

**(ATTACHMENT 72) ACTION ON THE AWARD OF PROFESSIONAL SERVICES CONTRACTS
RELATED TO SCHOOL NUTRITION**

PR#: CRO02181
Contract Number: 018952
RFP Number (if applicable): RFP 812

**MILWAUKEE BOARD OF SCHOOL DIRECTORS
PROFESSIONAL SERVICES CONTRACT**

This Contract is being entered into this 15th day of June, 2013, by and between US FOODS, INC (“Contractor”) and Milwaukee Board of School Directors (“MPS”).

1. SCOPE OF SERVICES

Contractor shall specifically perform the following tasks:

US Foods shall receive, handle, store and deliver, agreed-upon commodities to all MPS Schools as **specifically** set forth in Request for Proposal (RFP) 812 and US Foods response to RFP-812, inclusive of all Addenda, Amendments and Exhibits, which are herein expressly incorporated by reference to this contract.

Specific areas of the scope to include:

US Foods will:

- 1 Stock items which end up in the top 25% on the quarterly volume reports two quarters in a row.
- 2 Update pricing list weekly for dairy, cheese and produce AND monthly for all other items purchased. These “price changes” must be able to be downloaded into the districts Back Of House (BOH) system.
- 3 Buy American/domestic commodity or product = an Agricultural commodity produced in the United States (US) or processed in the US substantially (at least 51%) using agricultural commodities produced in the US.
- 4 Make sure all products shall conform to Federal and State regulations and requirements in the National School Lunch Program (NSLP), the School Breakfast Program (SBP), and other Federal and State regulated nutritional programs (including new meal patterns) the District participates.
- 5 Work with the District to achieve compliance with changes to program standards as they relate to products and services provided by the vendors to the District.

Standard Delivery vs. Difficult Delivery

All sites will be considered Standard Delivery. The vendor and MPS will agree that certain building sites present difficult delivery situations; typically where a second driver is deemed necessary to make a safe and efficient delivery. By mutual agreement the District and US Foods can agree to designate certain locations as difficult.

Orders

1. All orders will initially be placed by the District via the **BOH** system. School Nutrition Central Office will transmit all of the orders to US Foods via the **BOH** system. Confirmations for each site order must be e-mailed to School Nutrition Central Office after the orders have been placed. US Foods will commit to work with the District to develop an overall process for ordering, receiving, inventorying, analyzing product usage, invoicing, etc.
2. Separate account numbers must be maintained for each delivery site for each Category Regular Account, USDA Account, Fresh Fruit and Vegetable Account And Summer School Accounts.
3. Orders may be sent to vendor by 3:30 pm for the next day's delivery. MPS expect to normally order one week in advance of delivery. Monthly menus can be provided three to six weeks in advance. Currently, the District uses a four week cycle menu for breakfast and lunch and a two week cycle menu for dinner.
 - US Foods must be committed to have product in stock at the vendor’s warehouse two weeks prior to the item being menued (with the exception of fresh produce).
4. US Foods must have the capability of reserving the product ordered from time of transmittal of

orders when product is ordered in advance to prevent out of stocks (Example-delivery placed Monday for following weeks deliveries).

