



**INVITATION FOR BIDS
Miscellaneous Foods and Smallwares**

IFB No: 22-009-CJ

Date: July 12, 2021

**County of Gloucester
Central Purchasing Office
6489 Main Street – Suite 324
Gloucester, VA 23061
Phone: (804) 693-6235 Fax: (804) 693-0061**

The County of Gloucester is seeking bids from qualified firms (the “Bidder” or “Contractor”) to furnish the goods and/or services described herein. Bids will be received at the office of Central Purchasing, 6489 Main Street, Suite 324, Gloucester, Virginia, 23061, through the due date and hour shown below (local prevailing time).

Project Overview: To solicit bids from qualified firms to establish a firm fixed price term contract for Miscellaneous Foods and Smallwares for the Gloucester County Public Schools Cafeteria and Gloucester County Sheriff’s Department. The resulting agreement from this solicitation shall be non-exclusive and the services provided shall be on an on-call basis with no guarantee of work. The County reserves the right to make multiple awards from this solicitation and the use of the contracted firms shall be at the sole discretion of the County.

Pre-Bid Conference: A Pre-Bid Conference is NOT scheduled for this solicitation.

Bids Due: Thursday, July 29, 2021, at 2:00 p.m.

Questions: Questions or comments regarding this solicitation shall be directed to the Buyer **not later than July 19, 2021 at 4:00 p.m.** All questions shall be submitted in writing (email is preferred).

Buyer: Christine Joyce, Purchasing Manager, cjoyce@gloucesterva.info or 804-693-1208

ONE ORIGINAL AND TWO COPIES OF YOUR SUBMITTAL IS REQUESTED

Copies of the bid documents may be obtained at the Central Purchasing Office located in County Office Building No. 2, 6489 Main Street, Suite 324, Gloucester, Virginia. You may also download this solicitation at www.gloucesterva.info/purch on the Central Purchasing website and on eVA, Virginia’s eProcurement Portal (www.eva.virginia.gov).

Note: The County of Gloucester does not discriminate against faith-based organizations in accordance with the *Code of Virginia* § 2.2-4343.1 or against a Bidder or Bidder because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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**SECTION A
GENERAL TERMS AND CONDITIONS.**

1. PRE-BID AND BID SUBMISSION REQUIREMENTS:

- a. **Direct contact with anyone other than the Gloucester County Central Purchasing, including other County departments or the County consultants, regarding this Invitation for Bid (also referred to “solicitation” herein) is expressly forbidden. Violation of this directive may result in a determination that the Bidder is ineligible for award.**
- b. All bids shall be submitted sealed with the bid number, date and time clearly marked on the outside of the envelope or package. Electronic transmittals (i.e. fax, email, etc.) will not be considered. Bids received in Central Purchasing after the due date and time will not be accepted. Failure to return required documents and information specified herein may result in a determination that the bid is non-responsive.
- c. Bids will be publicly opened on the due date and time specified in the Central Purchasing Department. A bid tabulation will be posted as soon as practical.
- d. All costs associated with preparing a bid, including any mailing costs, are the Bidder’s responsibility.
- e. All bids must be signed by an officer or employee having the authority to sign on behalf of the firm.
- f. All prices and notations should be in ink or typewritten. Mistakes may be crossed out and corrections made in ink. Any corrections must be initialed and dated in ink by the person signing the bid. Illegible notations may result in a determination that the bid is non-responsive.
- g. Prices shall be stated in units of quantity specified. No additional charges shall be passed on to the County, including sales tax, delivery charges or other surcharges. Prices quoted shall be the final cost to the County. All deliveries shall be F.O.B. Destination.
- h. If the County is closed for business on the due date and time for bids, regardless of reason, bids will be accepted on the next business day of the County, at the originally scheduled time.
- i. The Terms, Conditions and Specifications in this Invitation for Bids will be incorporated by reference and be part of the contract following award.
- j. Failure to submit a bid on the official County form(s), as provided herein, and failure to provide an authorized signature on the forms may be cause for rejection of the proposal.
- k. Submission of a bid is not to be construed as an award or an order to ship.
- l. A bid by the Bidder certifies that they are not currently debarred or suspended by a local, state or federal government entity from doing business with the County. If a debarment or suspension exists, supporting information shall be provided with the submittal. Suspension or debarment may disqualify the Bidder from award of a contract.

2. **CLARIFICATION OF TERMS/ADDENDA:** If any Bidder has questions about the specifications or other solicitation documents, the Bidder shall contact the buyer whose name appears on the face of the solicitation no later than the due date and time posted on the cover page. Any revisions to the solicitation will be made only by addendum issued by the buyer and posted on the public posting board in Central Purchasing. Addenda shall also be posted on the Central Purchasing website at <http://gloucesterva.info/CentralPurchasing> and on eVA, Virginia’s eProcurement

Portal (www.eva.virginia.gov). It is the Bidder's sole responsibility to ensure they have obtained any and all addenda prior to submittal of their bid.

