

Green River Regional Educational Cooperative
Kentucky Educational Development Corporation



Northern KY Cooperative for Educational Services
Southeast/Southcentral Educational Cooperative

KPC – KENTUCKY PURCHASING COOPERATIVES
GRREC – KEDC - NKCES – OVEC - SE/SC - WKEC
KENTUCKY EDUCATIONAL DEVELOPMENT CORPORATION (KEDC)
904 ROSE ROAD, ASHLAND, KY 41102-7104
Member Services (606) 928-0205
www.kedc.org or www.kybuy.org

***** INVITATION TO BID *****

BID TYPE: **Lot 1 (Prime Vendor Market Basket) & Lot 2 (Prime Vendor Line Items) Cost plus fixed fee**

BID REFERENCE: **PV-SFS-2010-07**
BID OPENING: **Wednesday, May 5, 2010 at 10:00 a.m.**
AWARDING OF BID: **May 26, 2010**
BID PERIOD: **July 1, 2010 through June 30, 2011**

BID ITEMS: **Commercially purchased foods, meats, & supply items**

BID PURPOSE:

The Kentucky Educational Development Corporation (KEDC) Board of Directors, as the Legal Education Agency (LEA) for the Kentucky Purchasing Cooperatives (KPC) invites you to submit a sealed bid for commercially purchased foods, meats, & supply items (hereinafter referred to as School Food Service), that if accepted by the KEDC Board of Directors or its designee, establishes a PRIME VENDOR BID CONTRACT for the following KPC member school districts located in the OVEC region in accordance with the general conditions and detailed specifications of this bid.

OVEC Region

Anchorage School	Henry County
Carroll County	Oldham County
Eminence Independent	Owen County
Erlanger-Elsmere Independent	Shelby County
Franklin County	Spencer County
Gallatin County	Trimble County
Grant County	West Point Independent

SECTION I

INSTRUCTIONS FOR COMPLETING BID PROPOSAL

1. All bidders will use eSchoolMall's easyBid application to enter their bid responses (www.eschoolmall.com). In addition to responding to the bid online, we also require that bidders print and submit the following forms from the attachments on eSchoolMall or from the OVEC or KPC websites and return to OVEC ~ P.O. Box 1249 ~Shelbyville, KY 40066 via regular mail prior to the bid opening:
 - a) Certification of Submission
 - b) Authentication of Bid Statement and Statement of Non-Conflict of Interest
 - c) Certification of Disbarment and Suspension
 - d) Proposal Certification
 - e) Prime Vendor Questionnaire
 - f) SFS Prime Vendor Bid Fixed Fee Schedule

Other forms bidders are asked to view from the web site, but do not have to be submitted include:

- Requirements of Contractors Doing Business with the Cooperative
- Maximum and Free & Open Competition
- KRS 45A.455 Conflict of Interest, Gratuities and Kickbacks, and Use of Confidential Information.

All of the above forms can be found online at the KPC website (www.kybuy.org) or the OVEC website (http://www.ovec.org/bid_forms.cfm).

2. All bids will be opened electronically at the stated date and time. Bidders that submit bids can participate in the bid opening electronically. To participate in the bid opening online, logon to eschoolmall.com and go to the Vendor Response Tab and select the Award option. Then select the bid catalog of interest (once we open the bid you will be able to see the results in this area). Bid results are also available by contacting askaggs@ovec.org.
3. The contractor's price will include an administrative fee of two percent (2%) on all purchases made by members under this contract that the contractor will remit to KEDC on a monthly basis. The contractor will also compile and provide to KEDC a monthly report showing all purchases made by members under this contract in a format provided by KEDC. The contractor will make all administrative fee payments to KEDC by the 25th of the succeeding month and all checks are to be made payable to KEDC and sent to KEDC, 904 Rose Road, Ashland, KY 41102-7104. In consideration of receiving a KPC PRIME VENDOR BID CONTRACT contractor agrees to report and pay KEDC's administrative fees for all sales to KEDC/KPC members even if orders are placed directly by the member to the contractor.

4. Bidders must provide the manufacturer brand name, vendor order or part number and the price of each item (cost + fixed fee for Lot 1 (Market Basket) and Lot 2 (Line items)). If the vendor is bidding a product different from the specifications (different case count or other unit of measure, or approved brand) as noted on the online bid document, the Bidder must indicate this by not checking the “bid as quoted” checkbox and enter a response note indicating the change the Bidder is making.
5. Bidders must submit by mail before the bid deadline, in a sealed envelope, a copy of their fixed fee schedule for Lot 1 (Market Basket) and Lot 2 (Line Items). **Before** “submitting the bid” on eSchoolMall, bidders must complete an Excel spreadsheet version of the bid, which is an attachment on eSchoolMall or can be downloaded from www.ovec.org/bid_forms.cfm or www.kybuy.org. Bidders then must print out this completed spreadsheet and mail it to OVEC ~ P.O. Box 1249 ~Shelbyville, KY 40066 by the bid deadline. This document is for internal use only and will not be shared with the other bidders. [Note: the pricing data submitted on eSchoolMall shall govern in determining best pricing among bidders.]
6. KPC has grouped or put into “Lot 1” the highest volume branded items on the bid. Items in this first lot are called the “Market Basket.” All items in this lot must be bid. If for some reason the item is no longer manufactured, bidders must use the Response Notes to indicate the reason. Under that circumstance only, the bidder should enter \$0.01 as the price.
7. Mail or deliver the required documents in a sealed envelope with the following information:
OVEC
KPC/School Food Service Bid
P.O. Box 1249
Shelbyville, KY 40066
8. All bid proposals must be submitted in strict accordance with Sections I, II, III, and the online bid document.

SECTION II

PROPOSAL REQUIREMENTS

Electronically sealed proposals will be received by KPC at the time specified in Section I of the Invitation to Bid using the eSchoolMall web site: <http://www.eschoolmall.com/>

Electronic proposals must be received on or before date and time stated on the web site. The time of the deadline is controlled by the eSchoolMall web site server's official time. A link to the official time is provided on the web site.

