

Board Office Use: Legislative File Info.	
File ID Number	21-1995
Introduction Date	9/8/21
Enactment Number	21-1430
Enactment Date	9/8/21 os



Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer

Meeting Date September 8, 2021

Subject Approval of Resolution No. 2122-0074, Request for Award of Bid #21-103NS Kitchen Equipment Providers to TriMark, Inc.

Ask of the Board Approval by the Board of Education of Resolution 2122-0074, award of contract kitchen equipment provider, RFP #21-103NS to TriMark, Inc., San Diego, CA, in an amount not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000) per school year, as the responsive, responsible bidder for an initial period of three (3) years with two one-year options to renew upon further approval by the Board.

Background The Nutrition Services Department provides meals to students across 81 school sites. The District has an agreement with the California Department of Education Nutrition Services Division to provide meals under the Child and Adult Care Food Program. Kitchen equipment such as refrigerators, heating and serving equipment, cooking preparation equipment, ovens, steamers, smallwares and sinks at the District's 81 schools and Central Kitchen are necessary purchases for the continued operation of District meal programs.

Discussion Nutrition Services advertised RFP #21-103NS for Kitchen Equipment Providers. Five vendors responded to the RFP. These vendors were interviewed and the responsive response was evaluated on the following criteria: experience, cost of goods, and service including qualifications of staff. TriMark Foodservice Equipment, Supplies and Design was identified as the lowest responsive and responsible bidder.

Fiscal Impact Funding resource(s): 5310

Attachment(s)

- Resolution 2122-0074
- Responsive proposal to RFP #21-103NS
- Contract

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**RESOLUTION
 OF THE
 BOARD OF EDUCATION
 OF THE
 OAKLAND UNIFIED SCHOOL DISTRICT
 NO. 2122-0074**

Award of bid (RFP No. 21-103NS) for Foodservice Equipment and Supplies to TriMark, Inc.

WHEREAS, Education Code section 49531 prescribes that a school district may provide nutritionally adequate breakfast or lunch, or both, to pupils each school day at each school in the district; and

WHEREAS, Oakland Unified School District (“OUSD”) has an agreement with the California Department of Education Nutrition Services Division to provide meals under the Child and Adult Care Food Program and the National School Lunch Program; and

WHEREAS, kitchen equipment such as refrigerators, heating equipment, serving equipment, cooking preparation equipment, ovens, steamers, pans, smallwares and sinks are necessary purchases for the continued operation of these programs; and

WHEREAS, on May 10, 2021, Nutrition Services advertised RFP #21-103NS; and

WHEREAS, the Nutrition Services received five responses to the RFP; and

WHEREAS, the Nutrition Services interviewed the five (5) companies submitting RFPs, including TriMark, Inc.; and

WHEREAS, TriMark provided a responsive response to the RFP and was evaluated on the following criteria: experience, cost of goods, and service including qualifications of staff; and,

NOW, THEREFORE, BE IT RESOLVED, that the Board acknowledges that TriMark, Inc. was responsive to the RFP and constituted a responsive and qualified vendor based upon experience, cost of goods, and service including qualifications of staff; and

BE IT FURTHER RESOLVED, that the Board hereby accepts the recommendation of Nutrition Services and does award a contract for TriMark, Inc. in an amount not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000) per school year as the lowest, responsive, responsible bidder for three (3) fiscal years, with two one-year options to renew; and

BE IT FURTHER RESOLVED, that the Superintendent of Schools is hereby authorized and directed to have Nutrition Services issue a Purchase Order to the above company, for said kitchen equipment and supplies.

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Passed by the following vote:

PREFERENTIAL AYE: None

PREFERENTIAL NOE: None

PREFERENTIAL ABSTENTION: None

PREFERENTIAL RECUSE: None

AYES: Gary Yee, VanCedric Williams, Clifford Thompson, Aimee Eng, Vice President
Benjamin "Sam" Davis, President Shanthi Gonzales

NOES: None

ABSTAINED: Mike Hutchinson

RECUSED: None


ABSENT: None

CERTIFICATION

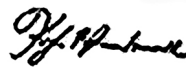
We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District held on September 8, 2021.