3. **AWARD:**

- a. Award will be made to the lowest responsive and responsible Bidder. The ability, capacity, skill, character, integrity, reputation, judgement, experience, efficiency, ability to perform within the time specified, quality of performance of previous contracts, financial resources, suitability of goods or services to particular purpose and future maintenance and service and any exceptions noted will be taken into consideration in making an award.
- b. The County may request additional information and make reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the services/furnish the goods and the bidder shall provide the County information and data for this purpose. The County may inspect physical facilities if deemed necessary. The results of investigations and inspections may result in rejection of the bid. In addition, the County reserves the right to conduct any test/inspection deemed necessary to assure goods and services conform to the specifications.
- c. The County reserves the right to reject any and all bids in whole or in part, to waive any informality and to delete items before making an award. Bidders agree that decisions of the Purchasing Agent are final, and shall hold harmless the County, its departments, directors, employees, and consultants and others involved in solicitation and selection. The submission of a bid indicates acceptance of this condition.
- d. In the event of an error or inconsistency between the unit price(s) and the extension of prices, the unit price(s) shall govern.
- e. If the bid from the lowest responsive and responsible Bidder exceeds available funds, the Purchasing Agent or designee may negotiate with the apparent low Bidder to obtain a contract price within available funds.
- f. Award will be based on net prices. Unit prices, extension and grand totals must be shown. However, the Purchasing Agent reserves the right on multiple item procurements to make an award either in whole or in part, whichever is deemed in the best interest of Gloucester County.
- g. If cash discount for prompt payment is offered, it must be clearly shown in the space provided. Discounts for prompt payment will not be considered in making awards.

4. **GOVERNING LAWS AND COURTS:** This solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia and ordinances of the County of Gloucester, Virginia. Any litigation with respect thereto shall be brought in the courts of Gloucester County, Virginia. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations (§ 15.2-1235, *Code of Virginia*).

5. **ANTI-DISCRIMINATION:** By submitting their proposals, Bidders certify they will conform to the provisions of the *Federal Civil Rights Act of 1964*, as amended, as well as the *Virginia Fair Employment Contracting Act of 1975*, as amended, where applicable, the *Virginians With Disabilities Act*, the *Americans With Disabilities Act* and § 2.2-4311 of the *Virginia Public Procurement Act* (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body (§ 2.2-4343.1E, *Code of Virginia*).

In every contract over \$10,000 the provisions in "a" and "b" below apply:

- a. During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- b. The Contractor will include the provisions of the foregoing paragraphs 1, 2 and 3 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each sub-contractor or vendor.
6. **ETHICS IN PUBLIC CONTRACTING:** By submitting their bids, Bidders certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, supplier, manufacturer or sub-contractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
 7. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By submitting their bid, Bidders certify that they do not and shall not during the performance of this contract, knowingly employ any unauthorized alien as defined in the *Federal Immigration Reform and Control Act of 1986, as amended* (§ 2.2-4311.1 *Code of Virginia*).
 8. **AUTHORIZATION TO TRANSACT BUSINESS IN VIRGINIA:** All Bidders organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50, as amended, shall provide the identification number issued to it by the State Corporation Commission. Any Bidder that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50, as amended, or as otherwise required by law shall include in the proposal a statement describing why the Bidder is not required to be so authorized.
- Any business entity that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its Certificate of Authority or Registration to Transact Business in the Commonwealth, if required under Title 13.1 or Title 50, as amended, to be revoked or cancelled at any time during the term of the contract. The County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section. (§ 2.2-4311.2 *Code of Virginia*). Visit <https://www.scc.virginia.gov/> for more information.
9. **SMALL, WOMEN-OWNED MINORITY AND SERVICE-DISABLED VETERAN OWNED BUSINESS REQUIREMENTS:** The County of Gloucester desires to facilitate the establishment, preservation, and strengthening of small businesses and businesses owned by women, minority individuals and service-disabled veterans, and employment services organizations, and to encourage their participation in the County's procurement activities. The County of Gloucester encourages these persons, entities and firms to compete and encourages non-minority firms to provide for the participation of small businesses and businesses owned by women and minority individuals and service-disabled veterans through partnerships, joint ventures, subcontracts, and other contractual opportunities.
 10. **DEBARMENT STATUS:** By submitting their bids, Bidders certify that they are not currently debarred by the Commonwealth of Virginia or any government entity from submitting proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.
 11. **ANTITRUST:** By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the County of Gloucester all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the County of Gloucester under said contract.

12. **MANDATORY USE OF COUNTY FORMS AND TERMS AND CONDITIONS:** Failure to submit a bid on the County document may be a cause for rejection. Modification of or additions to any portion of the solicitation may be cause for rejection of the bid; however, the Purchasing Agent reserves the right to decide, on a case-by-case basis, in his/her sole discretion, whether to reject the submittal or find it as nonresponsive. As a precondition of acceptance, the Purchasing Agent may, in his/her sole discretion, request the Bidder withdraw or modify nonresponsive portions of their submittal that do not affect quality, quantity, price, or delivery.
13. **PAYMENT:** A. Payment terms shall be Net 45 days unless otherwise stated by the bidder on this solicitation. Alternative terms may be offered by the bidder for prompt payment of bills. B. Payment terms may be considered in determining the low bid. C. Discount period shall be computed from the date of proper receipt of the vendor's correct invoice, or from the date of acceptable receipt of the goods/services, whichever is latest. D. The payment terms stated herein must appear on the vendor's invoice. Failure to comply with this requirement may result in the invoice being returned to the vendor for correction. E. Late payment charges shall not exceed the allowable rate specified by the Virginia Prompt Payment Act, (1% per month) (§ 2.2-4352, *Code of Virginia*).
14. **METHOD OF PAYMENT:** The Contractor will be paid on the basis of the invoice submitted to the Gloucester County Finance Department after delivery and acceptance by the designated School and/or County representative. To expedite disbursements to the Contractor, **all payments will be made through a purchase charge card, with no additional fees applied,** established by the County unless the County elects to pay the Contractor in a different manner. The submission of a proposal indicates the Contractor's acceptance of this payment method. All payments will be made in accordance with the Code of Virginia's Prompt Payment provisions. *Code of Virginia §2.2-4347 & 2.2-4352.*
15. **DRUG FREE WORKPLACE:** During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each sub-contractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
16. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the County shall be bound hereunder only to the extent of the funds available, or which may hereafter become available "subject to appropriation" by the Board of Supervisors for the purpose of this agreement.
17. **PRECEDENCE OF TERMS:** The General Terms and Conditions shall apply in all instances. In the event of conflict between any of the General Terms and Conditions and any Special Terms and Conditions, the Special Terms and Conditions shall apply. In the event of a conflict between the contract documents, including these terms and conditions and the terms of a Purchase Order or related document issued by Central Purchasing, the contract documents shall control.
18. **USE OF BRAND NAMES:** Unless qualified by the provision "NO SUBSTITUTE", the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is required to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the County to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates that the item offered is an equal item, such bid will be considered to offer the desired brand name product.