KEDC does reserve the right to reject any and all proposals and to waive any and all informalities. KEDC is not responsible for the bidder's inability to connect to the eSchoolMall's web site. All that is needed to connect to the web site is an Internet connection and an Internet browser (Explorer, Netscape, etc.).

- 1. *Contract Period:*** The bid will be awarded for 12-months with the bid period beginning July 1, 2010 through June 30, 2011. The contract may be renewed annually by KEDC upon written agreement of both parties for additional 12 months not to exceed 2 additional years. KEDC shall notify the contractor of its intent to extend or not to extend the contract by April 1st of each year. If KEDC notifies contractor of intent to extend the contract by one year, contractor shall respond by April 15th that it either does or does not intend to extend the contract. The determination to renew the contract beyond the initial 12-months shall be determined in part by the performance of the contractor as reflected by monthly performance evaluations conducted by district personnel. KPC will periodically provide evaluation summaries to the contractor. (See Evaluation Form.) KEDC reserves the right to extend the term for up to 180 days to continue a source of supply until new or replacement contracts are completed. The bid will not be automatically extended beyond any current year unless expressly approved by KEDC. KEDC reserves the right on any contract extension to revise, update, or supplement the contract terms and conditions including the assessment of administrative fees to the contractor as needed to cover the cost of KEDC servicing the bid contract, bidding program, or procurement service for the members.
- 2. *Pricing:*** KEDC will award items in Lot 1 (Market Basket) and Lot 2 (Line Items) based on a prime vendor method. KPC has created a "Market Basket" of the most used food and non-food items. The bidder must bid all items in the "Market Basket" (Lot 1). At least 80% of the Line Items (Lot 2) outside the "Market Basket" lot must also be bid. KEDC will award Lot 1 and Line items (Lot 2) of the bid to ONE vendor. Also in the "Line Items" are items listed as Future Product Placeholder, the vendor must enter \$0.01 as the price. These lines enable KEDC to add products based upon mutual agreement between KPC and the awarded vendor. All bid pricing quoted shall remain firm for the duration of the first 6-month period of the bid (July 1, 2010 – December 31, 2010). The second 6-month bid period of the bid (January 1, 2011 – June 30, 2011) shall allow for any necessary price increases or decreases at which time an increase/decrease shall only be allowed to the cost portion of the bid. The Fixed Fee portion of the bid shall remain firm for the 12-month bid period. KPC shall provide the contractor with an estimated usage of products for the second six month bid period (January 1, 2011 – June 30, 2011) by October 1, 2010. The vendor shall notify KEDC

of any necessary price increases or decreases for the second six month bid period by November 1, 2010. All bid pricing quoted for the second six month bid period shall remain firm for the duration of that period. All price increases/ decreases shall be accompanied by proper documentation of price increase/decreases to the contractor. Proper documentation shall include market bulletin(s) from an independent source, manufacturer's invoices, and freight bills. Pricing information submitted on eSchoolMall.com will be used exclusively in determining best prices among bidders.

All bid prices must include transportation and delivery charges to the location (school district, KEDC, etc.) specified during ordering. Fuel surcharges and other similar charges are not permitted. Replacement and/or supplemental products that meet or exceed the minimum bid requirements may be added to this contract at the sole discretion of KEDC. Replacement/supplemental products shall be offered at a discount equal to or greater than the original award. The bidder shall submit, on its letterhead the request to add products/services. The request shall be submitted by an authorized representative of the organization. KEDC is under no obligation to accept the offerings.

The bidder shall provide each item on this bid to all participating KPC members in the **OVEC Region** at the same price. Bidders MAY NOT submit multiple discount levels for the same product by KPC member.

Should an awarded bidder negotiate or bid a lower price for an item included in this bid with any KPC member, the bidder agrees to provide the product to all participating KPC members at the lower price. For example: Member A and Member B are both KPC members. Bidder then establishes a price with Member B for items that are on the KPC bid thru negotiation or a member bid that is lower than the bid price with KPC. The lower prices provided to Member B become the bid price for Member A and all KPC members.

3. ***Correction of Mistakes:*** Bidders are cautioned to re-check their bid for possible errors before submitting the document online. All quotations entered on the eSchoolMall system and "submitted" by the deadline are unavailable to the bidder to recall. Errors discovered after public opening cannot be corrected and bidder will be required to accept award if offered.
4. ***Withdrawal of Bid:*** All bids shall be valid for a period of thirty (30) days from the bid opening date to allow for tabulation, study, and consideration by the KEDC Board or its designee. A bidder may withdraw a bid after it has been submitted only if a written request is submitted and received prior to the expiration of the time during which bids may be submitted, without prejudice, by submitting a written request for its withdrawal to KEDC with the corresponding Bid Reference Number.

5. Return Instructions for other online forms:

A. The Bid Invitation Forms must be used without alterations.

B. The Bid Invitation Cover pages and Section I, plus the questionnaire shall be returned to KPC along with the Excel spreadsheet version of the bid (with cost plus fixed fee information – see Section I, No. 6) in a sealed envelope labeled “PV-SFS-2010-07.” Bidders can use the Reports function on eSchoolMall’s web site to receive a copy of the bid they submit online. Bidders may keep all documents for their files except that original copies of documents listed in Section 1, No. 1, a through e, must be sent to KPC by the bid deadline.

6. Addendums: KEDC may issue an addendum to the bid after the bid has been released. In no instance will an addendum be issued five (5) working days prior to the proposal opening. Any addendum issued must be returned to KPC by mail or private carrier service by the stated deadline.

7. Quantities: It shall be understood that any contract established as a result of this Bid Invitation will not obligate KEDC or its member school districts or schools to receive any quantity in excess of actual requirements. The quantities shown are estimates and result from actual or historical data. Participating KPC members will fully utilize projected quantities of any item specifically placed in inventory. Within 10 days after the award of contract, the successful bidder must provide a list of items that fall in this category. Failure to provide usage reports during the bid period relieves participating KPC members from fully utilizing said items. The successful bidder must provide to KPC, on a monthly basis, a list of slow moving items that have been placed into inventory specifically for participating KPC members. Failure to provide the list monthly will relieve participating members from fully utilizing said items.

