



RFP # PT-599-2020-21

The SPARC Consortium

2020 – 2021

REQUEST FOR PROPOSAL

For

**Processing of USDA Donated Foods and for Provision
of Commercial Equivalents**

**Proposals Are Due No Later than 10:00 AM, EST
Friday, January 17th, 2020**

SPARC

E-mail Address: SPARC@proteamadvisors.com

Subject line:

COMPANY NAME, RFP # PT-599-2020-21 Response



Bid Summary

Commodity/Service Being Requested:

Processing of USDA Foods and the provision of Commercial Equivalent

The School Purchasing and Resource Consortium (SPARC) and affiliated with the Manistee Intermediate School District is a School Food Service consortia in Michigan. The consortia are presently comprised of 48 school districts and other agencies throughout the State of Michigan and qualified for just under \$2 million dollars in USDA entitlements. All participating member districts will participate in purchases from this contract. Vendors bidding should be aware that the names and number of districts/entities will change yearly on the commodity side of the business as per the Michigan Department of Education's process for Commodity consortium signup. The commercial pricing offered in this bid will be open to any school district or other such governmental agencies or eligible entities, whom may join the consortium at any time to take advantage of commercial bid pricing. As a cooperative effort of all 48 ISD's in the state covering each of the State of Michigan's 83 counties and the school districts associated and/or other such governmental agencies or eligible entities, our program does allow for "piggybacking" of this type on commercial pricing to all school districts and or other such governmental agencies or eligible entities in the State of Michigan (2 CFR Part 200.318-.326).

SPARC is committed to providing the best services and resources for its member districts. Part of this philosophy includes purchases from the direct market. The manufacturer's Request for Proposal (RFP) for the 2020-21 school year is for USDA Foods-processed items as well as their commercial equivalents but does not include products offered strictly as commercial products.

SPARC has a management services, drayage, storage and distribution contract with Sysco for the acquisition and delivery of food and non-food supplies. Sysco is the distributor for all products solicited in this Manufacturer's RFP. Sysco, with the assistance of the SPARC Executive Director, will act as SPARC's agents to solicit and negotiate final pricing and proposals.

Submission of bid documents, specifically the "**Proposal Response Form**," constitutes agreement and compliance with the terms and conditions listed in this Request for Proposal and with your USDA National Processing Agreement becomes the contract when awards are made by the SPARC Executive Board. The Michigan Department of Education is also requesting a letter with your bid stating, if your company receives an award, your company will honor the award.

Type of Resulting Contract: Statewide Cooperative Contract

As a result of this RFP, SPARC will extend the contract to other school districts and eligible entities statewide. School districts and other eligible entities will have access to a list of approved products. The vendors will be competitively selected as having been qualified as defined within the RFP. This contract will enable school districts and other eligible entities to "piggyback" and purchase on an "as needed" basis from the pool of vendors awarded by this competitively awarded contract.



SPARC District Members for SY 2020-21

1 Allegan County Youth Home	25 Manistee Area Public Schools
2 Athens Area Schools	26 Martin Luther King, Jr. Education Ctr Academy
3 Beaver Island Community School	27 Monroe County Youth Center
4 Benton Harbor Area Schools	28 Mt. Pleasant City School District
5 Berkley School District	29 Oakland County Childrens Village
6 Black River Public School	30 Oholei Yosef Yitzchak Lubavitch
7 Bridge Academy	31 Old Redford Academy
8 Caledonia Community Schools	32 Our Savior Lutheran School
9 Central Academy	33 Our Shepherd Lutheran School
10 Clinton Community Schools	34 Queen of Miraculous Medal School
11 Clintondale Community Schools	35 River Rouge,
12 Crossroads Charter Academy	36 Riverside Academy
13 East Jordan Public Schools	37 Saranac Community Schools
14 Fitzgerald Public Schools	38 St. John the Evangelist School
15 Fraser Public Schools	39 St. Paul Lutheran School
16 Frontier International Academy	40 St. Paul Lutheran School
17 Garden City Public Schools	41 Tecumseh Public Schools
18 Global Heights Academy	42 Union City Community Schools
19 Global Tech Academy	43 Van Buren ISD
20 Grant Public School District	44 Vanderbilt Area Schools
21 Holy Trinity Catholic School	45 Walkerville Public Schools
22 LAKESIDE FOR CHILDREN	46 Wayne-Westland Community School District
23 Lawrence Public Schools	47 Whitefish Township Schools
24 Lincoln Consolidated School District	48 Wolverine Community School District



PROPOSAL TIMETABLE	
Release of RFP	January 3, 2020
Question & Answer Due Date	January 8, 2020
Questions and Answers Responses Posted	January 10, 2020
Request a Dropbox for Proposal Submission	January 15, 2020
Proposals Due by (10:00 am/ EST) *	January 17, 2020
Contract Compliance completed	January 24, 2020
SPARC Vendor Show	January 29, 2020
SPARC Vendor Show Votes Due from members	January 31, 2020
Evaluation/Clarifications/Negotiations	February 2020
Notice to Award Due	March 3, 2020
Master Agreement Award Date	March 2020
Sysco ONSA Form Due Date	May 1, 2020
New Bid Year Begins	July 1, 2020

*Any response received later than the specified deadline will be disqualified.

Contacts with SPARC Personnel: All contact regarding this RFP or any matter relating thereto must be sent in e-mail as follows:

1. Submit question via e-mail
2. Label the subject line: **COMPANY NAME, RFP # PT-599-2020-21 Question**

Contact Person: Kymm Mutch, SPARC administrator
 Submission E-mail: SPARC@proteamadvisors.com
 Contact Person Phone Number: **1-844-662-3767, ext 107**

Submission Instructions:

1. Submit proposal via e-mail or drop box
2. Proposers may request a drop box for supporting documents if too large to email. Note the deadline in the timetable above.
3. Label the subject line: **COMPANY NAME, RFP # PT-599-2020-21 Response**

Contact Person: Kymm Mutch, SPARC administrator
 Submission E-mail: SPARC@proteamadvisors.com
 _____ Contact Person Phone Number: **1-844-662-3767, ext 107**

4. Successfully submitted proposals will receive an email confirmation upon receipt.

Request for proposal package contains:

- Invitation from SPARC to Manufacturers and Brokers
- Proposal Timeline
- Request for Proposal with Submittal Instructions
- Proposal Instructions, Contract Terms and Conditions
- Excel File for Product Information with Price Proposal Column and Manufacturer's Technical Response Form (These excel forms must be returned electronically via e-mail)
- Nutritional Information & Product Labels Supporting Products Bid in electronic format
- Product Formulation Statements and/or Child Nutrition Labels for all items bid

Pages listed below must be submitted electronically with electronic or scanned manual signatures on all documents.

- A. PROPOSAL RESPONSE FORM
- B. FOOD DESTINATION FORM with Zip Code Plus 4 (return one for each food bid)
- C. MANUFACTURER AUTHORIZATION FOR BROKER REPRESENTATIVE SIGNATURE
- D. SAMPLE LETTER MANUFACTURER ACCEPTANCE OF BID AWARD
- E. CERTIFICATE OF COMPLIANCE IRAN ECONOMIC SANCTIONS ACT
- F. CHECK LIST OF BIDDER'S RESPONSES TO RFP
- G. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION
- H. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS
- I. CERTIFICATION REGARDING LOBBYING CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS,
- J. CLEAN AIR AND WATER AFFIDAVITS
- K. ETHICAL STANDARDS AFFIDAVIT
- L. CONFLICT OF INTEREST AFFIDAVIT
- M. A SAMPLE COPY OF YOUR "MONTHLY PERFORMANCE REPORT"
- N. SPARC BID SHEET TECHNICAL RESPONSE FORM 2020-21
- O. 2020-21 SEPDS FOR ALL PRODUCTS PROPOSED

SPARC reserves the right to select vendors yielding best value and in the best interest of the consortia. SPARC intends to competitively negotiate and award the contract all or in part based on the evaluation factors of: price, incentives, food processing factors, delivery conditions, point of sale and promotional materials and completeness of the proposal. When evaluations are scored, there is typically a logical separation between the most highly ranked proposals and all other proposals in terms of raw evaluation points. SPARC will negotiate with no more than three top bidders by category, and in the event of fewer highly rated proposals, may negotiate with less than three. SPARC also reserves the right to award entire product categories or groups to a single supplier if it is in the consortia's best interests to meet minimum load requirements and to reduce freight costs.

The SPARC Consortia invites and encourages participation in this procurement process by businesses owned by small businesses and minorities, women, disabled, and disabled business enterprises. Affirmative steps will include placing such qualified businesses on solicitation lists; assuring such businesses are solicited whenever they are potential sources; dividing total requirements, when economically feasible, into smaller quantities to permit maximum participation by such businesses; using the service and assistance, as appropriate, of organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and requiring the prime contractor, if subcontracts are to be let, to also take these affirmative steps. [2 CFR 200.321] SPARC Consortia will give additional score points for businesses that fall under this category. (See Tab 1 of technical response form for company response)



A. PROPOSAL RESPONSE FORM

Contract Period: July 1, 2020 - June 30, 2021

VENDOR INFORMATION:

Company FOB origin physical address:

Company Name

Address

City, State Zip code + four

Contact Name: _____ Phone Number: _____

Contact Email: _____ Company Website: _____

Address for Vendor Headquarters if different from FOB origin physical address listed above.

City State Zip Code

The undersigned is an authorized company officer to propose and bind the company, and furthermore agrees to furnish and deliver the goods or services in accordance with the terms, conditions, specifications and prices herein quoted, and to pay promotional allowances, incentives and rebates as guaranteed if awarded a contract.