19. **LATE BIDS:** To be considered for selection, bids must be received by Central Purchasing (or designated issuing office) by the designated date and hour. The official time used for the receipt of bids is that time on the automated stamp machine in the Central Purchasing Office. Bids received in Central Purchasing after the date and hour designated are non-responsive and will not be considered. The County/School Board is not responsible for delays in the delivery of mail by the U. S. Postal Service, private courier, or any inter-departmental mail distribution. It is the sole responsibility of the bidder to ensure that its bid reaches Central Purchasing by the designated date and hour. If the County is closed for business at the time scheduled for a sealed bid opening, the bids will be accepted and opened on the next business day of the County, at the originally scheduled hour.
20. **QUALIFICATION OF BIDDERS:** The Purchasing Agent may make such reasonable investigations as deemed proper and necessary to determine the ability of the bidder to perform the services/furnish the goods and the bidder shall furnish to the Purchasing Agent all such information and data for this purpose as may be requested. The County reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications. The County reserves the right to inspect bidder's physical facilities prior to award to satisfy questions regarding the bidder's capabilities. The Purchasing Agent further reserves the right to reject any bid if the evidence submitted by, or investigations of, such bidder fails to satisfy the Purchasing Agent that such bidder is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
21. **NEGOTIATION WITH THE LOWEST BIDDER:** Unless all bids are cancelled or rejected, the County reserves the right granted by § 22-32, *Code of the County of Gloucester, Virginia* to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the department whenever such low bid exceeds the using department's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds, which were budgeted by the Board for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications to be performed. The Purchasing Agent shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that negotiations are desired for a lower contract price.
22. **WITHDRAWAL OF BID DUE TO ERROR:** Bidders have the right to request withdrawal of their bids from consideration due to error by giving notice not later than two days after bids are publicly opened. Work papers showing evidence of error(s) are requested. Withdrawal may be approved by the Purchasing Agent if withdrawal meets all bid and code requirements. (§ 22-27, *Code of the County of Gloucester, Virginia*)
23. **DELIVERY, TRANSPORTATION AND PACKAGING:** Except when otherwise specified herein, all items shall be **F.O.B. Destination** to any point within the County of Gloucester, Virginia as directed by the ordering department. By submitting their bids, all bidders certify and warrant that the price offered for F.O.B. Destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers should be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
24. **ADDITIONAL INFORMATION:** The County reserves the right to ask any Bidder to submit information missing from its bid, to clarify its bid, and to submit additional information which the Purchasing Agent deems desirable. By submitting their offers, Bidders certify they understand these terms, and if awarded a contract as a result of this solicitation, they will comply. They also understand that a violation of these terms constitutes a breach of contract.
25. **SAMPLES OF ITEMS:** If requested, samples of items shall be furnished by the Bidder without charge. Upon request, within sixty (60) days after the receipt of offers, the samples may be returned at the Bidder's expense; otherwise, the samples may be destroyed or consumed.
26. **AWARD NOTICES:** Awards or Decisions to Award shall be posted on the public posting board in Central Purchasing, on the County website at <http://gloucesterva.info/CentralPurchasing> and on eVA, Virginia's eProcurement Portal (www.eva.virginia.gov).