8. Nutritional Information: The successful bidder shall provide the most recent nutritional data, meal contributions, and for the purpose of food allergies, ingredient labels upon request.

9. Product Safety and HACCP Information: The successful bidder shall provide upon request by any member, the most recent MSDS information sheets for any products the bidder may deliver to said member. It is the bidder’s responsibility to comply with all local, state, and federal regulations. Contractor HACCP procedures are to be provided to KPC for publication on the KPC website and to KPC members upon request.

10. Liability: The contractor agrees to protect, defend, and save harmless KEDC and members from any suits or demands for payment that may be brought against it for the use of any patented material, process, article, or device that may enter into the manufacture, construction, or form a part of the work covered by either order or contract; and contractor further agrees to indemnify and save harmless KEDC and members from suits or actions of every nature and description brought against it for, or on account of any injuries or damages received or sustained by any party or parties by, or for any of the acts of the contractors, his servants or agents. The contractor will hold KEDC and its participating districts harmless for any and all damages resulting from consumption of products delivered under this contract

when such damages are attributed to foreign materials or other defects in products delivered by the contractor.

11. *Recalls:* The contractor shall notify KPC immediately of any products recalls. Any products that have been recalled and have been delivered shall be issued a credit and/or a comparable substitute immediately. All costs associated with voluntary and involuntary product recalls shall be borne by the contractor.

12. *Pre-qualification:* KPC reserves the right to pre-qualify a potential contractor, especially any firm that has not previously participated in the KPC bid program. Criteria for qualification shall include:

- A. Product Line - The potential contractor shall provide proof that all items listed in Section IV are in stock or can be quickly obtained.
- B. Deliverability - Bidder must demonstrate or has demonstrated to KPC the ability to promptly and efficiently deliver all the items on the bid list.
- C. Physical Facilities - Bidder must have the warehouse facilities required to safely and securely store the products required by these specifications. Refrigeration facilities used for storing chilled and frozen products must meet recommendations of the Refrigeration Research Council. Delivery temperatures of frozen and chilled food shall be in compliance with AFDOS code as recommended by the Federal Food and Drug Administration. KEDC reserves the right to pre-qualify any or all bidders and to reject any bidder not meeting the requirements in the areas of warehouse facilities and equipment associated with and necessary for the safe and sanitary storage and delivery of food items requested in these specifications. The facilities and operating practices must, at all times, be in compliance with the United State Food, Drug, and Cosmetic Act as well as any State and Local Statute, Regulation or Ordinance.
- D. Financial Capacity - The potential contractor shall have financing adequate to purchase items in the most economical quantities. References may be requested to document adequate financial capacity.
- E. Service Level - If KPC does not have adequate historical data to determine the contractor's ability to comply with the service level requirement outlined in this bid invitation, then three letters of reference from previous school district customers shall be provided.
- F. Accounting Practices - A potential contractor must clearly demonstrate the capacity to provide accurate, reliable, and timely reports in terms of invoices, statements, credits, and usage data. Further, they must demonstrate the ability and capability to provide any and all data necessary to accomplish an accurate and time efficient audit of cost on items being purchased under the cost process.
- G. NOI/Value Pass Thru Program--The contractor must be approved by the Kentucky Department of Agriculture to participate in the USDA's Net Off Invoice/Value Pass

Thru Program. This is a requirement for an item that can be processed with a USDA commodity.

- 13. Post-Bid Conference:** KEDC reserves the right to call a Post-Bid Conference to review the preliminary results with the bidders and to arrange for delivery date schedules for the member school districts.
- 14. Product Testing:** Bidders must contact KPC at (502) 647-3533 and make arrangements to have their products tested, if necessary, to meet the approved brands listed on the bid document by April 14, 2010. The testing is limited to “Market Basket” items containing approved brands for which the bidder does not have access to any of the listed brands. Items not pre-approved will be disallowed. Items rejected through testing will not be acceptable and the bidder restricted to the approved brand list.
- 15. Review:** After the public opening of proposals received from the Bid Invitation, KPC staff and school officials will review the results, develop a preliminary tabulation, and may contact bidders for the purpose of clarification only. Bidders may also view the initial results of the bid online at eSchoolMall’s web site.
 - A. The low proposal will be checked for accuracy and meeting approved brands. All proposals shall/may be subject to verifications. If the errors on math and brands are within tolerance described in this section, the bottom line will be adjusted and, if the proposal is still the lowest, the proposal disclosure procedure will continue.
 - B. Mathematical Accuracy of Proposals Offered: Since the online bid will automatically calculate the extended price, errors in the unit price or in failing to note changes in the unit of measure will be counted against the bidder.
 - C. Brand Indication and Specification Sheets. Offering a proposal on a brand, which was not pre-approved, shall be cause for rejection of the proposal. Failure to write-in the brand name on the online Bid Form shall be cause for rejection of the proposal.
 - D. Decimals. Any mathematical calculation that involves decimals shall be treated as follows: a) All decimals shall be carried only two (2) places except for portion prices which shall be carried to a maximum of four (4) spaces.
 - E. Special Orders. Bidders shall specify on the online bid document if any item is a Special Order only item by typing SO after the brand name or order number or in the Response Notes. Otherwise, it will be assumed that the bidder stocks the item. Special orders should be delivered within a 2-week timeframe of the receipt of order. Schools/Districts have the right to cancel special orders if the item is not received in a timely fashion.