5. Sales to school sponsored groups must go through School Nutrition Services.

Substitutions

1. If a product is substituted, shorted, or "out", US Foods must notify the School Nutrition Office of the situation twenty four (24) business hours prior to delivery. The Food Services Director or designee will approve all substitutions!
2. All substitution requires prior approval. If the selected Distributor is temporarily out of stock of a particular product, an equal or superior product at a equal or lower price may be delivered as long as prior approval has been received. The substituted product cannot be higher priced than the original product or US Foods will absorb the cost. Approved substitutions still serve to reduce the distributors fill rate (sec.7, Deliveries Section)
3. No minimum order charge may be applied, if due to US Foods shortages or substitutions. Minimum charges was defined by US Foods as \$350 per site per delivery.
4. US Foods will notify MPS at least 30 days prior to product changes, as long as US Foods receives at least 30 days notification from said manufacturer, including but not limited to, manufacturer, house brand packer, pack size, discontinuations, etc. Selected distributor will coordinate product transition to achieve a mutually beneficial result for all parties. Failure to provide appropriate notice and coordination shall result in US Foods being charged for unusable products including Districts cost and \$100 penalty per incident per affected MPS site.
5. US foods will not drop or discontinue a product required by MPS without 30 days' notice and the list of products is mutually agreed to by both parties,. Failure to provide notice shall result in a \$100 penalty per incident per affected MPS site. If a suitable replacement cannot be agreed upon by the time the product is menued, the penalty will be doubled to \$200. US Foods is not responsible for discontinuations by Manufacturers, but still must provide a 30 day notice to MPS. A copy of the Manufacturer's notification notice may be requested by MPS.
6. Each **substitution** should be **labeled clearly** on each invoice with a separate product code. Substitutions should exist only in emergency situations.
7. Substitutions may not exceed 2% of products being ordered. Approved substitutions still serve to reduce the distributors fill rate.

Deliveries

1. Deliveries shall be made to each District school and as additional Schools require deliveries (example, opening/closings of schools; combining of schools, thus, increasing counts, thus, lack of freezer/refrigeration space etc). Weekly deliveries to each of the District schools are expected (some sites may require 2-3 deliveries per week). Changes to calendar or sites will be updated as changes are made.
2. In case of inclement weather and the cancellation of District, US Foods will accept as late as 7a.m. notification for that day's delivery. US Foods must be prepared to cancel all deliveries to all affected District schools at that time of notice. It is expected that US Foods will return all routes to the US Foods warehouse and store all products at the appropriate storage temperatures. It is also expected that the vendor will resume deliveries of District schools the following day.

3. The District and the vendor will mutually agree on a reasonable delivery schedule and delivery location within each District school. Delivery times shall be agreed upon by the Food Services Director and the US Foods. Drivers are expected to deliver into the buildings and into the proper storage location (storeroom/freezer/cooler) within every school. Drivers will be expected to give District school personnel time to check in the order, before signing invoice. All deliveries must include a detailed and priced invoice. All invoices must be signed by School Nutrition personal; **unsigned delivery invoices will not be paid**. Variations from the delivery ticket, such as shortages, damages, miss picks etc., must be noted on each ticket and initialed by both the driver and School Nutrition employee. Delivery times shall be agreed upon by the Food Services Director and US Foods
4. A letter must be on file explaining that the District would receive priority consideration in the event of a strike by either party, emergency conditions service or disasters. US Foods should provide documentation of the provisions made in proposals submitted.
5. US Foods Sales Representative assigned to the District will issue bona fide credits for shortages or damaged product. Damaged or incorrectly delivered items will be picked up by US Foods on the next delivery. The driver can issue pick-ups for items delivered in error.
6. If a product is omitted from an order by US Foods or is delivered in an unacceptable condition (example-defrosted frozen product or damaged containers). The replacement delivery must be made within 24 hours or at a longer time span if approved by the Director or approved designee.
7. US Foods **fill rate** shall be at least 95% on a weekly average. The fill rate formula is the percentage of ordered items that must be provided in full quantity without any substitutions or outages. Any line items not completely filled will be considered unfilled.
 - **Fill Rate Penalty:** A penalty will be reflected in MPS payment for any delivery site whose order/delivery does not meet the required 95% fill rate. The penalty will be at the rate of 1 % of the total dollar value of the invoice upon that delivery. MPS will extend the grace period of one month from August 1, 2013 as an adjustment time.
 - **“Other “ Penalties:**
 - a. As described in section 2:c.5 of RFP-812., a penalty will be deducted from each MPS site invoice in connection with the substitution issues.
 - b. Distributor software issues including interfacing issues with the District’s BOH system must be resolved within a 40 hour work week or a financial penalty of \$100 per day will be assessed to US Foods.
8. The District expects delivery vehicles to be clean, adequately equipped, properly operating and include backup warning systems.