27. **PROTEST OF AWARD OR DECISION TO AWARD:** Any bidder who desires to protest the award or decision to award a contract shall submit such protest in writing to the Purchasing Agent no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the Bidder appeals within ten (10) days by instituting legal action as provided in § 22-60 and § 22-64, *Code of the County of Gloucester, Virginia*.
28. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the County.
29. **MODIFICATION OF CONTRACT:** Per § 22-14, *Code of the County of Gloucester, Virginia*, no contract or purchase order may be modified or changed by amendment, change order, or any other agreement without the prior approval of the Purchasing Agent or designee unless (i) such modifications, in the aggregate, do not increase the amount of the contract by more than twenty-five (25) percent of the original amount of the contract or fifty thousand dollars (\$50,000), whichever is greater, (ii) such changes are the result of unforeseen circumstances or changed conditions encountered during the progress of the performance of the contract, and (iii) such changes are directly related to the performance of the contract. Extensions of time to perform a contract may be granted without prior approval of the Purchasing Agent or designee provided such extensions involve no increase in cost to the County. In no event shall the aggregate of all modifications increase the cost of the Contract beyond the appropriated project amount.
30. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Purchasing Agent, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the County may have.
31. **TAXES, FEES AND SURCHARGES:** Sales to Gloucester County, Virginia are normally exempt from State sales tax. A State sales and use tax certificate of exemption (Form ST-12) will be issued upon request. Deliveries against this contract shall be free of federal excise and transportation taxes. The County's Excise Tax Exemption Registration Number is **54-6001312** and the School/ **54-6001313**. Additionally, no additional fees or surcharges may be passed to the County. This includes but is not limited to any type of fuel surcharge.
32. **CANCELLATION OF CONTRACT:** The Purchasing Agent reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty and without liability for goods or services which have not been delivered, provided, or ordered as of the date of notice of termination/cancellation, upon 30 days written notice to the Contractor. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation. Contractors may request cancellation of their contract, upon 60 days written notice to the County. The Contractor shall be responsible for delivering their goods or services during this period at the contracted price.
33. **CONTRACTUAL DISPUTES:** In accordance with § 22-63, *Code of the County of Gloucester, Virginia*, claims arising out of this contract, whether for money or other relief, may be submitted to the County of Gloucester, by submitting the claim in writing, with all necessary data and information to substantiate the claim attached, to the Purchasing Agent. The Purchasing Agent shall render his/her decision within thirty (30) days. The Contractor may then appeal the Purchasing Agent's decision to the County Administrator, who shall render a final decision within forty-five (45) days.
34. **COUNTY BUSINESS LICENSE:** If applicable, the Contractor shall pay for and obtain a County Business License before commencing work. All sub-contractors doing over \$25,000 in work shall likewise obtain a business license before commencing work. All Contractors must be licensed to do business within the Commonwealth of Virginia, as required by the *Code of Virginia* §§ 54.1-1117, 58.1-3714 thru 3715, 58.1-3703.1 and *Code of the County of Gloucester, Virginia*, Chapter 5, Article V §§ 5.61-5.63 and Chapter 10, Article I §10-8.
35. **ORDERING OPTION:** The County of Gloucester may, during the first 180 days after this contract is awarded, with the concurrence of the Contractor, place additional orders under the contract at the original unit price through the

issuance of separate purchase orders. The aggregate of such additional orders shall not exceed 100% of the quantity originally stated in the contract, unless approved by the Purchasing Agent.

36. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and hold harmless the County, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.
37. **INDEPENDENT CONTRACTOR:** The Contractor and any employees, agents, or other persons or entities acting on behalf of the Contractor shall act in an independent capacity and not as officers, employees, or agents of the County.
38. **NON-EXCLUSIVE CONTRACT:** Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Contractor. The contract shall not restrict the County from acquiring similar, equal or like goods and/or services from other sources.
39. **RECORDS AND INSPECTION:** The Contractor shall maintain full and accurate records with respect to all matters covered under this contract, including, without limitation, accounting records, written policies and procedures, time records, telephone records, and any other supporting evidence used to memorialize, reflect, and substantiate charges or fees related to this contract. The Contractor's records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by the County and its employees, agents or authorized representatives after giving at least three (3) days' notice to the Contractor by the County. The County shall have access to such records from the effective date of this contract, for the duration of the contract, and for five (5) years after the date of final payment by the County to the Contractor pursuant to this contract or any renewal or extension of this contract. The County's employees, agents or authorized representatives shall have access to the Contractor's facilities and all necessary records and be provided adequate and appropriate workspace in order to conduct audits.
40. **ENTIRE AGREEMENT:** The contract resulting from this solicitation and any additional or supplementary documents incorporated herein by reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this contract or any part thereof shall have any validity or bind any of the parties hereto. This contract shall not be modified, altered, changed or amended unless in writing and signed by the parties hereto.
41. **COOPERATIVE AGREEMENT:** This solicitation is being conducted under the provisions of § 2.2-4304 of the *Code of Virginia*, "Cooperative Procurement", as stated, a public body may purchase from another public body's contract even if it did not participate in the solicitation, if solicitation specified that the procurement was being conducted on behalf of the other public bodies. If authorized by the Contractor(s), the resultant contract(s) may be extended to any jurisdiction within the Commonwealth of Virginia to purchase at contract prices in accordance with contract terms. Any jurisdiction using such contract(s) shall place its own order(s) directly with the successful Contractor(s). The Central Purchasing Department of Gloucester County, Virginia, acts as the Contracting Agent and is not responsible for placement of orders, payment or discrepancies of the participating jurisdictions. It is the Contractor's responsibility to notify the jurisdictions of the availability of contract(s). Bidders desiring to offer to other jurisdictions under this clause should so indicate in their response.
42. **DEBRIEFING:** All information regarding Bidders and bids shall remain confidential during the review process. This information will only be available after an award or decision to award has been made. After an award is made, or the decision to make an award is made, the file, with documents and information required or allowed to be omitted by law removed therefrom, is available for review in the Central Purchasing Department which will constitute the debriefing. Bidders should make an appointment to review the file during normal business hours, 9:00 AM–4:00 PM Monday – Friday.

**SECTION B
SPECIAL TERMS AND CONDITIONS**

1. **CONTRACT TERM:**

The contract term for services under this contract shall be for one (1) year from the date of the contract award. The initial contract period will be for one year from date of award and continue for one year .

2. **OPTIONAL CONTRACT RENEWALS:**

At the sole request of Gloucester County, this contract may be extended upon mutual agreement of the parties for four (4) additional, one (1) year periods, upon the same terms and conditions set forth in the contract.