16. Award: After the review of the proposals KEDC will award a contract based on the total points awarded to each contract using the scale below:

	Maximum Points
a) Best Price for Market Basket Items (Lot 1)	70
70	Lowest Bid
69	\$1 – \$10,000
67	\$10,001 - \$20,000
65	\$20,001 - \$30,000
60	\$30,001 - \$40,000
55	\$40,001 - \$50,000
50	\$50,001 - \$60,000
45	\$60,001 - \$70,000
40	\$70,001 - \$80,000
30	\$80,001 - \$90,000
20	\$90,001 - \$100,000
10	\$100,001 - \$250,000
0	\$250,001 & Over

b) Best Price for All Line Items (Lot 2)	30
30	Lowest Bid
29	\$1 – \$10,000
27	\$10,001 - \$20,000
22	\$20,001 - \$30,000
17	\$30,001 - \$40,000
15	\$40,001 - \$50,000
10	\$50,001 - \$60,000
5	\$60,001 - \$70,000
0	\$70,001 & Over

17. Service Level: The contractor shall fill all original orders at a monthly average of 97% or above on the scheduled delivery day. The remaining 3% shall be delivered on the next regularly scheduled delivery day. In the event the school declares an emergency need for an item not delivered on the originally scheduled date, the contractor shall make delivery within 96 hours.

18. Usage Reports: Usage reports in an electronic format (Microsoft Excel, Access, SQL, etc.) specified by KEDC shall be issued to KEDC monthly by the 10th day of the next month. Contractor shall compile usage reports by Cooperative, district, and school. Failure to provide usage reports may be cause to remove the contractor from future bid participation. Since the usage report data is useful to both KEDC and the contractor, it is of benefit to both parties to share this information. KEDC will routinely request procurement data from participating members to verify usage report accuracy. KPC will not respond to any concerns of under utilization of product(s) unless it is receiving regular usage reports from the contractor in question.

19. Delivery Time: Attached is a school directory for each of the thirteen school districts and the acceptable delivery times. Delivery days and times shall be scheduled with each School Nutrition Director (see attached). Deliveries are to be made to individual schools on a weekly basis unless requested otherwise by the School Nutrition Director. No minimum dollar or case amounts shall be required for the weekly delivery. School Nutrition Directors may request additional deliveries or special arrangements from time to time and contractor shall respond with no extra charge.

20. Delivery Procedures: Drivers and helpers shall deliver merchandise into designated storage areas. Drivers or helpers shall not be required to store merchandise on shelves. Drivers may request the authorized school receiver to verify the accuracy of quantities delivered. Shortages, damages and substitutions shall be noted by the driver to the receiver and noted on the delivery ticket.

It is understood that deliveries are not to be made when school is not in session with exception of the opening of school. Calendars will be provided to the successful bidders to designate off-school days. When school is cancelled because of inclement weather or any other emergency and the delivery truck is already in route, upon arrival the company driver must contact the School Nutrition Director by telephone for instructions. The school system reserves the right to accept the delivery, authorize another acceptance signature, or to return the delivery. If the truck has not left the distributor's warehouse, the delivery will be made on the next day that schools are re-opened unless notified otherwise.

21. Transmittal of Orders: All purchase orders will be conducted online and submitted to the awarded bidder using eSchoolMall's web site. The vendor must have the capability of integrating their ordering system with eSchoolMall or accepting an excel format of an order to be uploaded into their ordering system. See No. 34 regarding non-bid items.

22. Customer Service Representative: Contractor shall provide a customer service representative to service all KPC school districts. The customer service representative shall have the ability and authority to deal with credits, rebates, promotions, billing issues, quality issues, and communicate stocking issues.

23. Member Support: A representative from the awarded contractor shall be available to attend monthly School Food Service meetings, product testing events, and an annual School Food Service show and workshop as requested.

24. Menus: Upon request, each School Nutrition Director will supply a copy of the monthly planned menus to the successful bidder's sales representative. It is understood that the menus are only to be used for guidance purposes by the successful bidder and in no way guaranteed.

25. *Item Substitution and Out-of-Stocks:* If a contractor is temporarily out of stock of a particular item, **an equal or superior product at an equal or lower price must have prior approval from the School Nutrition Director before the scheduled delivery date.**

Failure of a Contractor to deliver within the time specified, or within a reasonable time as interpreted by each School Nutrition Director, or failure to make replacements of rejected articles when so requested, or continues to be unable to secure the bid item, the school at its sole discretion, may purchase a product of equal or greater quality from another source. On all such purchases, the Contractor shall be responsible and liable for the difference in cost between the amount paid for the substituted product and the amount that would have been paid the contractor. The contractor's argument that an item could have been purchased at a lower price shall not have merit. Such purchases shall be deducted from contract quantities.

26. *Delivery of Non-Approved Brands:* Delivery of non-approved brands shall be cause for termination of contract.

27. *Returns:* The contractor must provide a Return Material Authorization within 1 working day of the request by KPC member for items not subject to HACCP guidelines. Returned materials shall be restocked at no charge to KPC member.

28. *Payments:* Each school district and/or school shall be responsible for making payment to the contractor. Normally, school districts pay bills only after approval from their Board of Education, which meets monthly.

29. *Warning and Termination of Contract:* KEDC may terminate the contract if the contractor fails to perform at the service level specified in the bid document. Contracts may be terminated at any time, on 30 days notice upon the mutual agreement of both parties or upon the discretion of KEDC, in a shorter period of time, if the terms of the contract are violated in any way. In the event of termination, the schools shall not be liable to any costs other than the cost of items delivered and accepted prior to the termination date. The contractor may terminate the contract if the school districts fail to meet mutually agreeable and specified payment terms.

Each party shall follow the following procedure if the contract is to be terminated:

- Step 1. Issue a warning letter outlining the violations and state the length of time to correct the problem(s).
- Step 2. Issue a letter of intent to cancel contract, if the problem(s) is not resolved by a given date.
- Step 3. Issue letter to cancel contract.

In the event the physical facilities of the contractor are destroyed or a labor dispute makes performance under the terms of the contract impossible, the contractor shall not be held liable by KEDC or the school districts.

30. Exclusivity: Participating KPC members in the OVEC region agree to use the awarded contractor as an exclusive source for the various items and services as listed herein as well as for comparable substitutes and supplemental non-bid items. The only anticipated exceptions might be in time of emergency.

31. Access to Records: All contracts over \$10,000 awarded by KEDC shall include the right of KEDC, the Kentucky Department of Education, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, to have unrestricted access to any books, documents, papers, records of the contractor which are directly pertinent to the awarded contract, for the purpose of making audit, examination, excerpts, and transactions.