(SIGNATURE) (DATE)

Name:

Title/Position:

PROPOSAL RESPONSE FORM is not acceptable unless signed by a manufacturer's firm member or an authorized manufacturer's agent. Signature authority may be delegated by a manufacturer to a manufacturer's agent in a letter (sample provided) from the manufacturer substantiating this authority. The manufacturer should e-mail this letter in sufficient time for receipt by SPARC by January 17, 2020, 10:00 a.m. EST.

U.S. DEPARTMENT OF AGRICULTURE - FOOD AND NUTRITION SERVICE
**DESTINATION DATA FOR DELIVERY OF
DONATED FOODS**
FNS Instruction 709-5
SEE INSTRUCTIONS ON REVERSE

TYPE OF ACTION

- NEW SHIP-TO CHANGE / UPDATE
 NEW HQ RECEIVER INACTIVATE

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Agriculture, Food and Nutrition Services, Office of Policy Support (0584-0293), Alexandria, VA 22302. Do not return the completed form to this address.

SECTION A: SHIP-TO

1. COMPANY NAME	2. STREET ADDRESS (Number, Name)	3. CITY	4. STATE	5. ZIP CODE
6. BUSINESS PARTNER ID (Existing Business Partners)	7. CONTACT EMAIL (optional) PRIMARY: ALTERNATE:	8. CONTACT NUMBERS (delivery) PRIMARY ALTERNATE		9. CARE OF/DBA NAME (if applicable)
		PHONE:		
		FAX:		
10. SDA BP ID (Map To)		11. <input type="checkbox"/> ADD TO HQ RECEIVER		
		12. <input type="checkbox"/> REMOVE RELATIONSHIP (SDA use only)		

13. SHIP BY (Shipment may be made by rail or truck unless one of the following is checked) <input type="checkbox"/> RAIL ONLY <input type="checkbox"/> TRUCK ONLY	EXPLANATION OF NEED FOR THE RESTRICTION SHOWN LIMITATIONS
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SECTION B: NEW HQ RECEIVER

14. COMPANY NAME	15. STREET ADDRESS (Number, Name)	16. CITY	17. STATE	18. ZIP CODE
19. <input type="checkbox"/> ADD HQ RECEIVER WBSCM USER (COMPLETE 20-22)	20. NAME (First, Last)	21. EMAIL	22. PHONE	

23. DELIVERY LOCATIONS (if applicable)

BP ID (List existing Ship-To that will be mapped to this HQ Receiver)	NEW SHIP-TO
	Attach a list of new Ship-To to this form. (Include Street Address, City, State, Zip Code)

SECTION C: TYPE OF WAREHOUSE (OPTIONAL SECTION 24-28)

24A. TYPE OF WAREHOUSE <input type="checkbox"/> STATE OWNED AND OPERATED <input type="checkbox"/> COMMERCIAL	25. TYPE OF PROCESSOR <input type="checkbox"/> SINGLE PROCESSOR <input type="checkbox"/> NATIONAL PROCESSOR <input type="checkbox"/> OTHER	26. RELATIONSHIP TO NATIONAL WAREHOUSE <input type="checkbox"/> NATIONAL WAREHOUSE RECEIVING LOCATION
24B. IF COMMERCIAL WAREHOUSE DELIVERY ACCEPTABLE BY <input type="checkbox"/> TRANSFER OF TITLE <input type="checkbox"/> LOCAL PICKUP		
27. TYPE(S) OF STORAGE PROVIDED <input type="checkbox"/> DRY <input type="checkbox"/> REFRIGERATED <input type="checkbox"/> FREEZER	28. HANDLING OF PERISHABLE FOODS (Check one) <input type="checkbox"/> SHIPMENT ALWAYS ENTIRELY UNLOADED AND PLACED IN STORAGE <input type="checkbox"/> PART OF SHIPMENT ALWAYS OR SOMETIMES DISTRIBUTED FROM CAR OR WAREHOUSE PLATFORM	

The above information is true and correct to the best of my knowledge and belief.

29. DATE	30. SIGNATURE OF BUSINESS PARTNER REPRESENTATIVE
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EMAIL a copy to WBSCM-Ship-To@fns.usda.gov

INSTRUCTIONS

It is important that a separate form be prepared for each destination when delivery conditions require changes in Section A: Ship-To.

In the "Type of Action" entry, check one box only indicating whether the form is to provide data for:

- (1) A NEW SHIP-TO destination: This can be a request for a delivery location to be created or a request for a delivery location to be linked/mapped to a State Distributing Agency (SDA)
- (2) A New HQ Receiver: HQ Receivers are a physical grouping of Ship-To organizations. One HQ can have oversight of multiple Ship-To organizations.
- (3) Notification of CHANGE/UPDATE in data for an existing Ship-To. This can be a physical change to the information or to request removal of a Ship-To to SDA relationship.
- (4) INACTIVATE of a Ship-To destination

Section A: Use to provide information for New Ship-To, Ship-To Change/Update or Ship-To Inactivation.

Section B: Use to provide information for a New HQ Receiver

Section C: Use to provide additional Ship-To information

ITEM

- 1 2,3,4, and 5 are Self-explanatory.
- 6 Provide the Business Partner ID (BP ID) for Ship-To Changes/Updates and Inactivation (*i.e.* 500XXXX)
- 7 Provide a contact email for the delivery location to be contacted for delivery questions/issues.
- 8 Provide a valid delivery contact phone number and/or fax to schedule deliveries. A contact phone number is required.
- 9 If the delivery location holds the business name of another entity and this location will receive shipments under a different name, add the name of the receiving organization and specify if it is a DBA or Care of.
- 10 If applicable, provide the SDA BP ID to have the Ship-To location mapped to the requested SDA (*i.e.* 400XXXX)
- 11 Check this box if the Ship-To must be added to an HQ Receiver (Processors only) found in Section B
- 12 Check this box if a Ship-To should be removed from an SDA.

- 13 Check one of the boxes to restrict transportation options.

For Rail Delivery - No entry is to be made unless delivery to a specific location is essential to program operations; e.g., the receiving warehouse is located on a rail siding. When an entry is necessary, the address

shown shall include the specific location at which the car is to be placed for unloading. When reciprocal switching is not in effect at the point of delivery, the name of the railroad which serves this location shall be shown. For example: "Blank's Warehouse, ACL," or "Industrial siding, PPP." Where reciprocal switching is in effect at the point of delivery, no delivering carrier shall be specified. If delivery is to be made on a team track, the name of a specific team track shall not be shown unless it is essential to program requirements.

For Truck Delivery - Show exact street address for location at which delivery will be accepted. If same as for "Rail Delivery," enter "Same as for rail delivery."

Limitations: Show limiting conditions, if any, at the destination point; e.g., "Cannot handle care over maximum length of 53 feet."

Restrictions: It is desirable that shippers be allowed to make shipment by either rail or truck so that the means of transportation can be selected which will result in least transportation costs. Distributing agencies may restrict the method of shipment only when necessary to their program operations. If a specific mode of transportation is shown, an explanation must be made of the need for the restriction.

- 14 15, 16, 17, and 18 are Self-explanatory.
- 19 Check this box to add a WBSCM User for the HQ Receiver.
- 20 21 and 22. Provide the user's information who will access WBSCM on behalf of the HQ Receiver.
- 23 List Ship-To that will be added to the HQ Receiver.
- 24 25, 26, 27 and 28 Self-explanatory.
- 29 and 30. Receiving organization or Distributing Agency's representative will complete these sections.

**C. MANUFACTURER AUTHORIZATION
FOR BROKER TO ACT AS THE MANUFACTURER'S
REPRESENTATIVE
WITH FULL SIGNATURE AUTHORITY**

COMPLETE AND RETURN THIS PAGE IF APPLICABLE

Date: _____

By my signature below, I certify I am authorized to delegate signature authority for

Manufacturer's Representative _____
(Name of company and specific individual authorized to sign)

for the express purpose of negotiating Direct to Manufacturer contracts between

_____ and SPARC, for the contract year 2020-21
(Name of Manufacturing company)

(SIGNATURE)

(DATE)

Name:

Title/Position:

Phone"

Email Address:

D. SAMPLE LETTER MANUFACTURER ACCEPTANCE OF BID AWARD

**SAMPLE – Please type your response on company letterhead
and submit signed copy with proposal response**

Date:

By my signature below, I certify I am authorized to accept a bid award from SPARC, and that our company will honor such an award for the extent of the bid period. Further, we understand that while an award has been made and our company has been added to the annual surveys of the SPARC Consortia, the membership may not have allocated enough product on the respective surveys for a diversion of USDA food to us.

Manufacturer _____

Name _____ (typed)

Name _____ (signed)

Title _____

Phone _____

Email _____

COMPLETE AND RETURN THIS PAGE

**E. CERTIFICATE OF COMPLIANCE
MICHIGAN PUBLIC ACT NO. 517 OF 2012
IRAN ECONOMIC SANCTIONS ACT**

The undersigned, the owner, or authorized officer of the below-named company (the "Company"), pursuant to the compliance certification requirement provided in the SPARC Consortium request for proposal (the "RFP") hereby certifies, represents, and warrants that the company (which includes its officers, directors and employees) is not "Iran Linked Business" within the meaning of the Iran Economic Sanctions Act, Michigan Public act No. 517 of 2012 (the "Act"), and that in the event the company is awarded a contract by SPARC as a result of the aforementioned RFP, the company is not and will not become an "Iran Linked Business" at any time during the course of performing any services under the contract.

The Company further acknowledges that any person who is found submitting a false certification is responsible for a civil penalty not more than \$250,000 or two (2) times the amount of the proposed contract for which the false certification was made, whichever is greater, the cost of the SPARC Consortium's investigation, and the reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to bid on a request for proposal for three (3) years from the date it was determined that the person has submitted the false certification.