3. **PRICE ESCALATION/DE-ESCALATION:**

Prices shall remain firm for the initial contract period. A price adjustment may be requested after the initial contract period and each renewal period thereafter.

Price adjustments shall be based on the percentage change of the Producer Price Index (PPI) industry data (or Consumer Price Index (CPI), for **SERIES# pcu3119993119990** as published by the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available. The percentage change shall be applied to the (then) current contract prices in effect for the County. The newly adjusted prices shall become effective upon a mutually acceptable date and shall affect goods and/or services requested on or after that date.

Price adjustments will not be automatic. The Contractor shall submit a written request (email, facsimile, etc.) to the County (ATTN: Central Purchasing Department) and are subject to approval by Central Purchasing. Evidence/proof of price change from the manufacturer or other relevant source shall accompany the request. If an adjustment is approved by the County, price increases may be limited to a maximum of 5% for each increase period.

Producer Price Index information and detailed statistics including current percentage changes can be accessed at <http://www.bls.gov/ppi/>. Fuel and/or other surcharges shall not be allowed.

The County reserves the right to request a reduction in price based on economic factors or market conditions during the contract term according to changes in the specified index or other factors.

4. **PRINTING:** In accordance with standard printing trade practices, bids will be rejected when the additional per thousand cost, run at same time (R.A.S.T.), equals or exceeds the base lot per thousand price quoted and/or incremental unit cost. On bids for multiple part forms and envelopes, the additional per thousand price (R.A.S.T.) shall not exceed the base lot per thousand price quoted and/or incremental unit cost.

5. **OWNERSHIP OF PRINTING MATERIALS:** All artwork, camera-ready copy, negative, dyes, photos, and similar materials used to produce a printing job shall become the property of the County. Any furnished materials shall remain the property of the County. All such items and materials shall be delivered to the ordering agency in usable condition after completion of the work, and prior to submission of the invoice for payment.

6. **INSPECTION OF JOB SITE:** Contractor's signature on this solicitation constitutes certification that they have inspected the job site and are aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the County.

7. CONTRACTOR REGISTRATION:

If a contract for construction, removal, repair or improvement of a building or other real property is for one hundred and twenty thousand dollars (\$120,000) or more, or if the total value of all such contracts undertaken by bidder within any 12-month period is seven hundred and fifty thousand dollars (\$750,000) or more, the bidder is required under Title 54.1-1100, *Code of Virginia (1950)*, as amended, to be licensed by the State Board of Contracts a “CLASS A CONTRACTOR.” If such contract is for ten thousand dollars (\$10,000) or more but less than one hundred and twenty thousand dollars (\$120,000), or if the total value of all such contracts undertaken by bidder within any 12-month period is between one hundred and fifty thousand dollars (\$150,000) and less than seven hundred and fifty thousand dollars (\$750,000), the bidder is required to be licensed as a “CLASS B CONTRACTOR.” If such a contract is more than one-thousand dollars (\$1,000) but less than ten thousand dollars (\$10,000), or if the Contractor does less than \$150,000 in business in a 12-month period, the bidder is required to be licensed as a “CLASS C CONTRACTOR.” The board shall require a master tradesman licensure for electrical, plumbing and heating, ventilation and air conditioning Contractors. The bidder shall place on the outside of the envelope containing the bid and shall place in the bid over his signature whichever of the following notations is appropriate, inserting his Contractor license number:

Licensed Class A Virginia Contractor No. _____ Specialty _____
Licensed Class B Virginia Contractor No. _____ Specialty _____
Licensed Class C Virginia Contractor No. _____ Specialty _____

If the bidder shall fail to provide this information on his bid or on the envelope containing the bid and shall fail to promptly provide said Contractor license number to the County in writing when requested to do so before or after the opening of bids, his bid will not be considered. In addition, the bidder shall provide the Purchasing Agent copies of required licensing or certificates to include the appropriate Business License with his/her bid.

If a bidder shall fail to obtain the required license(s) prior to submission of his bid, the bid shall not be considered.

13. CRIMINAL BACKGROUND CHECK:

- (a) In order to determine whether, in the interest of public welfare and safety, an employee of a Contractor contracting with any County agency and each applicant for County volunteer service may be disqualified from such employment or service by reason of a criminal record, the County Administrator or designee (in this case the Purchasing Agent is the designee), who must be a County employee, may require the Contractor’s employee or volunteer to provide personal descriptive information and to submit to a criminal background check. The Contractor contracting with any County agency shall pay the cost of the criminal records check. The volunteer will not be required to pay the cost of the criminal records check.
- (b) The County Administrator or designee, who must be a County employee, shall require that a criminal background check be conducted on an employee of a Contractor contracting with any a County agency and applicants for County volunteer service where the anticipated duties or responsibilities of the employee or volunteer will involve (i) unsupervised access to public records or to personal information as defined in § 2.2-3801 of the *Code of Virginia*; (ii) accountability for public funds in excess of \$2,500.00; (iii) unsupervised access to County supplies; (iv) entry into secured areas outside of working hours without a County employee; (v) right of entry onto private property without a County employee; or (vi) proximity to children, the elderly or disabled on a one-on-one basis with minimal supervision.
- (c) The County Administrator or designee may require a Contractor’s employee or volunteer whose duties do not fall within the duties enumerated in section (b) to submit to a criminal background check in the interest of protecting the public safety where there is reasonable cause to believe the Contractor’s employee or volunteer is not suitable for such employment or service or for other unique employment or volunteer service.