32. Audits:

- 1) KEDC reserves the right to make audits of a contractor's costs records for bid and non-bid or quoted items as follows:
 - a. Prior to award of contract
 - b. Following the allowed 6-month extension price change.
 - c. An unscheduled audit one time during each 6-month bid period upon appropriate notice given to contractor.
- 2) The contractor shall be given notice of the intent of the cooperative to conduct an audit a minimum of two weeks in advance.
- 3) The contractor shall provide acceptable documentation as follows:
 - a. Manufacturer's invoices
 - b. Freight bills
 - c. Perpetual inventory records
 - d. Market bulletins (used for distributor manufactured items and inner company billing items when price change occurs).

33. Cost: Third Party Invoice or confirmation -- Cost prices shall be based on "delivered to contractor's warehouse." When a contractor chooses to "backhaul" or "pick-up" products, a reasonable freight charge may be added to the cost. In all cases, the decision made by the contractor on the initial proposal must be maintained throughout the duration of the contract. Cost shall be based upon the "latest invoice" or manufacturer's confirmation prior to the proposal opening or cost update to the cooperative. Should a manufacturer's confirmation be used in lieu of an invoice, and the confirmation identifies item and/or quantity, the cost may not be changed until the specified time has expired. Cash discounts, label allowances, group allowances, promotion advances, "bill backs", or other "rebates" may accrue to the benefit of the contractor. No allowances shall accrue to the school district.

34. Fixed Fee: Contractor shall be limited to one of the following fixed fee pricing methods for bid and non-bid or quoted items:

- a) Line Item: A fee set for each individual item.
- b) Sliding Scale: A fee set for items that are priced between certain cost brackets. (i.e., \$5.01-\$10 = \$.50; \$10.01-\$15.00 = \$1.00)
- c) Set Fixed Fee: One fee set for all items on the bid.

35. Prompt Payment Discount: Bidder may provide a prompt payment percentage discount for invoice payments postmarked less than 30 days from the invoice date. The discount may take the form of either a deduction from the total invoice or a check in an amount equal to the same. (Example: 1% discount for invoices postmarked within 10 days of the invoice date.)

36. Kentucky Broker Service and Buy American Act: Contractor shall use Kentucky Brokers when possible and abide by Buy American Act (see attachment).

37. Purchase of Food and Non-Food Items not specifically listed in the Online Bid.

- A. KPC schools may exercise their rights to purchase all non-bid items from the contractor that has been awarded the contract.
- B. Non-bid items shall be quoted with the same pricing principles (cost plus fixed fee) and shall be subject to the same auditing provisions as bid items. The initial quote on non-bid items judged to have sufficient quantity to be an ongoing bid item shall become the official bid price for the remainder of the six-month bid period in which it was quoted. KPC will add these items to the bid ordering system on eSchoolMall's web site.
- C. Contractor's sales representative shall provide KEDC as requested a list non-bid items that have been quoted to the schools including cost plus fixed fee information.

38. Warranty: Contractor shall make available and honor all manufacturer's warranties, both standard and extended, to KPC members.

39. Non-assignability of Awarded Bid: The bid award will be made only to the individual or entity which actually submits a bid. The awarded bid cannot be conveyed to an awarded bidder's successors or assigns without the prior, express approval of the KEDC Board of Directors or its designee.

40. Contract Suspension: KPC may, at its sole discretion, suspend a contractor for a period of up to 90 days to investigate alleged instances of breach of contract or non-compliance. The contractor is prohibited from accepting new orders from KPC members while suspended, however, orders already in process can be completed. If the contractor is found to be in breach of contract or non-compliance, the contract is rendered null and void. The contractor agrees that they have no legal recourse of any nature against KEDC, KPC, or its member entities except for payment of goods, supplies and services that are due for prior purchases

which were permitted to be sold by the contractor under this bid. The decision of KPC regarding suspension and/or termination is final.

41. *Penalty:* The designated supplier(s) reciprocally agrees to provide total requirements as listed herein, thereby minimizing occurrences when a school district may have to seek other interim product sources. Failure to deliver 100% of the items on this list -- within 48 hours -- shall be considered a default.

42. *Other Conditions:*

- A. Contractors shall comply with the Executive Order 11256, entitled, "Equal Employment Opportunity," as amended by Labor regulations (41 CFR Part 60).
- B. Contractors shall be in compliance and will comply with any and all local, state, and federal laws and regulations related to this bid and the rendering of goods and /or services.
- C. This contract shall be governed in all respects as to validity, construction, capacity, performance, or otherwise by the laws of the Commonwealth of Kentucky.
- D. Contractors providing services under this bid invitation, herewith assure KEDC they are conforming to the provisions of the Civil Rights Act of 1964 as amended.
- E. Kentucky Sales and Use Tax Certificate of Exemption Form will be issued upon request.
- F. Contractor shall comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with the contractor's performance of work under this contract, contractor agrees not to discriminate against any employee(s) or applicant(s) for employment because of race, color, national origin, age, sex, disability, or religious creed.
- G. In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400
- H. Contractor agrees to retain all books, records, and other documents to this agreement for three years after final payment. KEDC and its members, its authorized agents and/or state/or federal representatives shall have full access to, and the right to examine any or said materials during said period which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts and transcriptions. If the investigator or audit is in progress, records shall be maintained until stated matter is closed.
- I. Contractor shall comply will all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C.) 187 [h], Section 508 of the Clean Water Act (33 U.S.C. 1368, Executive Order 11738 and Environmental Protection Agency (EPA) regulations, (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included in the EPA list of violated facilities.
- J. Contractor shall comply with all mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- K. By signing this document, the contractor certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same materials, supplies, or equipment, and is in all

respects fair and without collusion or fraud. The contractor certifies that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.

