Odyssey Elementary
375 Goddard Street
Ogden, UT 84401

Taylor Canyon Elementary
2130 Taylor Ave
Ogden, UT 84401

TO Smith Elementary
3295 Gramercy Ave
Ogden, UT 84403

USDA Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;

(2) fax: (202) 690-7442; or

(3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.