Name of Company

Name and Title of Authorized Representative

Signature

Date

F. CHECK LIST OF BIDDER'S RESPONSES TO RFP (PAGE 1)

The undersigned hereby offers and agrees that, if SPARC offers a contract within 90 days from the date of opening requests for proposals, the undersigned will sell to SPARC's distributor, Sysco, the goods or services offered which have been awarded to them in accordance with the terms, conditions, specifications and prices quoted herein, and in compliance with all conditions and terms set forth in this manufacturer's request for proposal.

After carefully reviewing the specifications, do the following: COMPLETELY fill in ALL pricing and product details on the computer, print a copy for your reference and email the completed file back to lockbox as described on pages 3 of this document. For a proposal to be responsive, vendors shall complete and submit the Excel file in the format exactly as provided. Vendor manipulation of the file format will render that vendor's response invalid. You may provide additional product information on a separate page and attach it to your bid. But, do not insert the information into the bid document.

Mark all of the following with or Check Mark to indicate agreement, acknowledgement, and compliance:

- Bidder guarantees he/she has read, and shall adhere all Terms and conditions of this Proposal
- Bidder acknowledges, if processing USDA commodities, that they have on file or can secure a Master Contract with the State of Michigan.
- Bidder has completed and shall submit all required forms in the specified format by 10:00 a.m., EST, Friday, January 17, 2020
 - A. PROPOSAL RESPONSE FORM
 - B. USDA FORM 709-5 DESTINATION DATA FOR DELIVERY OF DONATED FOODS
 - C. MANUFACTURER AUTHORIZATION FOR BROKER REPRESENTATIVE SIGNATURE
 - D. SAMPLE LETTER MANUFACTURER ACCEPTANCE OF BID AWARD
 - E. CERTIFICATE OF COMPLIANCE IRAN ECONOMIC SANCTIONS ACT
 - F. CHECK LIST OF BIDDER'S RESPONSES TO RFP
 - G. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION
 - H. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS
 - I. CERTIFICATION REGARDING LOBBYING CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS,
 - J. ETHICAL STANDARDS AFFIDAVIT
 - K. CONFLICT OF INTEREST AFFIDAVIT
 - L. CLEAN AIR AND WATER AFFIDAVITS
 - SAMPLE COPY OF YOUR "MONTHLY PERFORMANCE REPORT"
 - SPARC BID SHEET TECHNICAL RESPONSE FORM – UNLOCKED EXCEL FORMAT
 - SPARC BID SHEET TECHNICAL RESPONSE FORM – PDF FILE
 - USDA APPROVED 2020-21 SEPDS FOR ALL PRODUCTS PROPOSED
 - NUTRITIONAL AND PRODUCT LABEL INFORMATION ON ALL PRODUCTS OFFERED FOR CONSIDERATION.
- Bidder acknowledges this is a requirement contract for a specified period, not a guaranteed volume contract
- Bidder acknowledges and will comply with payment of rebates, incentives and promotional allowances, including payment of the non-timely payment penalty when assessed.
- Bidder can and will provide commercial and processed equivalent product in the same case pack size and count.
- Bidder acknowledges SPARC prefers standard yield when available to the processor.
- Bidder acknowledges SPARC prefers wing credit to be returned in product when a price discount is not possible.
- Bidder acknowledges SPARC prefers food value to be provided through a reduced price rather than a rebate.
- Bidder can and will process and deliver no more than 60-days of processed USDA food product at one time and only when requested.
- Bidder acknowledges and will comply with specified SPARC delivery and lead time conditions unless variances to SPARC expectations are clearly noted on the Technical Response Form and accepted and noted in final negotiations.

G. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

(A) By submission of this offer, the offeror certifies each party thereto certifies as to its own organization, that in connection with this procurement:

(1) The prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting completion, as to any matter relating to such prices with any other offeror or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to bid opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other offeror or to any competitor; and

(3) No attempt has been made or will be made by the offeror to induce any person or firm to submit or not to submit, an offer for the purpose of restricting competition.

(B) Each person signing this offer on behalf of the manufacturer or processor certifies that:

(1) He or she is the person in the offeror's organization responsible within the organization for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above; or

(2) He or she is not the person in other offeror's organization responsible within the organization for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate, in any action contrary to (A)(1) through (A)(3) above, and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above.

To the best of my knowledge, this manufacturer or processor, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

Signature of Company Representative Title Date Company's Authorized Representative

In accepting this offer, SPARC certifies that no representative of SPARC has taken any action which may have jeopardized the independence of the offer referred to above.

Signature of the SPARC Administrator Title _____ Date

**H. CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY, AND VOLUNTARY EXCLUSION – LOWER
TIER COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Executive Order 12689, and 31 U.S.C. 6101; Debarment and Suspension, 7 CFR Part 3017, Subpart C, Responsibilities of Participants Regarding Transactions.

(Please read instructions on next page before completing Certification.)

The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

School Purchasing And Resources Consortium (SPARC)
2020-21

PT-599-

Organization Name

Award Number or Project

Name:

Name(s) and Titles(s) of Authorized Representatives(s)

Signature(s)

Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Excluded Parties List System (EPLS) at <http://epls.arnet.gov/>.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies as appropriate, including suspension and/or debarment.

NOTICE TO APPLICANTS – CERTIFICATION/DISCLOSURE REQUIREMENTS RELATED TO LOBBYING

Section 319 of Public Law 101-121 (31 U.S.C.), signed into law on October 23, 1989, and imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. Certain provisions of the law also apply to Federal commitments for loan guarantees and insurance; however, it provides exemptions for Indian tribes and tribal organizations.

Effective December 23, 1989, current and prospective recipients (and their subtier contractors and/or subgrantees) will be prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress and any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of \$100,000 (or \$150,000 for loans) on or after December 23, 1989, the law requires recipients and their subtier contractors and/or subgrantees to: (1) certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or **nonappropriated** funds on or after December 23, 1989; and (3) file quarterly updates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance.

If you are a current recipient of funding or have an application, proposal, or bid pending as of December 23, 1989, the law will have the following immediate consequences for you:

- You are prohibited from using appropriated funds (other than profits from Federal contracts) on or after December 23, 1989, for lobbying Congress and any Federal agency in connection with a particular contract, grant, cooperative agreement or loan;
- You are required to execute the attached certification at the time of submission of an application or before any action in excess of \$100,000 is awarded; and
- You will be required to complete the lobbying disclosure form if the disclosure requirements apply to you.

Regulations implementing Section 319 of Public Law 101-121 have been published as an Interim Final Rule by the Office of Management and Budget as Part III of the February 26, 1990, **Federal Register** (pages 6736-6746).

**I. CERTIFICATION REGARDING LOBBYING
CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

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

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

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;

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients 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.

Organization Name # PT-599-2020-21
Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

J. ETHICAL STANDARDS AFFIDAVIT

Contractor, after being first duly sworn, affirms that by its employment policy, standards and practices it does not subscribe to any personnel policy which permits or allows for promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age or sex and that it is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

Contractor understands that it shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore.

Contractor also understands that it shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award or a subcontract or order.

Contractor also understands that it shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a metropolitan government contract upon the agreement or understanding for a contingent commission, percentage or brokerage fee, except for the retention of *bona fide* employees or *bona fide* established commercial selling agencies for the purpose of securing business.

Contractor represents that it has not retained anyone in violation of the foregoing.

Contractor also understands that a breach of ethical standards could result in civil or criminal sanctions and/or debarment or suspension from being a seller, contractor or subcontractor under metropolitan government contracts.

Print name of bidder: _____ Signature: _____

Name of Company: _____ City: _____ State: _____

Sworn to and subscribed before me, a notary public in and for the above state and county, on this

_____ Day of _____, 20_____.

Notary Public _____

My commission expires: _____

Seal

K. CONFLICT OF INTEREST AFFIDAVIT

This affidavit is required by state law and complies with the State of Michigan, Act No. 232 of Public Acts of 2004, Enrolled House Bill No. 5376, Sec. 1267, paragraph 3, and sub-paragraph (d), as listed below:

- (3) The advertisement for bids (and proposals) shall do all of the following:
State that the bid shall be accompanied by a sworn and notarized statement disclosing any familial relationship that exists between the owner or any employee of the bidder and any member of the board, intermediate school board, or board of directors or the superintendent of the school district, intermediate superintendent of the intermediate school district, or chief executive of the public school academy. A board, intermediate school board, or board of directors shall not accept a bid that does not include this sworn and notarized disclosure statement.

CHECK ONE OF THE TWO BOXES BELOW.

List and describe all existing Conflicts of Interest. *(Attach an additional page if necessary.)*

To the best of my knowledge, no conflict of interest exists.

Print name of bidder: _____ Signature: _____

Name of Company: _____ City: _____ State: _____

NOTARY: State of _____

County of _____

Sworn to and subscribed before me, a notary public in and for the above state and county, on this

_____ Day of _____, 20__ .

Notary Public _____

My commission expires: _____

Seal

L. CLEAN AIR AND WATER CERTIFICATE

Applicable if the contract exceeds \$100,000 or the Contracting Officer has determined that the orders under an indefinite quantity contract in any one year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (41 U.S.C. 1857c-8(c) (1) or the Federal Water Pollution Control Act 33 1319(d) and is listed by EPA or the contract is not otherwise exempt. The School Purchasing and Resource Consortium (SPARC) and manufacturer or processor (offeror) shall execute this Certificate.