- L. Prohibition against conflicts of interest, gratuities, and kickbacks: Any employee or official of KEDC or member institution, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or things of value as an inducement or intended inducement, or in the procurement of business, or the giving of business, for or to or from, any person, or in open market seeking to make sales to the membership shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or fine in accord with state and/or federal laws.
- M. The bidder is legally entitled to enter into contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, including those prohibited by provisions of KRS 164.390, KRS 61.092-61.096, and KRS 42.990.
- N. The provisions of KRS 365.080 and KRS 365.090 which permit the regulation of resale price by contract, does not apply to sales to the State.
- O. The bidder is fully knowledgeable of KRS 45A.335-45A.490, Kentucky Model Procurement Code, including the provisions for violation of the Code. KRS 45A.455 prohibits conflicts of interest, gratuities, and kickbacks to employees of KEDC or member institutions in connection with contracts for supplies or services whether such gratuities or kickbacks are direct or indirect. KRS 45A.990 provides severe penalties for violations of the laws relating to gratuities or kickbacks to employees that are designed to secure a public contract for supplies or services.
- P. KEDC reserves the right to reject any and/or all bids and to waive informalities.

SECTION III

Product Requirements

1. **Item Identification (ID):** The item ID listed herein is not specifications. Product ID's are limited to requirements that can be verified upon delivery. U.S. Grades are generally not specified unless there is a grade shield on the container or an inspection certificate accompanies the product. The use of pre-approved brands makes it unnecessary to use detailed specifications.
2. **Product Protection Guarantees:** School districts have automatic product protection recourse against suppliers for products that are misrepresented. According to federal regulations, the supplier whose name and address appear on the package is the responsible party. Contractors are expected to take immediate action to correct any situation in which product integrity is violated.
3. **Import Products:** Products, which are canned or packed outside of the United States, will not be accepted. Please note this rule applies to "Private Label" as well as other labels. Exceptions to this rule are for pineapple, mandarin oranges, olives, tuna, and coffee. The Nutrition Labeling and Education Act of 1990 mandates that the country of origin for both domestic and imported food products be identified on the product labels.
4. **Brands:** The "**Approved Brand**" space on the item identification indicates:
 - A. **Approved Brands.** These are items that have been pre-approved before the School Food Service Committee and no other brand will be accepted. If more than one manufacturer's names and product numbers are listed under approved brands, the bidder may only propose one of those products in the list. If there is only one approved brand listed, the bidder must pre-approve an alternative at the product testing scheduled prior to the bid opening. In the instance where a pre-approved brand is packed also under a Private Label, the bidder must present documentation from the manufacturer at the time of the opening in order to bid the Private Label version of the product.
 - B. **Unacceptable Brands.** KEDC may specifically designate a brand as unacceptable even if blanket approval is implied. This is done by stating specifically the brand will not be acceptable if bid.

STATEMENT OF SUBMISSION

We have read all the conditions and requirements of the bid and have signed statements of Authentication, Non-Collusion, and Non-Conflict of Interest. We have submitted prices and agree to make delivery free of additional charges.

In submitting this bid, it is expressly agreed that, upon proper acceptance by the Kentucky Educational Development Corporation of any or all items bid, a contract shall thereby be created with respect to the items accepted.

Bidding Firm	Authorized Signature
Sales Contact Name	Printed Name of Authorized Signer
Sales Contact Email Address	Phone # (Toll Free – if applicable)
Fax # (Toll Free – if applicable)	Address
City, State, Zip	Date

AUTHENTICATION OF BID AND STATEMENT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST

I hereby swear or affirm under penalty of false swearing as provided by KRS 432.170:

- That I am the bidder (if bidder is an individual), a partner in the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority on its behalf (if the bidder is a corporation);
- That the attached bid or bids covering Kentucky Purchasing Cooperatives have been arrived at by the bidder independently and have been submitted without collusion and without agreement, understanding, or planned common course of action, with any vendor of materials, equipment, or services described in the invitation to bid, designed to limit independent bidding or competition.
- That contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bids and will not communicate to any such person prior to the official opening of the bid or bids.
- That the bidder is legally entitled to enter into the contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, including those prohibited by the provisions of KRS 164.390, 61.092-61.096 and 42.990.

- That I have fully informed myself regarding the accuracy of the statements made above. [Any agreement of collusion among bidders or prospective bidders that restrains, tends to restrain, or is reasonably calculated to restrain competition by agreement to bid at a fix price, or to refrain from bidding, or otherwise, is prohibited.] Further I understand the provisions of KRS 365.080 and 365.090, which permit the regulation of resale price by contract, do not apply to sales to the State. Further, I understand that any person who violates any provisions of Kentucky revised Statutes 45.460 shall be guilty of a felony and shall be punished by a fine no less than \$5,000 no more than \$10,000 or be imprisoned not less than one year nor more than 5 years, or both fined and imprisonment. Any firm, corporation, or association that violates KRS 45.460 shall be fined no less than \$10,000 nor more than \$20,000.

**ACKNOWLEDGEMENT AND AGREEMENT TO ALL TERMS AND
CONDITIONS OF THE BID**

I hereby acknowledge that I have read and agree to all terms and conditions of the bid as provided by KEDC on eSchoolMall's web site.

I understand and accept as a condition of being awarded a bid that KEDC will assess an administrative fee of 2% on each purchase of items that may be awarded to my company.

I understand that I am able to obtain the bid results on the eSchoolMall web site after the bid has been opened by KPC. I also understand that I can obtain the bid award results from the eSchoolMall web site after the KEDC Board of Directors or its designee has approved the award recommendations and KEDC posts that information.

SIGNATURE: _____

PRINTED NAME: _____

COMPANY: _____

DATE: _____

CERTIFICATION OF DISBARMENT AND SUSPENSION

By signature below, I certify on behalf of the company and its key employees that neither the company nor its key employees have been proposed for debarment, debarred, or suspended by any Federal Agency.

PROPOSAL CERTIFICATION

I hereby certify with my signature below that costs quoted in this proposal are correct and that I have authority to obligate my company to perform under the conditions stated in the bid document in Sections I, II, and III.