US Foods shall use its best efforts to perform all tasks and achieve the objectives set forth in the scope of services.

US Foods shall provide, at its own expense, all personnel required to perform the services under this Contract.

2. TERM

This Contract shall be in effect from June 15, 2013, through June 30, 2014. The Contract may be extended for up to four additional one-year periods upon mutual consent of both parties. For each additional extension, an updated contract must be signed and brought back to the MPS Board for approval.

No work shall commence before US Foods receives a fully executed Contract and has been given approval to proceed. Any work performed by the US Foods prior to obtaining a fully-executed contract with approval to proceed shall not be compensated pursuant to this contract. Any continuation of the contract beyond this term must be set forth in writing and signed by the original signatories to the contract.

3. COMPENSATION

US Foods agrees that all purchases made by MPS shall be at the "Net MPS Delivered Price." The Net MPS Delivered Price is defined as follows:

The price US Foods pays to its suppliers, plus the freight charges for delivery of goods to US Foods warehousing facilities, less allowable manufacture discounts and allowances as defined below, PLUS the fixed fee set forth in US Foods' complete submitted response to RFP-812, which specific response is hereby incorporated by reference.

US Foods further agrees that it will ensure that, to the fullest extent possible, the Net Delivered Price for all goods purchased pursuant to this contract will be at the best price possible as measured by the price which

US Foods, has offered to, and which have been accepted by, any Similarly Situated Customer(s). Similarly Situated Customer shall mean a customer of US Foods (i) purchasing a similar volume of products; and (ii) subject to similar material terms and conditions, including similar service and delivery requirements, contract duration, payment terms, geographical distribution, allowances, business mix and total sales, applicable to USF's relationship with MPS.

Allowable Manufacture Discounts

US Foods shall ensure all applicable discounts, rebates and/or credits, which are those applicable discounts, rebates and/or credits provided to USF specifically for this procurement by manufacturers, private label holders and/or redistributors and are designated by those entities to be passed on to MPS.

MPS reserves the right to determine in its sole discretion whether services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Milwaukee Public Schools does not pay in advance for services. No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted to:

Ms. Deb Brunner, RD, CD
Milwaukee Public Schools
5225 West Vliet
Milwaukee, WI 53208

Total compensation under this Contract shall not exceed \$17,000,000 unless agreed to by MPS in writing. A properly submitted invoice must include a detailed description of the dates and times worked, and the tasks performed. As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this contract.

MPS reserves the right to determine its sole discretion (limited by what is commercially reasonable) whether services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered (limited by what is commercially reasonable).

Unless otherwise specified, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

4. AUDIT RIGHTS

MPS shall conduct semi annual audits for all goods covered by this contract. US Foods shall be responsible for demonstrating that the frequency and adequacy of its efforts to obtain the best prices for goods covered by this contract are reasonable.

US Foods shall furnish computer verification of costs for line items to be price verified. US Foods shall be notified of the date and time of the price verification 30 business days in advance. MPS will provide a listing of items to be verified, not exceeding 50 items, and the date of the pricing period to be verified. US Foods shall be able to provide cost data from purchases between divisions or departments within their organizations and from cooperatives to which they belong.

5. NON APPROPRIATION OF FUNDS

This Contract is contingent upon the appropriation of sufficient funds by appropriate MPS officials. If funds are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to MPS under the Contract, and relieve MPS of any further obligations under the Contract.

6. NON-DISCRIMINATION

In the performance of work under this Contract, US Foods shall not discriminate in any way against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. This prohibition includes but is not be limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. US Foods is required to include a similar provision in all subcontracts to this contract.

If MPS determines US Foods has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the US Foods ineligible to participate in future contracts with MPS.

7. INDEMNITY

Notwithstanding any references to the contrary, US Foods assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its subcontractors. US Foods shall indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS as a result of granting of this contract to said US Foods, or that may result from the carelessness or neglect of said US Foods, its agents, or employees. If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the US Foods, against such persons, firms or corporations carrying out the provisions of the Contract for the US Foods, US Foods assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys fees or other expenses resulting there from.