Name of Manufacturer or processor

Kymm S Mutch (e signature)_____
acting for SPARC Consortium

THE MANUFACTURER OR PROCESSOR AGREES AS FOLLOWS:

To comply with all the requirements of Section 114 of the Clean Air Act, as amended (41 U.S.C. 1857, et seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information as well as other requirements specified in Section 114 and Section 308 of the Clean Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.

That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency (EPA) List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.

To use his/her best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed.

To insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph.

THE TERMS IN THIS CLAUSE HAVE THE FOLLOWING MEANINGS:

The term "Air Act" means the Clean Air Act, as amended (41 U.S.C. 1957 et seq., as amended by Public Law 91-604).

The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1957c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

The term "Clean Air Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342) or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

The term "Compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an Air or Water Pollution Control Agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.

The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location or sites of operations, owned, leased, or supervised by the Manufacturer or processor.

Signature of Manufacturer or Processor
Company's Authorized Representative

Title

Date



M. SAMPLE COPY OF MONTHLY PERFORMANCE REPORT

This report must be filed each month with the Michigan Department of Education, the SPARC Administrator, and Sysco. Failure to comply with this request will be considered an infraction of the awarded contract. Past compliance with this provision will become part of the evaluation matrix. Copies of acceptable report formats can be found on the ACDA web site www.commodityfoods.org

N. BID SHEET TECHNICAL RESPONSE FORM

The Bid Sheet Technical Response Form (Excel Spreadsheet) is an integral part of this Request for Proposal.

- Tab 1. Required Manufacturers Information
- Tab 2. Instructions for Bid Sheet
- Tab 3. Bid Sheet

Steps for preparation and submittal

- Download unlocked Excel Spreadsheet file, SPARC Bid Sheet Technical Response Form 20-21;
- Rename with company title, (ABC Company, SPARC Bid Sheet Technical Response Form 20-21) and complete required information for Tab 1 and Tab 3
- Make a PDF copy of the file and include with your submission to ensure data integrity.
- Submit **both** an unlocked excel version and an PDF version of the excel file
- Only the provided format will be accepted. Please do not change the format of the spreadsheet.

IF YOU QUOTE A BILLBACK ALLOWANCE

The price from which the billback is to be subtracted must be provided or your proposal may be considered non-responsive. If you fail to provide base pricing from which to subtract the billback, your technical response will be marked down.

REBATE/ALLOWANCE COLLECTION

SPARC agent Sysco, will file promotional allowance claim requests with manufacturers. Payment to SPARC or Sysco is expected within 45 days or less after filing a claim. Sysco will remit payment to individual districts based on their proportionate share of purchases. Sysco will not be qualified for the promotional allowances and incentives offered in this Proposal and warrants and guarantees they will NOT retain any payments made on behalf of SPARC. Promotional allowances and volume incentives, if offered to SPARC, will be an award criteria considered in pricing proposals. All promotional allowances and volume incentives offered to SPARC shall be quoted on the Manufacturer's Technical Response Form for each product being bid.



QUOTE PRICES FOR EACH ITEM SEPARATELY

In the event that the unit designation stated on the price proposal form is different from the standard package offered, or the portion size requested, the Bidder shall convert the quantities to conform to the unit set forth in the specifications. Failure to make the conversion may be cause for rejection of the proposal. If decimals are used for pricing, decimals shall not exceed 4 decimal places.

DELIVERED PRICING

Quoted prices that shall include drayage, freight, packing and insurance at the manufacturer's expense on all items delivered to SPARC designated facility. All items delivered under this pricing option shall be delivered to Sysco, Canton and Grand Rapids, Michigan, or designated alternate locations. Sysco may request F.O.B. when considered appropriate during contract negotiations. Final pricing must be reflected on the ONSA form for the 20-21 school year.

SPARC ACCEPTABLE VALUE-PASS-THRU METHODS

Under the terms and conditions of this RFP, all manufacturers, vendors, brokers and suppliers agree to utilize one of the three methods of value-pass-thru authorized by SPARC, Fee for Service (FFS), Modified Fee for Service and Net-Off-Invoice (NOI). SPARC does not utilize either E-Rebates or Mail-in-Rebates and entities who bid on this RFP agree to abide by this request. E Rebates and Mail-in-Rebates are difficult to track and unduly complicate SPARC's recordkeeping and USDA required food usage reporting.

CONTRACT TERMS AND CONDITIONS:

All manufacturers and/or processors wishing to process USDA commodities for SPARC members must have a National Processing Agreement (NPA) or a Master Contract on file with the State of Michigan, Michigan Department of Education, Office of Health and Nutrition Services. The State of Michigan has adopted the American Food Distribution Association's (ACDA) prototype contract as the model bidders must meet. The NPA and/or Master Contract prototype along with certifications and documents required with a manufacturer's or processor's BID will constitute a valid contract with SPARC. Awards will be made in February and confirmed by SPARC executive director in March.

- 1. Contract Period:** The contract will be from July 1, 2020 through June 30, 2021. With the option for additional four (4) one-year contracts if agreeable by both parties.
- 2. Extension:** SPARC reserves the right to extend the contract for 90-days past its term to continue a source or sources of supply until new or replacement Bidders have been identified and contracts awarded. Any contract extension/renewal is contingent upon the approval of the Bidder(s).
- 3. Acceptance of Conditions:** Each Bidder, by submitting a proposal, assents to each and every term and condition set forth anywhere in this Request for Proposal and agrees to be bound thereby. A failure to become knowledgeable, to read materials provided or to obtain clarification about contract terms and conditions prior to submitting a proposal, does not warrant release from contract acceptance.
- 4. Format of Proposal:** Bidders are expected to submit bids that are accurate for products. Proposals shall be complete and contain all terms a Bidder believes necessary. If after submitting a Proposal, a Bidder finds changes are necessary, the bidder may change or withdraw their proposal at any time up to the time of the proposal opening. After the opening, the Proposal may not be withdrawn or changed except during the process of competitive negotiations. Once negotiations are complete and terms accepted, the proposal and the complete agreement constitute a binding contract, and the Bidder is expected to honor all agreed upon contractual terms.



Submittals are required in a specified format. Facsimile transmissions will not be accepted for price quotations or for documents requiring original signatures.

5. **Signatures:** All sheets requiring a signature may be electronically or manually signed, as follows:
 - a. In the case of an individual Bidder, by such individual Bidder,
 - b. In the case of a Partnership, the name of the partnership must appear on such proposal and shall be signed in the name of such partnership by at least one partner or an authorized broker when an original signed letter authorizing a broker to sign for the corporation is on file.
 - c. In the case of a corporation, the corporate name shall be subscribed by the president, a managing officer, or an authorized broker (when an original signed letter authorizing a broker to sign for the corporation is on file). There shall be set forth under the signature of such officer the name of the office he holds or the capacity in which he acts for such corporation.
6. **Proposal Opening.** The opening will serve only to open and acknowledge each Proposal via email. Price comparisons will not be available until competitive negotiations have been completed and all bids have been submitted to the other consortiums in Michigan. All materials submitted in response to this Request for Proposal must have been received in the form designated by 10:00 a.m. EST, January 17, 2020 at which time they will be opened and prices placed in an audit format. No award will be made or implied at the proposal opening. Proposals will be evaluated after proposal opening and contracts will be awarded based on award criteria.
7. **Initial Orders:** Initial orders will be submitted to successful Bidder on a time line established by Sysco for delivery in July or August 2020 at contract pricing.
8. **Specifications / Approved Brands for Equality:** It is the intent of SPARC to afford maximum competition and equal opportunity to any and all potential Bidders we have changed our process for giving specifications. Due to the ever-changing product mix in schools because of changes with the Healthy Hunger Free Kids Act, we are asking all vendors to fill out our "bid sheet form" with all of the pertinent information including pricing for all products that have been approved for commodity processing that are commonly used in schools. We have found that due to product reformulations based on regulation changes that our specifications are actually causing a system of limited competition. Our group has decided, that we will evaluate products in each product category that meet the needs of individual districts and will be awarding based on the criteria listed later in this document.
9. **Product Detail: Provide as much detail as possible with the specification/pricing document and the EPDS of SEPDS to assist in evaluating your product:** State Brand, Pack and Unit Size, Product Number or Universal Product Codes if used as the Vendor Product Number, Unit Price, Price per Serving; Number of Servings per Case, USDA Donated Foods Product Numbers required to produce each product and, the number of finished pounds, servings and percent yield produced from a truckload of the required USDA donated food(s). Errors in correctly quoting pack, size, price, etc. shall not relieve a vendor from the responsibility to provide product at the offered unit cost.
10. **Fiscal Year Funding:** Circumstances beyond the control of SPARC may have an unexpected impact on projected volume. In the event of the discontinuance or a decrease in federal and/or state funds, SPARC reserves the right to change the item identifications, increase or decrease the quantities, and/or delete items.
11. **Estimated Purchase Quantities:** This Request for Proposal seeks proposals to meet the product requirements of SPARC Member Districts and does not Guarantee a specified purchase volume.
12. **Prices, Size, and Pack Variances:** Quote each item separately by offering the standard unit price on the Excel "Bid Sheet Form" in the format designated. **IMPORTANT:** To qualify as a valid bid, ALL commercial and USDA Food price information must be completed as shown on the "bid sheet form" including unit pricing. USDA Food



must be quoted using the November 15 price file even if your company's SEPDS are still showing previous year's USDA Food price.