SIGNATURE: _____

COMPANY: _____

DATE: _____

PRIME VENDOR QUESTIONNAIRE

1. Will your company provide a customer service representative as stated in the bid requirements?
2. Is your company a member of School Nutrition Association (formerly American School Food Service Assoc.)?
3. Is your company a member of Kentucky School Nutrition Association?
4. Is your company a member of the Kentucky SNA Industry Council?
5. Will your company provide the districts with rebate information?
6. Can your company provide KEDC with utilization reports broken down by Cooperative, District, and School?
7. Can your company provide Ingredient and Nutrition Labels as requested?
8. What will be your fixed fee for all non-bid items?
9. How will non-bid items be handled for ordering?
10. How are add-ons to orders handled? Is there a deadline?
11. How are special ordered items handled? What is the turn around time to receive special ordered items?
12. Will districts have advance notice of out-of-stock items and have the ability to select a substitute?
13. We offer a Prompt Payment Discount for payment of bills of _____% for payment within _____ Days.

COMPANY: _____

REQUIREMENT OF CONTRACTORS DOING BUSINESS WITH THE COOPERATIVE

The purpose of this policy is to set forth the expectations of the Kentucky Educational Development Corporation (KEDC) regarding all contractors' obligations to follow federal, state, and local laws and regulations while conducting business with KEDC.

Any contract between KEDC and a business or individual that calls for supplying KEDC with goods or services shall be governed in all respects as to validity, construction, capacity, performance, or otherwise by the laws of the Commonwealth of Kentucky.

All contractors providing goods or services to will assure they are conforming to the provisions of the Civil Rights Act of 1964 as amended. Further, contractors shall comply with the Executive Order 11256, entitled "Equal Employment Opportunity," as amended by Labor regulations (41 CFR Part 60); the Copeland Act (18 U.S.C. 874 as supplemented in the Department of Labor regulation (29 CFR part 3).

Contractors shall comply with all applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. Included in this provision is the compliance of contractors with the Contract Work House and Safety Standards Act (40 U.S.C. 327 et. Seq. and all applicable sections of the act and the Department of Labor's supplemental regulations (29 CFR parts 5 and 1926).

In connections with the contractor's performance of work under any contract or bid award offered, the contractor(s) shall agree not to discriminate against any employee(s) or applicant(s) for employment because of race, color, national origin, age, sex, religious creed, sex, and disability.

Finally, contractors holding contracts in excess of \$100,000 shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C.) 87 [h], and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et. Seq.); and, Executive Order 11738 and Environmental Protection Agency (EPA) regulations (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants, or loans of facilities included in the EPA list of violated facilities.

Contracts with KEDC shall include the provision granting KEDC employees the right to access to the contractor's records.

MAXIMUM FREE & OPEN COMPETITION

It is the clear intention of the Kentucky Educational Development Corporation to foster all procurement transactions in a manner to provide to the maximum extent practicable, open and free competition. (20 U.S.C. 1221e-3(a)(1) and 3474, OMB Circular A-110)

KEDC shall make positive efforts toward procuring and utilizing small business and minority-owned business sources of supplies and services. All such efforts shall be made to allow these sources the maximum feasible opportunity to compete for contracts.

All procurement procedures developed and implemented by KEDC shall assure that unnecessary or duplicative items are not purchased. Where appropriate, considerations of lease and purchase alternatives will be made to determine which would be the most economical and practical procurement.

All KEDC bids and solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. Brand name or equal clause may be used as a means to define the performance of other salient requirements of procurement, and when so used to specific features of the named brand that must be met by bidders/offer's are clearly specified.

KEDC shall use procuring instruments such as fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts, where appropriate and or required by state law and which promotes the best interest of KEDC and its programs and services. KEDC shall not use a "cost-plus-a-percentage-of-cost" method of contracting.

Contractors will be entered into by KEDC with only responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be made for such matters as a contractor's integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. KEDC may be required by federal grants to seek prior approval by the granting agency for purchases of an aggregate amount of \$5,000 or more in the event of receiving only one bid or proposal.

KEDC shall follow the principles of cost analysis in the review and evaluation of proposals or bids to determine if the bidder meets the requirements or reasonableness, allocability, and allowability.

KEDC shall for all purchases that exceed \$10,000 maintain procurement files that include the basis for contractor selection; justification for lack of competition when competitive bids or offers were not obtained; basis for award cost or price; and a system for contract administration so as to insure contractor conformance with the terms, conditions and specifications of the contract, and to ensure adequate and timely follow-up of all purchases.

KEDC shall follow all laws of the Commonwealth of Kentucky requiring bidding of goods or services in excess of \$10,000.

KRS 45A.455 CONFLICT OF INTEREST GRATUITIES AND KICKBACKS USE OF CONFIDENTIAL INFORMATION

1. It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract; or subcontract; and any solicitation or proposal therefore, in which to his knowledge:
 - a. He, or any member of his immediate family has financial interest therein; or
 - b. A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or
 - c. Any other person, business or organization with whom he or any member of this immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigations, auditing, or in any other advisory capacity.
2. 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 purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefore.
3. It is 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 of a subcontract or order.
4. The prohibition against conflicts or interests and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefore.
5. It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual anticipated personal gain, or the actual or anticipated personal gain of any other person.

Each party shall follow the following procedure if the contract is to be terminated:

Step 1: Issue a warning letter outlining the violations and state the length of time to correct the problem(s).

Step 2: Issue a letter of intent to cancel contract, if the problem(s) is not resolved by a given date.

Step 3: Issue letter to cancel contract.

OVEC REGION SFS DIRECTORS

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DELIVERY SCHEDULE & TIMES

Anchorage School 7:00 a.m. – 2:30 p.m.

Carroll County: 6:00 a.m. – 2:00 p.m.

Kathryn Winn Elementary
Cartmell Elementary
Carroll County Middle School
Carroll County High School

Eminence Independent 7:00 a.m. – 10:00 a.m. & 1:30 p.m. – 2:30 p.m.

Erlanger-Elsmere Independent: 6:30 a.m. – 1:00 p.m.

Arnett Elementary
Howell Elementary
Lindeman Elementary
Miles Elementary
Tichenor Middle
Lloyd Memorial High

Franklin County: 6:00 a.m. – 2:00 p.m.