In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS' negligence for acts, policies, or directives that affect the activities covered by this Contract.

8. BACKGROUND CHECKS

A criminal information background check is required for all persons providing services under this Contract, including volunteers, that: (1) provide services in MPS facility(ies) on a regular and ongoing basis or more than 5 hours per week; and (2) come into contact with or have access to MPS students with or without the presence of an MPS teacher or MPS supervisor.

The purpose of this check is to ensure there is nothing that would render the person(s) unfit to perform services under this Contract where there is contact and or access to MPS students. MPS will, in its sole discretion, determine whether there is anything in a background check that would render a person unfit to work in an MPS facility with contact or access to MPS students. MPS shall perform background checks in the state(s) in which the individual resided for at least 6 months in the last 5 years, and was 18 years old or older at the time.

US Foods may perform its own criminal background checks through the Wisconsin Department of Justice Crime Information Bureau ("CIB"). US Foods shall provide the completed criminal background checks to at least 10 days prior to any services being performed pursuant to this contract.

MPS will perform the necessary background investigation at the rate of \$10.00 per person. In the event US Foods chooses this option, US Foods may contact the Office of Classified Staffing at 475-8157 to obtain the necessary forms. Please note that all forms must be filled out and submitted at least 30 days prior to the commencement of the services.

All background checks must be completed prior to the commencement of services under this contract. MPS will NOT be responsible for the payment of any services rendered by US Foods before the completion of these criminal information background checks.

9. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY

US Foods understands and agrees that financial responsibility for claims or damages to any person, or to US Foods' employees and agents, shall rest with the US Foods. US Foods and its subcontractors shall effect and maintain any insurance coverage, including, but not limited to, Workers' Compensation, Employers' Liability, General Liability, Contractual Liability, Professional Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

The minimum limits of insurance required of the Contractor by MPS shall be:

Workers' Compensation	Statutory Limits
Employers' Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Professional Liability	\$1,000,000 per occurrence
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

MPS shall be named as an additional insured under US Foods and subcontractors' general liability insurance and umbrella liability insurance. Evidence of all required insurances of US Foods shall be given to MPS. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that MPS shall be afforded written notice, consistent with the terms of the policy, of cancellation, non-renewal or material change by any of US Foods' insurers providing the coverages required by MPS for the duration of this contract.

10. SHIPPING /TAXES

If goods are provided pursuant to this Contract, please note that MPS is exempt from Federal Excise and Wisconsin Sales Taxes. All vendor quotes, bids and invoices must include delivery FOB destination to the MPS location receiving the goods and freight must be prepaid. This means any freight, shipping, processing, handling or like charges must be part of a unit price. Any separate line items for freight, shipping, processing, handling or like charges listed on an invoice will be deleted and NOT PAID.

All textbook purchases shall be governed by the terms and conditions in the Milwaukee Board of School Director Textbook Contract, found on the Milwaukee Public Schools portal (<http://mpportal.milwaukee.k12.wi.us>) which provides that textbooks shipped to MPS or its schools must be done at no additional charge to MPS or its schools.

MPS reserves the right to reject any items that do not conform to the bid, quote or Purchase Order. All return freight charges associated with the rejected materials shall be borne by the vendor.

11. IRREPARABLE HARM

It is mutually agreed the breach of this Contract on US Foods part shall result in irreparable and continuing damage to MPS for which money damages may not provide adequate relief. Therefore, the breach of this Contract on US Foods part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

12. TERMINATION BY PRIME VENDOR (US FOODS)

US Foods may, at its option, terminate this Contract upon the failure of MPS to pay any amount, which may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, US Foods shall be paid the compensation due for all services rendered through the date of termination including any retainage.