- 13. Fixed Firm Pricing/Market Emergency:** SPARC fixed pricing for the term of the contract. It is understood that, with market emergencies, pricing for a twelve-month period may not be realistic. In the event of an uncustomary increase or decrease in the market price of any item or items covered by the contract, SPARC will consider negotiated price adjustments (increases or decreases), commensurate with ingredient price changes when substantiated by independent third-party market food bulletins over a 60-day period in advance of the request, and when the resulting price change would be six-percent or greater. Allowable third market party bulletins for market adjustments are:
- a. Urner Barry Market Reports (Price Current or National Provisioner Sheet) - Urner Barry Publications Inc, PO Box 389, Toms River, New Jersey, 08754-0489 exact indicator to be agreed upon between SPARC and the successful vendor at the time of the initial award.
 - b. Current Spot Price for the specific food, exact location and poultry federation to be agreed upon between SPARC and the successful vendor at the time of the initial award.
 - c. Agricultural Marketing Service, United States Department of Agriculture Market Reports for the Specific food in question, shipping point or location to be agreed upon between SPARC and the successful vendor at the time of the initial award.
 - d. Food Institute Reports
 - e. Third market bulletins proposed by the successful Bidder, exact location and federation to be agreed upon between SPARC and the successful vendor at the time of the initial award.
 - f. Pricing adjustments will not be considered for contract rollovers/extensions.
- 14. Competitive Negotiations:** Michigan State Law and USDA regulations require that SPARC follow one of several prescribed bid / acquisition processes. SPARC takes the proposal process seriously, and intends to solicit Proposals that are accurate, and that Bidders intend to honor. Bidders are advised that SPARC intends to use competitive negotiations in an effort to obtain best value for all desired terms of prices, food processing factors, delivery conditions, and miscellaneous factors. SPARC intends to make awards to Bidders that best meets SPARC expectations, balancing the highest standards of quality, creativity of proposals and services and value with the lowest costs. SPARC will not negotiate with all Bidders within a group. SPARC may negotiate prices and terms with the most highly rated Bidders. SPARC reserves the right to select vendors in the best interest of the cooperative and to competitively negotiate and award the contract based on the evaluation factors of: member evaluations and taste tests, student evaluations and taste tests, price, food processing factors such as yield, delivery conditions, point of sale and promotional materials and completeness of the proposal. When evaluations have been scored, there is typically a logical separation between the most highly ranked proposals and all other proposals in terms of raw evaluation points. SPARC will negotiate with no more than three top ranked Bidders for a particular product or categorical grouping and, in the event of fewer highly rated proposals, SPARC may negotiate with less than three. SPARC also reserves the right to award entire product categories or groups to a single supplier, or to roll-over previous year's awards, if it is in the cooperative's best interests to reduce carryover, reduce costs, meet minimum load requirements, reduce freight costs and/or maintain supply levels.
- 15. Purchase Orders:** All purchase orders placed under this contract shall be invoiced at the contract price prevailing at the time the order is placed.
- 16. Delivery/Lead Times:** The SPARC service provider Sysco, will receive delivered product. Delivery of high volume products will generally be requested on a weekly basis, and should be delivered no later than 14-work days after receipt of order (ARO). For lower volume products, delivery may be requested on a bi-monthly or monthly frequency and should be delivered no later than 14-21work days ARO. If lead-time requirements for



your organization will be different from the specified 10- or 14-days, please record the desired lead time(s) on the proposal document. It is unreasonable for order lead times to exceed 21 days except for seasonal or specialty items.

It is required that all items delivered to Sysco be delivered on 40" x 48" hardwood pallets. Pallet exchange is available. The receiving hours of Sysco for all incoming freight are 7:00 AM – 2:00 PM. All deliveries require 48-hour advance telephone notice to Sysco prior to delivery. Deliveries with no dock times may be refused.

Delivery/dock times can be arranged by contacting:

SYSCO Grand Rapids Company
3700 Sysco Ct., SE
Grand Rapids, MI 49512
Phone: (616) 956-0775

SYSCO Detroit
41600 Van Born Rd
Canton, MI 48188-2797
Phone: (734) 397-7663

Appointments only accepted via email

17. **Just in Time Processing and Delivery:** Processing of USDA Donated or commercially processed foods shall be scheduled so as to be fresh on delivery and to minimize loss in the event of a recall. Delivery will be required on a schedule developed by Sysco and will be in response to orders by the SPARC member districts. The quantity of product delivered shall never exceed that amount that can be used by SPARC districts in a 60-day period. Deliveries will be requested generally weekly or biweekly for high volume products, and bi-weekly or monthly for lower volume products.
18. **Bill of Lading/Delivery Ticket:** The successful Bidder shall enclose a complete packing slip or delivery ticket with any items ordered and delivered under the awarded contract. The packing slip or delivery ticket shall include at a minimum, the following information: purchase order number, date of order, and a complete listing of items delivered.
19. **Invoices and Statements:** Invoices or statements for product and/or for processing of USDA donated food shall be submitted in triplicate to SPARC in care of the appropriate Sysco Division at the addresses listed earlier in the document for payment along with the vendor invoice and receiving documentation. Invoices or statements shall contain the following information: purchase order number, item number, item description, quantity, unit price, extended totals, and applicable discounts for items delivered. All prices, terms and discounts must be listed on the statement. Failure to enter the above information on the invoice or to submit a timely invoice may cause a delay in payment. Payment shall be made on partial deliveries accepted by Sysco on behalf of SPARC. Sysco shall in turn, bill schools for the cost of product and will add a fixed fee for delivery. Sysco shall maintain records regarding purchases of commercial food or processed food entitled by and received by each school and district or entitlement agency.
20. **Approved State of Michigan USDA Donated Foods/Food Processor:** Any manufacturer awarded a USDA Food-processing contract must have in place a National Processing Agreement or have applied for or received a Master Contract and become listed as an Approved USDA Food Processor by the State of Michigan. Additionally, approved USDA Summary End Product Data Schedules must be provided to the State of Michigan, Michigan Department of Education (MDE), Food and Nutrition Unit within the time specified. SPARC will also file SEPDS with MDE for all products selected to meet SPARC members' needs.



- 21. USDA Processed Donated Foods:** It is desire of SPARC to fully use USDA donated food entitlement in the year earned. Furthermore, it is SPARC's desire that the transition between USDA processed donated foods and commercial products be seamless and transparent to students and staff members. To effect a seamless transition, a USDA food product will have a commercial equivalent, and the processed food and the commercial equivalent shall be the same portion size, essentially the same formulation, and be packed in a case of equal count and weight. Likewise, both products shall require the same preparation methods and holding characteristics. Taste profiles shall be considered equal to the student customer. The successful Bidder shall accept the USDA donated foods obtained on behalf of SPARC member districts under the Federal Food Distribution Program. To the extent USDA approval has been obtained by the successful Bidder, any substitutable food not needed immediately for use by SPARC, can be used for production for third parties or sold outright to third parties in connection with its normal business operations provided the USDA product is replaced with an equivalent amount of commercial product to meet SPARC production requirements, the procurement specification for the commercial product is equal to or superior than the USDA specification and the transaction is recorded for accountability purposes. The successful Bidder may combine commercial and USDA foods to make products selected by SPARC. All products, commercial and food processed shall be ordered, received and subsequently supplied to schools by Sysco.
- 22. Standard Yield versus Guaranteed Minimum Yield:** Guaranteed minimum yield options can be disruptive to cooperative operations when far more product is returned than was expected. SPARC will more favorably rate processors whose product return histories do not exceed approved USDA End Product Data Schedules by more than ten (10) percent for products they propose to supply, provided those items also meet or exceed product specifications. When Standard Yield is an available option for a processor to use, SPARC seeks estimated production returns based on this methodology as well as Guaranteed Minimum Yield for the number of servings and net finished pounds of product projected to be returned per delivered truckload of raw unprocessed food. When Guaranteed Minimum Yield is the only option used by a processor, SPARC seeks estimated production returns based on this methodology for projected number of servings and net finished pounds of product projected to be returned per delivered truckload of raw unprocessed food as well as the actual production history for that product in recent years (see Technical Response Form).
- 23. USDA Donated Foods – Form AD-1048, Non-Collusion Certification:** The successful Bidder shall complete and return Form AD-1048 attached hereto, as required by the U. S. Department of Agriculture. Other requirements of the U. S. Department of Agriculture as part of its donated foods program are set forth in Guidelines for Certification attached hereto and made a part of the contract by reference. Contracts over \$25,000 in value shall not be awarded without this form.
- 24. USDA Product Accountability “Monthly Performance Report” Requirements:** Accountability records, in the form of the Monthly Performance Report utilized by this vendor and the sample report form attached to the bidder's proposal, showing USDA Donated Food receipts, amounts processed and returned and remaining inventory shall be provided automatically by the vendor by the 10th of each month to the SPARC Executive Director and to Sysco, SPARC's Service Provider, for the duration of this Agreement.
- 25. Evaluation of Proposals:** SPARC reserves the right to award or reject proposals on each item separately, as a group of similar items, or as a whole vendor award whichever is in the best interest of SPARC; or to waive irregularities of a proposal when in the best interest to SPARC. The following evaluation factors will be considered in awarding the negotiated contract to determine best overall value:



Evaluation of Proposal by Category	Score	Points
Price Evaluation		45
Member District Preference		35
Responsiveness and RFP Compliance		15
Volume Incentive Rebates		5
Total		100

SPARC make awards only to companies whose products have been tested and approved by members and students. An opportunity to present your products for review takes place at various times throughout the year prior to award.

A technical response form and suggested criteria in response preparation have been provided. However, these suggestions are not intended to limit a Bidder's creativity in developing a response. Creativity in assisting SPARC to meet the goals of saving time and resources (money, duplication of effort, etc.) are encouraged. Creativity in assisting SPARC in providing value added services to members is also greatly encouraged. With your assistance, SPARC intends to be of "unique" service to its members.