Bridgeport Elementary School
Collins Lane Elementary School
Elkhorn Elementary School
Hearn Elementary School
Peaks Mill Elementary School
Westridge Elementary School
Bondurant Middle School
Elkhorn Middle School
Franklin County High School
Western Hills High School

Gallatin County: 6:30 a.m. – 1:00 p.m.

Gallatin County Elementary
Gallatin County Upper Elementary
Gallatin County High School
Gallatin County Middle School

Grant County: 6:30 a.m. – 1:30 p.m.

Crittenden – Mt. Zion Elementary
Dry Ridge Elementary
Mason Corinth Elementary
Grant County Middle School
Grant County High School (occasionally twice weekly)

Henry County: 6:30 a.m. – 1:30 p.m.

Campbellsburg Elementary
Eastern Elementary
New Castle Elementary
Henry County Middle School
Henry County High School

Oldham County: 6:30 a.m. – 2:00 p.m.

Buckner Elementary
 Camden Station Elementary
 Centerfield Elementary
 Crestwood Elementary
 Goshen Elementary at Hillcrest
 Harmony Elementary
 Kenwood Station Elementary
 LaGrange Elementary
 Liberty Elementary
 Locust Grove Elementary
 East Oldham Middle School
 North Oldham Middle School (occasionally twice weekly)
 Oldham County Middle School (occasionally twice weekly)
 South Oldham Middle School (occasionally twice weekly)
 North Oldham High School (occasionally twice weekly)
 Oldham County High School (occasionally twice weekly)
 South Oldham High School (occasionally twice weekly)

Owen County: 6:30 a.m. – 1:30 p.m.

Owen County Primary
 Owen County Elementary
 Bowling Middle School
 Owen County High School

Shelby County: See List of Times

Shelby County Preschool Center 6:30 a.m. – 1:45 p.m.
 Clear Creek Elementary “ “
 Heritage Elementary “ “
 Painted Stone Elementary “ “
 Shelby County Preschool “ “
 Simpsonville Elementary “ “
 Southside Elementary “ “
 Wright Elementary “ “
 Shelby County East Middle 6:30 a.m. – 2:30 p.m.
 Shelby County West Middle “ “
 Martha Lane Collins High 6:00 a.m. – 2:00 p.m.
 Shelby County High School “ “

Spencer County: 7:00 a.m. – 2:00 p.m.

Spencer County Preschool
 Spencer County Elementary
 Taylorsville Elementary
 Spencer County Middle
 Spencer County High School

Trimble County: 7:00 a.m. – 2:30 p.m.

Bedford Elementary
 Milton Elementary
 Trimble County Middle School
 Trimble County High School

West Point Independent 6:30 a.m. – 2:00 p.m.

PRIME VENDOR MONTHLY PERFORMANCE REPORT

District: _____ Name: _____

Vendor: _____ Month of Survey: _____

5	4	3	2	1	N/A
Excellent	Very Good	Acceptable	Poor	Unacceptable	N/A
No Problems	Problems occur rarely	Problems occur occasionally	Problems occur frequently	Problems occur daily	Not Applicable

1. Overall fill rates are:	5	4	3	2	1	N/A
2. Fill rates on critical items are:	5	4	3	2	1	N/A
3. Special and/or surge requirements are handled effectively:	5	4	3	2	1	N/A
4. Emergency orders are filled in a timely manner:	5	4	3	2	1	N/A
5. I was given adequate time and notice to agree to substitutions:	5	4	3	2	1	N/A
6. Quantities received match quantities ordered:	5	4	3	2	1	N/A
7. Prime Vendor Customer Service Representative is responsive to my needs:	5	4	3	2	1	N/A
8. Deliveries arrive within agreed upon time window:	5	4	3	2	1	N/A
9. Delivery of non-approved brand:	5	4	3	2	1	N/A
10. Rate overall product quality:	5	4	3	2	1	N/A
11. Rate overall prime vendor service:	5	4	3	2	1	N/A

Additional Comments and Concerns:



United States
Department of
Agriculture

DATE: August 9, 2006

Food and
Nutrition
Service

MEMO CODE: SP 29-2006

3101 Park
Center Drive
Alexandria, VA
22302-1500

SUBJECT: Buy American Reminder

TO: Regional Director
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Since the April 17, 2006 issuance of SP 20-2006, Procurement Questions Relevant to the Buy American Provision, we continue to receive questions about the provision. This guidance serves as a general reminder to State agencies about the importance of complying with the Buy American provisions that are found in the regulations of the National School Lunch Program (NSLP) at 7 CFR 210.21(d) and the School Breakfast Program (SBP) at 7 CFR 220.16(d).

One issue in particular that we would like to address is the applicability of the provision to all foods purchased by School Food Authorities (SFAs) with funds from the nonprofit food service account. We have been informed about a food product was displayed at the recent School Nutrition Association (SNA) 2006 conference that was non-compliant with the Buy American provisions. This food item, which was produced and exhibited by a major food company at the conference, was clearly marked as containing a main ingredient from China and prepared in Thailand.

Although the food item was not displayed at the SNA conference as a component of any of the menu planning options in the NSLP or the SBP, we are concerned that conference attendees could have mistakenly concluded that such products are acceptable for a la carte sales. As discussed in the SP 20-2006 guidance (see Q&A 5), SFAs must ensure that all procurements using funds from the nonprofit school food service account comply with the Buy American provisions. This includes foods that are sold to students as a la carte food items.

Regional Directors
State Directors
Page 2

Child Nutrition Division

As with all other program requirements, State agencies have an obligation to ensure that SFAs are complying with the Buy American provisions, to the maximum extent practicable. The SP 20-2006 guidance describes actions that SFAs can take to comply with the Buy American requirements, such as:

- Including a Buy American clause in all procurement documents (product specifications, bid solicitations, requests for proposals, purchase orders, etc.);
- Monitoring contractor performance;
- Requiring suppliers to certify the origin of the product;
- Examining product packaging for identification of the country of origin; and
- Asking the supplier for specific information about the percentage of U.S. content in the food product.

We appreciate your assistance in reminding SFAs about the importance of complying with the Buy American provisions. If there are other questions concerning these provisions, please let us know.

Original Signed

STANLEY C. GARNETT
Director