

RFP # PT-2-2023-2024

The SPARC Consortium

SY 2023– 2024

**Direct to Manufacturer
REQUEST FOR PROPOSAL**

For

Commercial Food and Supplies

**Proposals Are Due No Later than 4:00 PM, EST
Friday, May 19, 2023**

SPARC

E-mail Address: SPARC@proteamadvisors.com

Subject line:

COMPANY NAME, RFP # PT-2-2023-2024 Response

Bid Summary

Commercial Foods and Supplies:

The School Purchasing and Resource Consortium (SPARC) and affiliated with the Manistee Intermediate School District is a School Food Service consortia in Michigan. SPARC is made up of over 90 school districts and public institutions throughout the State of Michigan.

Competitive fixed price, electronic RFP responses are being sought for the K-12 school segment for commercial food and disposable supplies. Pricing is requested for the 2023-2024 school year, effective July 1, 2023 through June 30, 2024.

Upon award, products will be purchased and paid for by the selected distributor, who will in turn sell the products to SPARC at the contract price plus an established fee for service. For the 2023-24 school year the distributor will be Sysco Foods Grand Rapids and Detroit. The Sysco/SPARC fee for service schedule has been negotiated and finalized for the 2023-24 school year. This is a direct to manufacturer RFP. Distributor RFPs will not be accepted.

Awards will be made in writing to the approved manufacturer who is the lowest responsive and responsible respondent to the RFP. All pricing **MUST** include freight delivered to Sysco.

SPARC will allow for price changes through the term of the contract. Price changes must be proposed with justification that is explained in the RFP document and mutually agreed upon.

Volumes are based on the 2022-23 school year. A product listed on the RFP does not guarantee that the product will be used during the 2023-2024 school year. SPARC will communicate directly with the manufacturer if any changes arise.

Please refer to the RFP checklist to assure your packet is complete.

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 becomes the contract when awards are made by the SPARC Executive Board.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA. Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English. To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form,

(AD-3027) found online at: How to File a Complaint, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- 1. mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410;*
- 2. fax: (202) 690-7442; or*
- 3. email: program.intake@usda.gov*

This institution is an equal opportunity provider

SPARC District Members for SY 2023-2024

1	Allegan County Youth Home	24	Oakland County Children's Village
2	Athens Area Schools	25	Oholei Yosef Yitzchak Lubavitch
3	Beaver Island Community School	26	Our Shepherd Lutheran School
4	Benton Harbor Area Schools	27	Plymouth Educational Center School
5	Berkley School District	28	Queen of Miraculous Medal School
6	Bridge Academy	29	Pittsfield Acres Academy
7	Center Line Preparatory Academy	30	River Heights Academy
8	Central Academy	31	River Rouge School District
9	Clinton Community Schools	32	Riverside Academy
10	D.A. Blodgett-St. John's (RCCI)	33	Saranac Community Schools
11	Distinctive College Prep	34	St. John the Evangelist School
12	East Jordan Public Schools	35	St. Paul Lutheran School-Ann Arbor
13	Fitzgerald Public Schools	36	St. Paul Lutheran School-Flint
14	Fraser Public Schools	37	St. Mary's Assumption School
15	Frontier International Academy	38	Tecumseh Public Schools
16	Garden City Public Schools	39	Union City Community Schools
17	Global Heights Academy	40	Van Buren ISD
18	Global Tech Academy	41	Walkerville Public Schools
19	Grant Public School District	42	Washtenaw County Juvenile Home
20	Lawrence Public Schools	43	Whitefish Township Schools
21	Manistee Area Public Schools	44	Wolverine Community School District
22	MLK Jr Education Center Academy	45	Yeshiva Beth Yehudah School
23	Monroe County Youth Center	46	NHA Charter Schools (50 locations)

General Scope:

SPARC RFPs shall be conducted in a manner that provides maximum open and free competition consistent with Title 7, Code of Federal Regulations (7 CFR) sections 3016 and 3019.

As such, we invite companies to submit their RFP responses in a professional honest fashion. Per Title 2 CFR (Code of Federal Regulations) 200.318-320, this invitation for Response for Proposals is created with a goal of obtaining an adequate number of RFP responses. SPARC will award the contract to the lowest responsible vendor who meets the stated needs and objectives of this RFP.