26. **Student Taste Testing:** Product Evaluation and student taste testing will be utilized to evaluate member and student preferences for products that are highly rated on the proposal rubric. SPARC may request the amount of product necessary for product evaluation and student testing by member districts. Samples will be provided at no cost to SPARC or Sysco and must be supplied within designated time frame. Samples are to be shipped to the respective warehouses of Sysco and will be delivered to the participating districts by Sysco. Failure to submit timely samples as requested may be sufficient cause for rejection of the vendor proposal.

For 2020-21, when testing is needed, SPARC will include in-school testing with students in districts wishing to participate in product evaluation. Products tested and approved the last three years, will not be requested or tested again unless there are formulation changes. The most highly rated vendor proposals shall submit one case of samples per designated evaluating district (a maximum of 2 cases), plus one extra case for retention in the event of a quality problem of all proposed products SPARC requested for taste testing. Samples shall be provided from normal production runs in fully sealed cases and be labeled with typical identifying information and production instructions. Samples shall be typical of that product proposed to be provided in school year 2020-21. Samples may be tested alone, side by side with the current year's product, or with other products in the same category. Students will also be asked, would they buy/select the product? Products will be tested on a set schedule and test sites will not be testing all products. However, the taste test schedule will include appropriate grade levels in districts from all geographic regions within SPARC.

The Taste Testing Evaluation Protocol will be provided to all vendors who wish to receive a copy. Evaluation results will be provided to all vendors supplying product.

27. **Retention of Samples/Laboratory Testing:** A case of samples provided with those shipped for student taste testing will be retained in the event of a quality specification question after bid award. Should a question arise, the sample and the actual product in question shall be sent to an independent laboratory for a thorough analysis of sensory and physical characteristics as well as chemical composition. In the event that testing is required, the successful Bidder shall bear all testing costs. Items will be disqualified found not to meet established specifications. If a product fails to meet the bid specification, the item will be rejected and returned to the vendor at the vendor's expense.



28. **Quality or Acceptability Problems in Products Discovered After Contract Award:** If after contract award a Bidder's products do not perform as the manufacturer stated, or if student acceptability of an awarded product(s) is poor, Sysco, as the SPARC agent, will notify the awarded contractor and report the quality issue in writing in an attempt to resolve (Opportunity to Cure) the issue. If the problem is not resolved to SPARC's satisfaction within a maximum of 30 days after company notification, the contract may be cancelled and re-awarded to the next vendor. Furthermore, if the contract is cancelled, that product will be excluded from consideration on future contracts until the product is reformulated and proved to be satisfactory through testing by SPARC member districts. In the event that the quality issue relates to a USDA processed product, the processor shall cooperate with SPARC to move any unprocessed donated commodities to another processor.
29. **Proposal Information:** The Initial Proposed Prices will be available electronically after July 1, 2020. With the myriad and variable factors included in the selection of the successful awards, no printed evaluation matrix will be issued. However, the minutes of the SPARC Executive Board showing the awards will be furnished upon request. Or an individual company may request a meeting with the SPARC administrator or SPARC designee to discuss where their product or products finished in the overall evaluation.
30. **Vendor Specifications, Nutrient Analysis / USDA Meal contribution and Requested Samples:** Successful Bidders shall provide nutrient analysis per serving, the usual number of servings per case and certification of USDA meal contribution. All specifications and certifications of meal contributions to USDA meal must be provided within the required evaluation timelines. Products submitted without corroborating information will not be considered for award.
31. **Labeling:** Labels shall be stamped (preferably with waterproof ink) on the top or ends of each package. In addition, this same uniform code may be stamped on the side of shipping containers. Brand, item, code, count and pack dates are to be clearly identified on master cases and boxes within master cases. Container marking specifications are:
- All product numbers must be clearly legible. Numerical markings preferably would be at least $\frac{3}{4}$ " high to denote proper product code for warehouse personnel. Product codes on carton strap tape are not acceptable.
 - Labels on all products must contain the company Name, Product Description, Product code Number, and any ingredient items used in production of the product in legible print. It is the Bidder's responsibility to meet all these requirements.
 - All products with labels not meeting approved specifications may be refused at receipt by the SPARC Distribution Center and the Default Provision may be enforced.
 - Single product pallet loads are preferred when delivered at the SPARC Distribution Centers. Products shipped are preferably separated by the product codes.
 - If a mixed pallet load is delivered, the pallet shall be clearly marked "Mixed Load".
32. **Monosodium Glutamate:** SPARC requests that products supplied be free of Monosodium Glutamate (MSG). Bidders must note recognition of and compliance to this requirement on the proposal submittal cover document. Products that are not "MSG free" must be listed by product name and brand on the "Request for Proposal Form".
33. **Allergens:** SPARC requests that products supplied that contain one or more of the 8 major allergens as ingredients or that were produced in a plant or on a line that is not certified "allergen free" be listed in a separate document. Bidders must note recognition of and compliance to this requirement on the proposal submittal cover document. Products that are NOT allergen free or produced in an allergen free environment must be listed by product name and brand. In the event that a Bidder fails to note allergen contamination, and



a student in an allergen-controlled district suffers injury or death from consuming your product, your company assumes full legal liability for the event. Furthermore, if you certify products that are allergen free and SPARC later discovers they are not, your company may have your contract terminated, and we will negotiate a contract with an allergen manufacturer. This is intended only as a last recourse and not as a deterrent to Bidders.

34. **Sodium Content:** Vendors need to be aware that every attempt is being made by districts through various USDA healthy school meals regulations to move toward lower sodium standards. Preference will be given to reduced sodium products that are acceptable to students. In evaluating products for an award, sodium levels as well as fat grams and whole grains will be evaluation factors.
35. **Definitions/ Terms of Reference:**
- a. **Cooked:** The terms “cooked” and “fully cooked” (F/C) all imply the product is to be fully cooked in accordance with Hazard Analysis and Critical Control Point (HACCP) standards for that product. Such products will generally be heated prior to service.
 - b. **Precooked:** The term “precooked” implies that additional cooking is required before service.
 - c. **IQF/IFF/IF:** The term “individually quick frozen” (IQF), “individually fresh frozen” (IFF), or “individually frozen” (IF) means that the separate parts and pieces can be easily removed from packages while the product is in a frozen state. Either is acceptable. The term “quick” means frozen “at the time” in a freezer tunnel, either by air blast, nitrogen or carbon dioxide.
 - d. **IW or I/W:** The abbreviation IW or I/W means “individually wrapped” products, generally a single portion.
 - e. **SS:** The abbreviation SS means “single serve” products, generally a single portion or individual unit.
 - f. **IMPS:** Institutional Meat Purchase Specifications (IMPS) were developed by the National Association of Meat Purveyors. The packer must be willing to certify to the service provider and/or user that the product meets the IMPS specifications. These specifications standardize various fresh meat cuts or combination products for purpose of trade identification as to how they are cut, trimmed, ground, mixed, blended and the state of refrigeration required, i.e., chilled or frozen. IMP specifications are designated by numbers that have a very specific meaning in identifying the product.
 - g. **Vegetable Protein Products (VPP):** The initials VPP and ISP are used herein to refer to forms of Vegetable Protein because the commonly used initials TVP are a trademark of the ADM (Archer Daniels Midland Company). Items which contain VPP and ISP must carry on the main face of the label the following statement, “This item contains Vegetable Protein Product(s) which are authorized as an alternate food in the Child Nutrition Programs.” If a product has a CN Label then the VPP statement is not required.
 - h. **Breeding of Meat and Poultry Products:** Identification as listed for meat and poultry require twenty-five percent (25%) breading at time of pack. Federal regulations require that breading (for meat and poultry) cannot exceed thirty percent (30%) without modifying the name of the product. Packers of breaded meat and poultry products normally will certify that breading at time of pack will range between twenty-four (24%) and twenty-eight (28%). Thus, twenty-five (25%) means “nominal.” If a product has a CN label, then a breading certificate is not required.
 - i. **Fish Inspection and Grading:** Fish as identified herein must bear the PUF (Packed under Federal Inspection) Shield of USDC Grade Shield.
 - j. **Raw, Cooked or Pre-Cooked:** Meats, poultry and seafood are deemed to be raw (uncooked) unless the term “cooked” is used. The term “cooked” implies “fully” cooked, unless a lesser degree of doneness is specified. The term “precooked” implies that additional cooking is necessary before service.