(d) The criminal history record information regarding such Contractor's employee or volunteer may be obtained through the Central Criminal Records Exchange or other appropriate qualified private source and may include the following: Employment records/Employee references; criminal background records/information; criminal background check/fingerprint; driver's license check; automobile insurance check; Social Services central registry check; training/experience check; personal references and addresses.

(e) As a condition of awarding a contract for the requested services that require the Contractor or his employees to have direct contact with students or perform any work on school property, the Contractor is required to provide certification to Gloucester County Public Schools that all persons who will provide such services have not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child (§ 22.1-296.1, *Code of Virginia*).

(f) The criminal history record information provided in accordance with this section shall be used solely to assess eligibility for employment as a Contractor's employee or volunteer service and shall not be disseminated to any person not involved in the assessment process, unless required by law. If a Contractor's employee or volunteer is denied employment or service because of information appearing in his or her criminal record history, the County Administrator or designee shall notify the Contractor or volunteer that information from the Virginia Central Criminal Records Exchange or other appropriate qualified private source contributed to such denial.

14. **WORK SITE DAMAGES:** Any damage to existing utilities, equipment or finished surfaces resulting from the performance of this contract shall be repaired to the County's satisfaction at the Contractor's expense. Further, the Contractor acknowledges that it is their sole responsibility to safeguard all worksite materials from loss, theft or vandalism during the performance of the Contract.

15. **PERFORMANCE AND PAYMENT BONDS:** If requested, the successful Bidder shall provide the County with an executed Commonwealth of Virginia Standard Performance and Labor and Material Payment Bonds, each in the sum of the contract amount, with the County of Gloucester as obligee. The surety shall be a company or companies approved by the State Corporation Commission to transact business in the Commonwealth of Virginia. No payment shall be due to the Contractor, even if the contract has been performed in whole or in part, until the bonds have been delivered to and approved by Central Purchasing. Standard bond forms will be provided by the County in the solicitation document or at the time of award.

16. **BID BOND OR GUARANTEE:** Bids in excess of \$100,000 shall be accompanied by a bid bond or guaranty of five percent (5%) of the amount of the bid, which shall be a certified check, cashier's check, or a bid bond payable to the Treasurer of the County of Gloucester, Virginia. The sureties of all bonds shall be a surety company or companies that are approved by the State and are authorized to transact business in the County. Such bid bond or check shall be submitted with the understanding that it shall guarantee that the bidder will not withdraw such bid during the period of sixty (60) days following the opening of bids; and that if such bid is accepted, the bidder will accept and perform under the terms of the Invitation for Bid and Purchase Order or Contract. The bid guarantee will be returned upon award of contract.

17. **ALTERNATE FORMS OF SECURITY:** If approved by the County Attorney, a Bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the solicitation, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.

18. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by § 1261 of Title 15 of the *United States Code* (U.S.C.) or "Pesticides" as defined in § 136 of Title 7 of the *United States Code*, then the Bidder, by submitting his proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products the Bidder does not violate any of the prohibitions of Title 15 U.S.C. § 1263 or Title 7 U.S.C. § 136.

19. **GRANTS:** If any resulting contract is issued under a State/Federal Government Grant or contract/subcontract, it shall be subject to the clauses and conditions of that grant or contract/subcontract and all applicable federal regulations.

20. **OWNERSHIP OF MATERIALS:** Ownership of all data, material and documentation originated and prepared for the County pursuant to the IFB shall belong exclusively to the County and is subject to public inspection in accordance with the *Virginia Freedom of Information Act*. Trade secrets or proprietary information submitted by the Bidder shall not be subject to public disclosure under the *Virginia Freedom of Information Act*; however, the Bidder must invoke the protection of this section prior to the submission of the data or other materials to be protected and state the reasons why protection is necessary (§ 2.2-4342, *Code of Virginia*).

21. **STARTING AND PLACING EQUIPMENT IN OPERATION:** Contractor shall initially start up and place all equipment installed/provided into successful operation according to manufacturer's written instructions and as instructed by manufacturer's field representative. All items must be assembled and set in place, ready for use; all crating and other debris must be removed from the premises. Contractor shall provide all material, labor, tools, equipment and expendables as required. General Activities Include:

1. Cleaning,
2. Removing temporary protective coatings,
3. Flushing and replacing grease and lubricants, where required by manufacturer.

The County will provide sufficient personnel to assist Contractor in the initial start-up but the prime responsibility for proper mechanical operation will belong to the Contractor. Upon completion of successful start-up and placing of equipment in operation, the County will assume responsibility for operation of equipment.

22. **SUPREMACY CLAUSE:** Notwithstanding any provision in the Bidder's response to the contrary, the Bidder agrees that the terms and conditions contained in the County's solicitation shall prevail over contrary terms and/or conditions contained in the Bidder's response.

23. **SCHEDULING AND DELAYS:** The parties to a contract resulting from this IFB acknowledge that all or part of the work to be performed hereunder may be delayed and extended at the option of the County. Such delays may be caused by delays, denials and modifications of the various state or federal permits, or for other reasons. The County shall not be required to pay any of the Contractor's direct or indirect costs, or claims for compensation, extended overhead, or other damage or consequential damages arising out of or related to any delays or interruptions required or ordered by the County. If the County delays the project for any reason for a continuous period of ninety (90) days or more, the County and Contractor will negotiate a mutually agreeable adjustment to the Contractor's award amount.