The RFP is a competitive process with pricing for the 2023-2024 school year. Effective July 1, 2023 through June 30, 2024.

PROPOSAL TIMETABLE	
Release of RFP	Wed. May 3, 2023
Question & Answer Due Date	Monday, May 8, 2023
Questions and Answers Responses Posted	Friday, May 12, 2023
Proposals Due by (4 pm/ EST) *	Friday, May 19, 2023
RFP Awards	Friday, June 2, 2023
Sysco ONSA Form Due Date	June 16, 2023
New Bid Year Begins	July 1, 2023

*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 email as follows:

1. Submit questions via email
2. Label the subject line: **COMPANY NAME, RFP # PT-2-2023-2024 Question**

Contact Person: Sara Gasiorowski, SPARC administrator

Submission Email: SPARC@proteamadvisors.com; sara@proteamadvisors.com

Contact Person Phone Number: **1-844-662-3767, ext 123**

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)

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

- A. PROPOSAL RESPONSE FORM
- B. MANUFACTURER AUTHORIZATION FOR BROKER REPRESENTATIVE SIGNATURE
- C. SAMPLE LETTER MANUFACTURER ACCEPTANCE OF BID AWARD
- D. CERTIFICATE OF COMPLIANCE IRAN ECONOMIC SANCTIONS ACT
- E. CHECK LIST OF RESPONDER'S RESPONSES TO RFP
- F. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION
- G. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS
- H. CERTIFICATION REGARDING LOBBYING CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS,
- I. CLEAN AIR AND WATER AFFIDAVITS
- J. ETHICAL STANDARDS AFFIDAVIT
- K. CONFLICT OF INTEREST AFFIDAVIT
- L. COMPLETED TECHNICAL RESPONSE FORM (AND ALSO IN PDF FORMAT)

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 reserves the right to award entire product categories or groups to a single supplier if it is in the consortium'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, 2023 - June 30, 2024

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 May 19, 2023, 4:00 p.m. EST

**B. 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 2023-24
(Name of Manufacturing company)

(SIGNATURE)

(DATE)

Name:

Title/Position:

Phone"

Email Address:

C. 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 select all products for which pricing was submitted.

Manufacturer _____

Name _____ (typed)

Name _____ (signed)

Title _____

Phone _____

Email _____

COMPLETE AND RETURN THIS PAGE

**D. 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

E. CHECK LIST OF RESPONDER'S RESPONSES TO RFP

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 via email as described in 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 X or ✓ Check Mark to indicate agreement, acknowledgement, and compliance:

- Responder guarantees he/she has read, and shall adhere all Terms and conditions of this Proposal
- Responder has completed and shall submit all required forms in the specified format by 4:00 p.m., EST, **Friday, May 19, 2023:**
 - A. PROPOSAL RESPONSE FORM
 - B. MANUFACTURER AUTHORIZATION FOR BROKER REPRESENTATIVE SIGNATURE
 - C. SAMPLE LETTER MANUFACTURER ACCEPTANCE OF BID AWARD
 - D. CERTIFICATE OF COMPLIANCE IRAN ECONOMIC SANCTIONS ACT
 - E. CHECK LIST OF RESPONDER'S RESPONSES TO RFP
 - F. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION
 - G. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS
 - H. CERTIFICATION REGARDING LOBBYING CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS,
 - I. ETHICAL STANDARDS AFFIDAVIT
 - J. CONFLICT OF INTEREST AFFIDAVIT
 - K. CLEAN AIR AND WATER AFFIDAVITS
 - L. SPARC BID SHEET TECHNICAL RESPONSE FORM – UNLOCKED EXCEL FORMAT (AND ALSO AS A PDF)
- Responder acknowledges this is a requirement contract for a specified period, not a guaranteed volume contract
- Responder acknowledges and will comply with payment of rebates, incentives and promotional allowances, including payment of the non-timely payment penalty when assessed.
- Responder acknowledges SPARC prefers food value to be provided through a reduced price rather than a rebate.
- Responder 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 negotiation
- Responder acknowledges advance notice of 48-hours to reserve dock time for Sysco deliveries
- Responder accepts, in the event of a quality or product performance problem, failure to meet a specification, or lack of student acceptance of a product causing loss of meal participation not cured by the contractor in the specified time, an alternative source of supply shall be located, and the contract terminated.
- Responder has proposed and shall supply products that IN GENERAL DO NOT contain MSG. Products with MSG are so noted separately on the specification sheets.
- SPARC seeks products that are "peanut and tree nut free" and produced in a certified "peanut and nut free" environment. The Responder has noted all products containing peanuts or nut products, or that were processed on a manufacturing line or in a plant that cannot certify in writing "peanut or nut free" production environments.