- k. **CN Label:** When a product is CN (Child Nutrition) labeled, it is "certified" by the packer to conform to the nutritional requirements of the USDA Food & Nutrition Service (FNS). The label shows the contribution made by a given amount of product toward meal requirements. NOTE: SPARC does NOT require or expect CN labeling. It does however require USDA certification of meal pattern components provided by the products.
 - l. **Grades:** The grades specified herein for fruits, juices and vegetables refer to "Packer Grades" except as specifically indicated otherwise. Packer Grades, offered by major buying groups, have been proven reliable over the years in that these groups utilize USDA standards.
 - m. **Net Container Quantity** - The minimum net quantity of all products in cans and jars shall be in accord with Section 401 of the Federal Food, Drug and Cosmetics Act regarding the individual specifications for standard of fill for the product as prescribed in 21 CFR Part 100-169.
 - n. **Drained Weights** - Drained weight of "wet pack" items shall conform to good industry practices and the minimum requirements of the Federal Food, Drug and cosmetics Act for drained weight, as prescribed in the individual specifications of each product in 21 CFR Part 100-169. Except for whole tomatoes, drained weight is not a factor of USDA grade.
 - o. **Fill of Containers** - All products shall be filled as full as practical under good commercial packing practices without impairment of quality and otherwise in accord with Section 401 of the Federal Food, Drug and cosmetics Act, regarding individual specifications for standards of fill (21 CFR Part 100-169).
 - p. **Standards of Identity** - All products must conform to U.S. minimum standards requirements. If not, the supplier (packer) is in violation of the contract not only with NETCO, but also with the Federal Food and Drug Administration and/or the Federal Trade Commission. Three (3) important Federal regulations pertaining to canned foods are listed in number 45 below. These and other federal and state regulations are automatically part of the proposal requirements.
 - q. **Natural Proportion** - Is listed as chicken products containing both white and dark meat in proportions found naturally in poultry.
36. **Ability to Supply/Deliver:** Quote prices only if merchandise can be obtained and delivered on specified delivery dates/schedules and in delivery amounts required by SPARC and Sysco as defined in the minimum order section. Initial orders for July and August delivery will likely be the largest ones placed and may represent as much as one fifth of total SPARC requirements to meet "back to school" needs. Item proposals shall be binding. SPARC shall have the option to collect a default penalty of (a) ten percent (10%) of the bid price value of the defaulted items ordered but not delivered as specified, or (b) the difference between the contract price and the cost of an equivalent item obtained by quotation through another vendor. Strikes, Acts of God, and similar causes not under control of the vendor will be considered exempt from this default provision. This is intended only as a last recourse and not as a deterrent to bidders. Vendors should confirm their inventories, shippers and suppliers before submitting proposals.
- SPARC reserves the right before awarding the contract to require a successful Bidder to submit evidence of its ability to meet orders of desired shipment sizes within requested delivery windows.
- SPARC will sign final contract award letter after receiving the (1) signed contract and the (2) SYSCO ONSA form from processor or processors delegated representative. The ONSA form must be completed with all requested information and must include all items listed in the original proposal.***
37. **Vendor Capability:** A successful bidder must have the capacity- physically and financially, to supply items to SPARC in the quantities required at the time requested. A successful bidder must have a proven record of service, particularly with respect to the delivery of all items on a regularly scheduled basis. A bidder may be



designated as unacceptable if the requirements listed are violated and/or poor communication exists between the vendor and the purchaser.

38. **Delivery Temperatures:**

- a. **Frozen:** All frozen foods are to be delivered rock hard frozen at 0 degrees Fahrenheit or below. Partially thawed products with evidence of thawing and re-freezing will be rejected at the time of delivery. The SPARC Service Providers will not refreeze partially thawed deliveries.
- b. **Refrigerated:** All refrigerated products shall be delivered at a product temperature appropriate to industry guidelines for that specific product, and shall have been maintained at this temperature at all times during storage and shipment.
- c. **Dry:** All dry products shall be above 40 degrees Fahrenheit.

39. **Age and Condition of Items:** Stocks shall be fresh and sound, prepared in properly equipped plants under modern sanitary conditions in accordance with the best commercial practice, and free from decay, discoloration or foreign matter. All products shall pass through metal detection before packaging. Containers shall be clean, sound, compact, sturdy and sealed. Opened, damaged or leaking packages will not be accepted. Any hidden damage discovered after acceptance and delivery at Sysco will be reported to the successful Bidder for the appropriate credit. Dated products shall meet industry standards for remaining shelf-life upon delivery to Sysco. In no instance (except for yogurt and produce) shall there be less than 60 calendar days of guaranteed freshness as defined by the product expiration date on the exterior package at the time of delivery to Sysco.

40. **Inspection/Acceptance/Rejection:** The SPARC Service Providers shall inspect both truck and product. Inspection and acceptance or rejection of all items shall be at the destination. Sysco, on behalf of SPARC, shall have the power and authority to reject any and all materials furnished which, in its opinion, are not in strict compliance and conformity with the requirements of the specification as outlined in the proposal or to the sample submitted by the vendor. All articles so rejected shall be promptly removed from the premises of Sysco at the vendor's expense, within 21 days. No brand or product substitutions will be accepted unless written prior approval is obtained from SPARC or its authorized representative. Items found to be defective or not in accordance with the contract specifications shall be replaced within ten days (10) by the successful Bidder at no cost to the SPARC participating school districts. Failure to replace items not meeting the contract specifications and/or defective items shall be considered sufficient cause for default action under the default provision of the contract.

A second inspection/acceptance and rejection process shall occur at the end user level – either school sites or school district warehouses. Product found unacceptable at this level shall be rejected at the dock or upon opening the case (in the event of hidden damage), the reason for the refusal will be documented and Sysco shall be informed to obtain credit or replacement at no additional charge.

41. **Warranty:** The Bidder agrees that all items furnished under this contract shall be covered by the most favorable commercial warranties the Bidder provides any customer for such items, and that the rights and remedies provided therein are in addition to any other provision of this contract. The Bidder shall provide copies of all warranties, which shall apply to deliveries under this contract with its proposal.

42. **Product Discontinuance:** It is expected that specified products will be available throughout the entire period of the contract. In the event a successful Bidder discontinues a product, the successful Bidder will notify SPARC Service Provider, Sysco, and propose alternative items and pricing to fulfill the contract. SPARC may



exercise the option to negotiate with other vendors at the time. If USDA Donated Foods are in the successful Bidder's inventory, and use on behalf of SPARC are no longer possible, the First Bidder is responsible to transfer the remaining USDA product to the new Bidder at no cost to SPARC.

43. **Federal Regulation Compliance:** Since the goods to be acquired under this request for proposal will be purchased in part or in whole with federal dollars, products shall be procured, packaged and inspected in accordance with all federal, state and local government standards and all applicable regulations such as Pure Food, Drug, and Cosmetic Act (Title 21 CFR), Agricultural Marketing Act, Fish and Wildlife Act, Meat Inspection Act, The Tariff Act, Poultry Products Inspection Laws, The Perishable Agricultural Commodities Act, and Anti-Trust Laws. Certification of compliance with the following Acts is required: Energy Policy and conservation Act (PL 94-163); Occupational Safety and Health Act and the standards and regulations issued thereunder; Fair Labor Standards Act; Department of Labor Regulations (41 CFR Part 60; Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)); Section 508 of the Clean Water Act (333 U.S.C.1368); Executive Order 117389 and Environmental Protection Agency Regulations (40 CFR Part 15).
44. **Civil Rights:** Any awarded company shall comply with all applicable civil rights laws, as amended which include but are not limited to: Title VI and the Title VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities; the Michigan Elliott-Larsen Civil Rights Act; and the Michigan Persons with Disabilities Civil Rights Act
45. **Equal Opportunity Act of 1975:** The SPARC policy is in firm support of the provisions of the Equal Opportunity Act of 1975. SPARC must therefore be assured by the successful Bidder in this Proposal that he is an equal opportunity employer according to the provisions of the Act.
46. **Hold Harmless Clause:** The Bidder shall hold harmless and indemnify SPARC, its member districts, the Lead Districts, Sysco, and their respective officers and employees, for every claim, demand, suit and award which may be made by reason of:
 - a. Any injury to person or property sustained by any person, firm, or corporation caused by any act, neglect, default, or omission of the Bidder or any person, firm or corporation, directly or indirectly employed by it upon, or in connection with its performance under the contract;
 - b. Any liability that may arise from the furnishing or use of any copyrighted or not copyrighted formula, secret process, or patented or not patented invention in the performance of the services called for under the contract;
 - c. The Bidder, at its own expense and risk, shall bear all reasonable attorney fees, costs and expenses which may be incurred in defending against any legal proceeding that may be brought against SPARC, its Member Districts and the Lead Districts, and Sysco, as well as their officers and employees, on any such claim or demand, and satisfy any judgment that may be rendered against any of them.
47. **Product Protection Liability / Guarantees:** The Bidder whose name and address appear on the product package is the responsible party for Product Protection Liability. Bidders shall take immediate action to correct any situation in which product integrity is violated. In the event of a mandatory or voluntary recall, Bidders shall remove or authorize disposal of all recalled product from Sysco, SPARC's Service Providers, within twenty-one (21) days and shall replace as soon as possible, the product with new product, at no cost to SPARC or Sysco.. All manufacturers and processors shall have filed appropriate Product Protection/Liability Insurances and assurances with the USDA.



48. **Protection from Bio-Terrorism or Other Such Contamination in Manufacturing:** Manufacturers are expected to comply with all federal laws protecting the food supply. It is expected that the Bidder whose name and address appear on the product package has implemented safeguards at all points in their manufacturing and delivery process to protect against intentional and unintentional contamination. Bidders shall take immediate action to correct any situation in which product integrity is violated or product becomes contaminated. If contamination should occur, Bidders shall remove or authorize disposal of all contaminated product from Sysco, SPARC's Service Providers, within twenty-one (21) days and shall replace the product with new product at no cost to SPARC, Sysco, as soon as possible.

49. **Buy American Act / Import Products:** The 1998 reauthorization of the National School Lunch Act requires school districts participating in the National School Meals Programs in the contiguous 48 states of the United States to buy food products produced in the United States (domestic) when using federal funds. Therefore, if there is a domestic and non-domestic food product available, the processor must supply domestic products.

The processor may supply non-domestic products only when domestic products are unavailable. As defined in this legislation, a domestic food is an agricultural food (for example beef, pork, chicken, fruits, vegetables, oils or grains) that is produced in the United States. A domestic food product is processed in the United States using substantially domestic agricultural commodities. Substantially means that over 51 percent of the finished processed product comes from American produced products. Implementing federal regulations are 7 CFR 210.21 and 220.16 published on September 20, 1999. Processors may be required to provide certification of domestic origin and content. Companies must certify the majority of food products proposed meet the federal requirements in the "Buy American Act" and stipulate which specific products are unavailable domestically.