24. **EQUIPMENT:** Any equipment delivered must be standard new and unused equipment, latest model, except as otherwise specifically stated in the proposal. Where any part or the normal accessories of equipment is not described, it shall be understood that all the equipment and accessories that are usually provided in the manufacturer's stock model shall be furnished.

25. **QUANTITIES:** The quantities stated are estimated annual quantities to be ordered and are provided as a general guide for submitting proposals and are not guaranteed quantities to be ordered. Actual quantities purchased may be more or less than those specified. Actual quantities purchased may be more or less than those specified. Upon mutual agreement, the County reserves the right to purchase additional quantities of goods or services at the contract price within six months of the date of initial award.

26. **CONTINUITY OF SERVICES:** The services rendered in the contract resulting from this IFB are vital to County and must be continued without interruption. At contract expiration, the Contractor shall provide best efforts and cooperation to facilitate an efficient and effective transition to a successor, whether County or other Contractor, at no additional cost to the County.

27. **DELIVERY OF GOODS/SERVICES:** The time of proposed delivery must be stated in definite terms. If time of delivery for different goods and/or services varies, the Bidder shall so state in the proposal. Delivery tickets shall show quantity, description, unit price, total price, purchase order number and release number.

28. **FEMA REQUIRED CLAUSES:** 2 CFR § 200.317- 2 CFR § 200.326, Appendix A.

SECTION C INSURANCE REQUIREMENTS

INSURANCE: By signing and submitting a quotation under this solicitation, the Bidder certifies that if awarded the contract, it will have the following minimum insurance coverage(s) at the time the contract is awarded. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with § 2.2-4332 and § 65.2-800 et seq. of the *Code of Virginia*. The Bidder further certifies that the Contractor and any subcontractors will maintain these insurance coverage(s) during the entire term of the contract and that all insurance coverage(s) will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. Bidder shall provide a Certificate of Insurance naming the Gloucester County School Division as an Additional Insured for any work done on school property at the Bidder's expense. If requested, the Bidder shall provide a Certificate of Insurance naming Gloucester County as an Additional Insured for any work done on county property at the Bidder's expense. Note: Actual limits and aggregates may be increased or decreased for specific projects during negotiation, or as the Purchasing Agent assesses the amount of risk.

Minimum Insurance Coverage(s) and Limits required for most Contracts:

- a. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include employer. Contractors who fail to notify the County of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the contract shall be in noncompliance with the contract.
- b. Employer's Liability - \$100,000.
- c. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The County of Gloucester must be named as an additional insured and so endorsed on the policy.
- d. Automobile Liability - \$1,000,000 – per occurrence. (If motor vehicle is to be used in the contract.)
- e. Professional Liability/Errors and Omissions - \$500,000 – per occurrence. (If required by the contract or Purchasing Agent.)
- f. Construction – All Risk Builders Risk Property insurance on the completed value of all such work, with exclusions for design or defects removed by policy endorsement, if required by subsequent contract or Purchasing Agent.
- g. Garage-keeper's Liability, Product Liability and some complete operation coverage is required in "c" under Commercial General Liability when maintenance/service contracts are for vehicles

Contractor shall have ten (10) days from the date of the County's request to provide insurance certificates and endorsements. Failure to provide the certificates and endorsements within this timeframe may be cause for the County to rescind award of a contract and hold the original Bidder/Bidder liable for excess costs.

SECTION D SCOPE OF WORK

1. **PURPOSE:** The purpose of this Invitation for Bids (IFB) is to solicit bids to furnish/provide: Misc. Foods & Smallware for the Gloucester County Public Schools Cafeteria and Gloucester County Sheriff's Department.
2. **SPECIFICATIONS:** All Food shall meet the most current United States Department of Agriculture (USDA) School's standards and regulations. The Contract certifies all products were processed in the U.S. and contains over 51% of weight or volume) of its agricultural food component from the U.S. Space will be providing for the Contractor to fill in the name of the product and its specific percentage of the domestic agricultural food component contained therein.

Absolutely no substitutions will be made on any product being ordered unless Gloucester County Public Schools (GCPS) Central Food Service is notified and is in agreement with the substitution. GCPS agrees to pay prices quoted only for products included in the bid. If the cafeteria manager requests the supplier to furnish items not included in the bid, the supplier must first obtain permission from the Director of Central Food Service before the item is delivered to the schools. Otherwise, Central Food Service will not take financial responsibility for such items. GCPS reserve the right to reject and return any unauthorized substituted product at the supplier's cost. GCPS also reserves the right to purchase on the open market any product the Supplier cannot supply for any reason and charge any excess in the contract price to the Supplier.

All deliveries are to be checked and signed for by the Cafeteria Manager. The Supplier is required to leave two (2) copies of the delivery invoice with the Cafeteria Manger whenever a delivery is made. A separate monthly statement for each school must be rendered to Central Food Service, 6097 T. C. Walker Road, Gloucester, VA 23061, no later than the fifth of each month. The County will make payments in accordance with the Virginia Prompt Payment Act, Article 4, §22-4352. GCPS reserve the right to purchase on the open market, and to charge any excess in the contract price to the Supplier if the above delivery service requirement is not met.