F. 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

**G. 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)

PT-2023-2024

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 sub tier 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 sub tier 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 sub tier 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).

**H. 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-2-2023-2024
Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

I. 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

Sara Gasiowski (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

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 Responder: _____ 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 proposals (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 Responder 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 Responder: _____ 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. 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 23-24;
- Rename with company title, (ABC Company, SPARC Bid Sheet Technical Response Form 23-24) and complete required information for Tab 1, Tab 3, Tab 4.
- Make a PDF copy of the file and include it 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 Responder 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 23-24 school year.

CONTRACT TERMS AND CONDITIONS:

1. **Contract Period:** The contract will be from July 1, 2023 through June 30, 2024. 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 Responders have been identified and contracts awarded. Any contract extension/renewal is contingent upon the approval of the Responder(s).
3. **Acceptance of Conditions:** Each Responder, 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:** Responders are expected to submit proposals that are accurate for products. Proposals shall be complete and contain all terms a Responder believes necessary. If after submitting a Proposal, a Responder finds changes are necessary, the Responder 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 Responder 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 Responder, by such individual Responder,
 - b. In the case of a Partnership, the name of the partnership must appear on such a 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. All materials submitted in response to this Request for Proposal must have

been received in the form designated by 4:00 p.m. EST, May 19, 2023 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 respondents on a timeline established by Sysco for delivery in July 2023 at the submitted 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 Responders we have changed our process for giving specifications. Due to the ever-changing product mix in schools, 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 commercial processing that are commonly used in schools. 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. **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.
10. **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 price information must be completed as shown on the "bid sheet form" including unit pricing.
11. **Fixed Firm Pricing/Market Emergency:** *SPARC is requesting 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 Responder, 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.*
12. **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 Responders

intend to honor. Responders 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 Responders that best meet 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 Responders within a group. SPARC may negotiate prices and terms with the most highly rated Responders. 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 Responders 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.

13. Purchase Orders: All purchase orders placed under this contract shall be invoiced at the contract price prevailing at the time the order is placed.

14. Delivery/Lead Times: The SPARC service provider Sysco, will receive the 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 14-21 work 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

15. Just in Time Processing and Delivery: 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.

16. Bill of Lading/Delivery Ticket: The successful Responder 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.

17. Invoices and Statements: Invoices or statements for products 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.

18. 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 the 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 makes 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 the award. **A specification on the bid does NOT guarantee SPARC will use the product in the 2023-2024 school year.**

19. Student Taste Testing: Product Evaluation and student taste testing may 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 the 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.

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 the product.

20. **Quality or Acceptability Problems in Products Discovered After Contract Award:** If after contract award a Responder'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 canceled and re-awarded to the next vendor. Furthermore, if the contract is canceled, 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.

21. **Proposal Information:** The Initial Proposed Prices will be available electronically after July 1, 2023. 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.

22. **Vendor Specifications, Nutrient Analysis / USDA Meal contribution and Requested Samples:** Successful Responders 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.

23. **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:

- a. 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.
- b. 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 Responder's responsibility to meet all these requirements.
- c. 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.
- d. Single product pallet loads are preferred when delivered at the SPARC Distribution Centers. Products shipped are preferably separated by the product codes.
- e. If a mixed pallet load is delivered, the pallet shall be clearly marked "Mixed Load".

24. **Monosodium Glutamate:** SPARC requests that products supplied be free of Monosodium Glutamate (MSG). Responders 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".

25. **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. Responders 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 Responder 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 Responders.

26. 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.

27. 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%) breeding at time of pack. Federal regulations require that breeding (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 breeding 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 breeding certificate is not required.
- i. **Fish Inspection and Grading:** Fish as identified herein must bear the PUFI (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.