Exceptions to this rule would typically be: pineapple, mandarin oranges, olives, tuna fish, tea, spices and coffee. In the event the Bidder supplies or delivers products contrary to the requirements of this section or applicable laws and regulations, SPARC may pursue remedies for default as provided in Section 53, and or may terminate this Agreement as provided in Section 53. The Bidder shall hold SPARC its member districts, its Lead Districts, and Sysco harmless from any fines, penalties, costs or expenses imposed upon or incurred by any of them as a result of the Bidder's non-compliance with such laws and regulations.

This purchasing requirement does not apply in instances when:

- a. SPARC has unusual or ethnic food preferences which can only be met through purchases of products not produced in the United States,
 - b. The product is not produced in the U.S. in sufficient and reasonable quantities of a satisfactory quality to meet general needs,
 - c. The cost of the US product is significantly higher than foreign products (SPARC defines significantly higher to be when US product is twenty-five percent higher than the foreign product).
50. **Debarment Disclosure:** If a Bidder has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, the Bidder shall disclose that information in its offer. Failure to do so shall result in rejection of its offer and shall constitute grounds for termination of the Agreement. The Bidder shall have a continuing obligation to disclose to SPARC Lead Districts any proceedings commenced during the term of this Agreement which might result in debarment, suspension or disqualification from participation in public procurement activities and such proceedings shall constitute grounds for termination of this Agreement as provided in Section 53.



51. **Protest Process.** RFP protests are filed by Vendors because they seek to remedy a wrong, actual or perceived, which could inflict or has inflicted injury or hardship to their company as a result of some action taken by SPARC during the solicitation process. Common reasons for Vendors filing a protest include:
 - a. The Master Agreement was awarded to Vendor with higher prices.
 - b. The Vendor proposal was rejected for invalid reasons.
 - c. The Vendor awarded the resultant Master Agreement did not comply with RFP specifications.

52. **General Authority** SPARC Administrators maintain the exclusive authority and responsibility to purchase and rent all materials, supplies and equipment, furnishings, fixtures and all other personal property for use by SPARC Cooperatives, districts or agencies which are governed by SPARC respective Boards.

53. **Protest Procedure** Upon a determination of Vendor selection from a bid process, the Administrator will post a "Notice of Intent to Award" on SPARC's website, and notify all solicitation participants of the intended award via email.
 - a. Non-selected Vendors will have three (3) business days from the date the notice is posted to file a formal bid protest with SPARC Administrators or the designee.
 - b. The bid protest, which must be received by SPARC Administrator or designees within the three (3) day period, shall be in writing, and include the specific facts, circumstances, reasons and/or basis for the protest. This written notice may be in the form of a letter, fax or email.
 - c. Upon execution of the Master Agreement with the selected Vendor, SPARC Administrator or designee will not take action on a bid protest, but a written response will be provided to the protesting Vendor.
 - d. If a Vendor's bid protest is appropriately filed, SPARC Administrator or designee may delay the award of the Master Agreement until the matter is resolved.
 - e. Notwithstanding the foregoing, throughout the bid protest review process, SPARC has no obligation to delay or otherwise postpone an award of a Master Agreement based on a bid protest. In all cases, SPARC reserves the right to make an award when it is determined to be in the best interest of the SPARC cooperative to do so.
 - f. SPARC Administrator or designee will respond to all bid protests in a timely manner.

54. **Default:** SPARC may, by written notice of default to the successful Bidder, terminate the whole or any part of their order under this contract. Remedies for default shall include, but not be limited to, failure to meet contract terms delineated above. The successful Bidder shall be liable for any difference in cost between agreed price and price paid to an alternate manufacturer, including expenses incurred to make alternate purchases. Should SPARC bring suit against defaulter, and prevail in such action, defaulter shall pay all reasonable attorneys' fees and other expenses for such litigation. In the event of default, Sysco on behalf of SPARC shall have the option to collect:
 - a. Ten percent (10%) of the contract price value of the defaulted items ordered but not delivered as specified or,
 - b. The difference between the contract price value and the cost of comparable items of similar quality, if available, or better quality if products of similar quality are unavailable, as obtained through another vendor.

In the event that any successful Bidder shall default, cancel or cause to have cancelled the contract, that successful Bidder shall have forfeited the right to bid or propose for contracts originating from SPARC for twenty-four (24)



months or two contract periods, whichever is the longer. Nothing herein shall be construed to imply that any party shall have any right to submit a bid or proposal to SPARC for any product or service.

- 53. Legal Defense:** The Bidder/Successful Bidder at its own expense and risk, shall defend any legal proceeding that may be brought against SPARC, the Lead Districts, each member district, Sysco, and their agents, officers and employees, on claims caused in material and substantial part by the Bidder and not caused in material and substantial part by an act, neglect, default or omission of SPARC or Sysco, and shall indemnify and hold harmless all such parties against any judgment, cost or expense that may be rendered against or incurred by any of them in such proceedings. This Agreement shall be governed by the laws of the State of Michigan. Any litigation brought between the parties to this contract shall be brought and maintained only in the District Court for the State of Michigan, County of Manistee or the U.S. District Court for the State of Michigan.
- 54. Records Retention:** The successful Bidder agrees to retain all books, records, and other documents relative to this agreement for three (3) years plus the current year after final payment. The successful Bidder will assure that subcontractors meet the same records retention requirement. SPARC, its authorized agents, and/or state/federal representatives shall have full access to and the right to examine any of said materials during said period. If an investigation or audit is in progress, records shall be maintained until the stated matter is closed.
- 55. Taxes:** Purchases made under provisions of any contract established as a result of this invitation are exempt from federal, state and local taxes, and Bidders shall quote prices that do not include such taxes. SPARC and its member districts shall not be responsible for payment or reimbursement of any taxes paid by the contractor during the terms of this contract. Exemption certificates will be furnished upon request.
- 56. Gifts, Gratuities or Kickbacks:** Acceptance of gifts, gratuities or kickbacks from Bidders and the offering of gifts by Bidders to SPARC, Board Members or Administrators is prohibited. (Copeland "Anti-Kickback" Act)
- 57. Miscellaneous Provisions:** The following terms and conditions shall be deemed to be included in any contract negotiated with SPARC except to the extent the final contract expressly modifies such terms:
- a. **Representations and Warranties.** Bidder represents and warrants that all of the information in its proposal is true and accurate and that SPARC and its member districts shall be entitled to rely upon the same as the basis for entering into this contract. Bidder shall immediately notify the Lead District(s) in writing throughout the term of this contract upon discovery that any of the facts or assertions in the Bidder proposal are inaccurate.
 - b. **Financial Information.** Throughout the term of this contract, Bidder shall provide to SPARC, upon request, updated financial reports and data, including but not limited to updates of any financial information in the successful Bidder's proposal and financing commitments from financial institutions.
 - c. **Independent Contractor.** Bidder shall perform its duties hereunder as an independent contractor, not as an employee of SPARC or any of its member districts. Neither Bidder nor any agent or employee of the Bidder shall be or shall be deemed to be an agent or employee of SPARC or any of its member districts. Bidder shall pay when due all required employment taxes and income tax withholding, including all federal and state income taxes and local taxes on any monies paid pursuant to this contract. Bidder shall be solely responsible for procuring and paying for workers' compensation and unemployment compensation insurance for all employees performing services for the benefit of SPARC and its member districts. Bidder shall have no authorization, express or implied, to bind SPARC or its member districts to any



agreements, liabilities, or commitments except as expressly set forth herein. Bidder shall be solely responsible for its own acts, as well as the acts of its employees and agents.

- d. Notice and Representatives. For the purposes of this contract, the representatives for SPARC is as follows:
- Kymm S Mutch, MS, RDN, SPARC Administrator
Phone: 1-844-662-3767, extension 107
Email: kymm@proteamadvisors.com
- e. Legal Authority. Bidder warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise its authority, and lawfully authorizes its undersigned signatory to execute this contract and bind Bidder to its terms. The person executing this contract on behalf of Bidder warrants that he has full authority to execute this contract.
- f. Conformance of Law. Bidder and its agent(s) shall at all times during the term of this contract strictly adhere to all applicable federal laws, state laws, executive orders, and implementing regulations as they currently exist and may hereafter be amended.
- g. Litigation. Bidder shall, within five (5) calendar days after being served with a summons, complaint, or other pleading, which has been filed in any federal or state court or administrative agency, notify SPARC, in writing, that it is a party defendant in a case which involves services provided under this contract; and shall deliver copies of such document(s) to SPARC Executive Directors. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization, and/or foreclosure.
- h. Third Party Beneficiaries. All rights of action relating to enforcement of the terms and conditions of this contract shall be strictly reserved to SPARC and Bidder. Nothing contained in the contract shall give or allow any claim or right of action whatsoever by any other third person or entity. It is the express intention of SPARC and Bidder that any such person or entity (other than SPARC or Bidder) receiving services or benefits under the contract shall be deemed an incidental beneficiary only.
- i. Waiver. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.
- j. Survival. SPARC and successful Bidders' obligations under the contract Documents shall survive following termination or expiration to the extent necessary to give effect to the intent and understanding of the parties.
- k. Assignment and Subcontracting. The duties and obligations of successful Bidder arising hereunder cannot be assigned, delegated, or subcontracted except with the express prior written consent of SPARC. Any subcontracts authorized by SPARC shall be subject to the requirements stated herein for the successful Bidder. The successful Bidder is responsible for all subcontracting arrangements, delivery of services, and performance of any subcontractor. Bidder warrants and agrees that any subcontract, resulting from its performance of the terms and conditions of this contract, shall include a provision that the said subcontractor shall abide by the terms and conditions herein. Also, Bidder warrants and agrees that all subcontracts shall include a provision that the subcontractor shall indemnify and hold harmless SPARC and its member districts against any claim related to the subcontractor's performance.