DELIVERY LOCATION ADDRESSES

Abingdon Elementary School	7087 Powhatan Drive, Hayes, VA 23072
Achilles Elementary School	9306 Guinea Road, Hayes, VA 23072
Bethel Elementary School	2991 Hickory Fork Road, Gloucester, VA 23061
Botetourt Elementary School	6361 Main Street, Gloucester, VA 23061
Petsworth Elementary School	10658 George Wash. Hwy., Gloucester, VA 23061
T. C. Walker Education Center	6099 T. C. Walker Road, Gloucester, VA 23061
Page Middle School	5198 T. C. Walker Road, Gloucester, VA 23061
Peasley Middle School	2885 Hickory Fork Road, Gloucester, VA 230661
Gloucester High School	6680 Short Lane, Gloucester, VA 23061

REPORTS

Purchase Volume Report: The supplier shall furnish to Central Food Service a monthly report of the total number of individual bid items purchased by the individual schools.

Central Food Service Contact: Steve Patton, Director of Central Food Service (804) 693-3585



**ATTACHMENT A
 BID FORM
 (Completed Form shall be submitted as Bid Cover Pages)**

Bid Number:	IFB 22-009-CJ
Bid Name:	Miscellaneous Foods and Smallwares
Due Date and Time:	Thursday, July 29, 2021, at 2:00 p.m.

BIDDER INFORMATION	
Firm/Company Name (Legal Name)	
Mailing Address	
Payment Address (if different from Mailing Address)	
Firm Telephone Number	(_____) _____ - _____
Employer Identification Number (EIN)	_____ - _____
Social Security Number (only if an EIN is NOT provided)	_____ - _____ - _____
Representative Name/Title	
Representative Telephone Number	
Representative Email Address	

1. **QUALIFICATIONS:**

Indicate the length of time the company has provided the type of good(s) and/or service(s) required for this contract.

_____ years _____ months

2. **AUTHORIZATION TO TRANSACT BUSINESS IN VIRGINIA**

SCC Identification Number: _____

or

Firm/Company is not required to have/maintain registration because: _____

3. **DELIVERY:** Bidders MUST insert a definitive time frame IN CALENDAR DAYS, within which delivery will be made after receipt of order. Delivery in _____ days.

4. **WARRANTY:** State of the warranty for goods/services.

5. **ADDENDA:** Bidder hereby acknowledges receipt of and incorporation of all requirements of any addenda issued for this Invitation for Bids:

Addendum No. _____ Dated _____
Addendum No. _____ Dated _____
Addendum No. _____ Dated _____

6. **EXCEPTIONS:**

Indicate if exceptions are requested by acknowledging the appropriate statement below, as applicable:

- Bidder understands and agrees to all terms, conditions, requirements, and specifications stated herein.
- Bidder takes exception to terms, conditions, requirements, or specifications stated herein Bidder must itemize all exceptions below (attach additional pages if necessary):

The following exceptions are noted:

Exceptions taken from the stated terms and/or specifications may be cause for bids to be deemed "non-responsive".

7. **COOPERATIVE PURCHASING:** Bidder will extend term, conditions and prices to other jurisdictions.

- Yes
- No

8. **ANTI-COLLUSION CERTIFICATION**

The undersigned certifies that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same product and that this bid is in all respects bona fide, fair and not the result of any act of fraud or collusion with another person or firm engaged in the same line of business or commerce. The Bidder understands collusive bidding is a violation of Federal law and that any false statement hereunder constitutes a felony and can result in fines, imprisonment, as well as civil damages. The Bidder also understands that failure to sign this statement will make the bid non-responsive and unqualified for award.

9. **AUTHORIZATION**

In accordance with the terms, conditions and specifications of this Invitation for Bids, the undersigned agrees to furnish any or all of the items and/or services at the prices quoted and at the prices set opposite each item, to be delivered within the specified timeframe and to the specified place. The undersigned acknowledges that **the bid is valid for a period of 90 days** from the due date and certifies he/she has read, understands, and agrees to all terms, conditions, and requirements of the Invitation for Bids, and is authorized to contract on behalf of firm named below.

Firm Name: _____

Print Name: _____ Title: _____

Signature: _____ Date: _____

(This form must be signed. All signatures must be original and not photocopies.)

BIDDER NAME: _____

Excel Spreadsheet is available*** contact Central Purchasing for access 804-693-6235***

*Market basket for bidding purposes only. Total Bid Price will be the basis for the award.

ATTACHMENT C
REFERENCE PAGE
MUST BE FOR EQUIVALENT SERVICES
(Completed form shall be submitted with the Bid)
Do Not Include the County of Gloucester as a Reference

BIDDER NAME _____

Reference 1

Name of Business, City, County or Agency	Street Address	City & State	Contract Dates
Contact	Title	Telephone	Email Address
Description of Work Performed:		Contract Amount: \$	

Reference 2

Name of Business, City, County or Agency	Street Address	City & State	Contract Dates
Contact	Title	Telephone	Email Address
Description of Work Performed:		Contract Amount: \$	

Reference 3

Name of Business, City, County or Agency	Street Address	City & State	Contract Dates
Contact	Title	Telephone	Email Address
Description of Work Performed:		Contract Amount: \$	

Appendix A

FEMA Required Clauses

2 CFR § 200.317- 2 CFR § 200.326

§200.317 Procurement by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

§200.318 General procurement standards.

(a) The Non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The Non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The Non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The Non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The Non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The Non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.212 Suspension and debarment.

(i) The Non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The Non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The Non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business.

(2) Requiring unnecessary experience and excessive bonding;

- (3) Noncompetitive pricing practices between firms or between affiliated companies.
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

(b) The Non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The Non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The Non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publicly advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The Non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The Non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The Non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.323 Contract cost and price.

(a) The Non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The Non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§200.324 Federal awarding agency or pass-through entity review.

(a) The Non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The Non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The Non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product.

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The Non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The Non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The Non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