13. TERMINATION BY MPS - BREACH BY PRIME VENDOR (US FOODS)

If US Foods fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, MPS shall thereupon have the right to terminate it by giving ten (10) days written notice before the effective date of termination of the contract, specifying the alleged violations, and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, US Foods promptly cures the alleged violation with ten (10) days. In the event of termination, MPS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by US Foods for use in completing the Contract.

14. TERMINATION BY MPS for VIOLATIONS BY PRIME VENDOR (US Foods)

IF within MPS' sole discretion, US Foods fails to materially perform for one delivery cycle (Monday-Friday), MPS shall have the absolute right to terminate this contract after giving the opportunity to cure, as set forth below, and US Foods has failed to cure. For purpose of this contract, a material breach includes, but is not limited to, a failure to delivery at least 95% (excepting substitutions) of an order for one school during a delivery cycle.

MPS' notice to cure shall specify the alleged violations and give 24 hours to cure. US Foods fails to cure the alleged violations, MPS shall have the right to terminate the contract immediately, and contract with another Prime Vendor.

Notification by telephone, e-mail or fax shall suffice for the purpose of this section.

MPS further reserves the right to terminate this Contract at any time for any reason by giving US Foods written notice by Registered or Certified Mail of such termination. MPS will attempt to give US Foods 20 days notice, but reserves the right to give immediate notice. If in the event of said termination, US Foods shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon said termination, US Foods shall be paid for all services rendered through the date of termination, including any retainage. This section also applies should the Milwaukee Board of School Directors fail to appropriate additional monies required for the completion of the Contract.

15. INDEPENDENT CONTRACTOR

US Foods agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. US Foods has exclusive control over work hours, location, and other details of such services, and MPS' sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

US Foods has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. US Foods specifically covenant not to file any complaint, charge, or claim with any local, state or federal agency or court in which US Foods claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on US Foods behalf, US Foods will request such agency or court to dismiss such matter. MPS shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits which may be extended to MPS employees, including any insurance, or pension plans.

US Foods further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time-to-time and further agree to indemnify and hold harmless MPS and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

16. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

17. PROHIBITED PRACTICES

- A. US Foods during the period of this contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of US Foods, has a conflict of interest.
- B. US Foods hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."

- C. US Foods shall adhere to the MPS' Livable Wage Policy that requires all contractors to pay their employees a minimum of \$7.70 per hour.
- D. No person may enter into this contract for services that the MPS employee would otherwise perform as an employee.
- E. No current or former MPS employee may perform services on a professional services contract without the prior written consent of the Director of Human Relations of her designee.
- F. If the Contract is for apparel for \$5,000.00 or more, the US Foods agrees to provide only items manufactured by responsible manufacturers. US Foods is required to include a similar provision in all subcontracts to this contract.

18. NOTICES

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this contract, or to their designees.

19. WAIVER

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

20. INTEGRATION / SEVERABILITY

This Contract and its exhibits and addenda, if any, constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in any US Foods packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein

21. CHOICE OF LAW & FORUM

The state courts of Wisconsin shall be the sole forum for all disputes arising of this contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

22. TIMING

Time is of the essence in this Contract.

23. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

US Foods certifies that neither US Foods or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. US Foods specifically covenants that neither the US Foods or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

24. FORCE MAJEURE

MPS will not be liable to pay US Foods for any work that the US Foods is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond MPS' reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

25. STUDENT DATA

US Foods acknowledges that student data is protected by both federal and state law. *See* Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that US Foods has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the MPS may have, MPS shall be entitled to

immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar US Foods from future MPS contracts for varying periods up to and including permanent debarment.

26. NON-DISCLOSURE

Absent prior written consent of the person listed in Section 3 or his/her designee, US Foods shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the US Foods is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. US Foods agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

All information and any derivatives thereof, whether created by MPS or US Foods under this Contract remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, "derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

MPS acknowledges that US Foods considers its invoices to contain information which if revealed, would allow a competitor to determine Prime Vendor's cost, profit and other propriety information. MPS further acknowledges US Foods delivery of any invoices to MPS is conditioned upon this receipt of this pledge of confidentiality, which MPS herein pledges. Specifically, MPS pledges to keep such any invoices submitted in the course of this contract records confidential to the greatest extent permitted under applicable law, subject to Wis. Stat. § 19.21, et seq.