28. 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 Responders. Vendors should confirm their inventories, shippers and suppliers before submitting proposals.

SPARC reserves the right before awarding the contract to require a successful Responder to submit evidence of its ability to meet orders of desired shipment sizes within requested delivery windows.

SPARC will sign the final contract award letter after receiving the (1) signed contract and the (2) SYSCO ONSA form from the 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.

29. Vendor Capability: A successful Responder must have the capacity- physically and financially, to supply items to SPARC in the quantities required at the time requested. A successful Responder must have a proven record of service, particularly with respect to the delivery of all items on a regularly scheduled basis. A Responder may be designated as unacceptable if the requirements listed are violated and/or poor communication exists between the vendor and the purchaser.

30. 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.

31. 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 Responder 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.

32. 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 Responder 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. Products 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.

- 33. Warranty:** The Responder agrees that all items furnished under this contract shall be covered by the most favorable commercial warranties the Responder 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 Responder shall provide copies of all warranties, which shall apply to deliveries under this contract with its proposal.
- 34. Product Discontinuance:** It is expected that specified products will be available throughout the entire period of the contract. In the event a successful Responder discontinues a product, the successful Responder 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 Responder's inventory, and use on behalf of SPARC are no longer possible, the First Responder is responsible to transfer the remaining USDA product to the new Responder at no cost to SPARC.
- 35. 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).
- 36. 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
- 37. 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 Responder in this Proposal that he is an equal opportunity employer according to the provisions of the Act.
- 38. Hold Harmless Clause:** The Responder 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 Responder 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 Responder, 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.

39. Product Protection Liability / Guarantees: The Responder whose name and address appear on the product package is the responsible party for Product Protection Liability. Responders shall take immediate action to correct any situation in which product integrity is violated. In the event of a mandatory or voluntary recall, Responders 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.

40. 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 Responder 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. Responders shall take immediate action to correct any situation in which product integrity is violated or product becomes contaminated. If contamination should occur, Responders shall remove or authorize disposal of all contaminated products 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.

41. 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 manufacturer 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 that 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 Responder 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 Responder 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 Responder'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 it to be significantly higher when the US product is twenty-five percent higher than the foreign product).

42. Debarment Disclosure: If a Responder has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, the Responder 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 Responder 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.

43. 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.

44. 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.

45. 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.

46. Default: SPARC may, by written notice of default to the successful Responder, 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 Responder 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 the defaulter, and prevail in such action, the 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 Responder shall default, cancel or cause to have canceled the contract, that successful Responder 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.

47. Legal Defense: The Responder/Successful Responder 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 Responder 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.

48. Records Retention: The successful Responder 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 Responder 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.

49. Taxes: Purchases made under provisions of any contract established as a result of this invitation are exempt from federal, state and local taxes, and Responders 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.

50. Gifts, Gratuities or Kickbacks: Acceptance of gifts, gratuities or kickbacks from Responders and the offering of gifts by Responders to SPARC, Board Members or Administrators is prohibited. (Copeland "Anti-Kickback" Act)

51. 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.** Responder 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. Responder 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 Responder proposal are inaccurate.
- b. **Financial Information.** Throughout the term of this contract, Responder shall provide to SPARC, upon request, updated financial reports and data, including but not limited to updates of any financial information in the successful Responder's proposal and financing commitments from financial institutions.
- c. **Independent Contractor.** Responder shall perform its duties hereunder as an independent contractor, not as an employee of SPARC or any of its member districts. Neither Responder nor any agent or employee of the Responder shall be or shall be deemed to be an agent or employee of SPARC or any of its member districts. Responder 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. Responder 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. Responder 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. Responder 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:
Sara Gasiorowski, SPARC Administrator
Phone: 1-844-662-3767, extension 123
Email: sara@proteamadviosors.com
- e. **Legal Authority.** Responder 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 Responder to its terms. The person executing this contract on behalf of Responder warrants that he has full authority to execute this contract.
- f. **Conformance of Law.** Responder 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.** Responder 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 Responder. 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 Responder that any such person or entity (other than SPARC or Responder) 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 Responders' 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 Responder 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 Responder. The successful Responder is responsible for all subcontracting arrangements, delivery of services, and performance of any subcontractor. Responder 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, Responder 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.