In the event that MPS receives an open records request for any of the above-described information provided by US Foods to MPS, MPS shall give prompt notice of that request and consult with US Foods prior to responding to such request.

Within ten business days of the earlier of receipt of MPS' written or oral request, or final payment, US Foods will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract.

27. MPS LOGO/PUBLICITY

No US Foods shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS' Director of Communication and Public Affairs.

28. ORDER OF PRIORITY

Should US Foods and MPS sign US Foods' Contract in addition to this Contract, the terms set forth in this Contract shall govern in the event of a conflict.

29. PUBLIC RECORDS

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. US Foods acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the US Foods must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

30. HUB REQUIREMENT

The HUB requirement on this contract is 10%.; Student Career Awareness Commitment is 20 Hours. Failure to achieve this requirement may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESSES WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR (Vendor)

By Kenneth B Fair
US Foods Inc.
W137 N9245 Hwy 145
Menomonee Falls, WI 53051

Date: 6/13/13

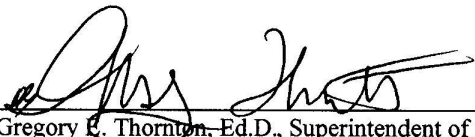
MILWAUKEE BOARD OF SCHOOL DIRECTORS

By Debbie Noble
Debbie Noble, Director of Procurement


Date: 6-17-13

Phone Number: 262-253-7882

Tax Id: XXXXXXXXXX

By: 
Gregory E. Thornton, Ed.D., Superintendent of Schools

Date: 6-18-13

By: 
Michael Bonds, Ph.D., President
Milwaukee Board of School Directors

Date: 6-15-13

NOTE: BUDGET CODES THAT ARE NOT LOCAL SCHOOL BUDGET CODES, MUST BE APPROVED BY APPROPRIATE DEPARTMENT OR PROGRAM ADMINISTRATOR.

This contract is not enforceable until signed by the Department of Finance. Payment will not be made on any contract not on file in the Department of Finance. A minimum of fifteen business days is required for approval.

Budget Codes:

- | | |
|---------------------|-------------------------------------|
| BKF-0-0-BKF-XX-EFOD | FOOD - BREAKFAST |
| BKF-0-0-BKF-XX-EFOT | FOOD - OTHER |
| LNC-0-0-LNH-XX-ESUP | SUPPLIES-CONSUMABLE - LUNCH |
| LNC-0-0-LNH-XX-EFCM | COMMODITIES(FEDERAL) - LUNCH |
| LNC-0-0-LNH-XX-EFOD | FOOD - LUNCH |
| LNC-0-0-LNH-XX-EFOT | FOOD - OTHER |
| LNC-0-0-LNH-XX-EACR | ALA CARTE REIMBURSABLE |
| LNC-0-0-LNH-XX-EACN | ALA CARTE NON-REIMBURSABLE |
| SFS-0-0-SLN-XX-ESUP | SUPPLIES-CONSUMABLE - SUMMER FD SV |
| SFS-0-0-SLN-XX-EFCM | COMMODITIES(FEDERAL) - SUMMER FD SV |
| SFS-0-0-SLN-XX-EFOD | FOOD - SUMMER FD SV |
| DNR-0-0-DNR-XX-ESUP | SUPPLIES-CONSUMABLE - DINNER |
| DNR-0-0-DNR-XX-EFCM | COMMODITIES(FEDERAL) - DINNER |
| DNR-0-0-DNR-XX-EFOD | FOOD - DINNER PROGRAM |

Reviewed by Division of Insurance and Risk Management

By:  Date: 7/3/13

Approved as to form and independent contractor status by Department of Finance.

By:  Date: 7-3-13