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By:	os

OAKLAND UNIFIED SCHOOL DISTRICT



Shanthi Gonzales
President, Board of Education



Dr. Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education

Approved as to Form
Andrea Epps
Deputy General Counsel

FIRM NAME: Trimark

ADDRESS: 10101 Old Grove Rd. San Diego, CA 92121

Remittance: PO Box 51847 Los Angeles, CA 90051

TELEPHONE: (916) 558-3032 _____ **FAX:** (_____) NA

E-MAIL ADDRESS: allison.pannabecker@trimarkusa.com

BID FORM AND REQUIRED DOCUMENTS ATTACHED HERETO

FOR

BID NO. 21-103NS,

KITCHEN EQUIPMENT FIRMS

FOR

OAKLAND UNIFIED SCHOOL DISTRICT

PURCHASING DEPARTMENT

900 High Street,

Oakland, CA 94601

BID FORM

Bidder Name: Trimark

To: Oakland Unified School District, acting by and through the Governing Board herein, called the "District."

1. The undersigned bidder, having become familiarized with all the following documents including but not limited to the Notice Calling for Bids, Calendar of Events, Bid Form, Bid Form Pricing Sheet, Information for Bidders, Noncollusion Declaration, Certification of Primary Participant Regarding Debarment, Suspension & Other Related Matters, Certificate of Lobbying, Tobacco Use Policy, Workers' Compensation Certificate, Agreement, Drug-Free Workplace Certification, Criminal Records Check Certification, all insurance requirements, General Conditions, specifications, and all modifications, addenda and amendments, if any (hereinafter Bid Documents), the local conditions affecting the performance of the work and the cost of the work at the place where the work is to be done, hereby proposes and agrees to be bound by all the terms and conditions of the Bid Documents and agrees to perform, within the time stipulated, the work, including all of its component parts, and everything required to be performed, and to provide and furnish and pay for any and all of the labor, materials, supplies, tools, equipment, and all applicable taxes, utility and transportation services necessary to perform the work and complete in a good workmanlike manner all of the work required in accordance with laws, codes, regulations, ordinances and any other legal requirements governing the work, in connection with the following:

Bid No. 21-103NS, Kitchen Equipment Firms

All in strict conformity with the Bid Documents, including Addenda Nos. _____, _____, _____, on file at the Purchasing Dept. of the Oakland Unified School District for the sums as set forth in this Bid Form.

2. It is understood that the District reserves the right to reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding process. Bidder agrees that this bid shall remain open and not be withdrawn for the period specified in the Information for Bidders.

3. The initial term of the Agreement is August 1, 2021 through June 30, 2024. Terms of the Agreement may be extended upon mutual consent of the District and successful bidder(s) for an additional two (2) one (1) year periods in accordance with provisions contained in the Education Code section 17596 (K-12). The maximum term of the Agreement is three (3) years.

4. It is understood and agreed that if written notice of the award of a contract is mailed, faxed, or delivered to the bidder, the bidder will execute and deliver to the **Oakland Unified School District** the Agreement and will also furnish and deliver to the **Oakland Unified School District** certificates and endorsements of insurance, the Workers' Compensation Certificate, Tobacco Use Policy, Drug-Free Work Place Certification, and the Criminal Records Check Certification, within five (5) working days of the notice of award of the contract.

5. Communication conveying notice of award of the contract, requests for additional information or other correspondence should be addressed to the bidder stated below in Section 6.

6. The name(s) of all persons interested in the bid as principals are as follows:

Name	Address	Phone/ Email
Allison Pannabecker	916-558-3032	allison.pannabecker@trimarkusa.com
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. The bidder hereby warrants that the bidder has all appropriate licenses and permits to perform the work as specified in the bid documents and that such licenses and permits will be in force and effect throughout the Agreement.

8. The bidder, whether manufacturer, supplier, distributor or retailer, hereby certifies that the products offered under this bid have been placed in regular commercial use for a period of at least three (3) years and that adequate spare parts exist in the marketplace for the items sold.

9. In submitting this bid, the bidder offers and agrees that if the bid is accepted, it will assign to the DISTRICT all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Business & Professions Code Section 16700, et seq.) arising from purchases of goods, materials, or services by the bidder for sale to the DISTRICT pursuant to the bid. Such assignment shall be made and become effective at the time the DISTRICT tenders final payment under the contract. (Public Contract Code Section 7103.5; Government Code Section 4450, 4451 and 4552).

10. The bidder hereby certifies that it is, and at all times during the performance of work hereunder shall be, in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and the bidder shall indemnify, hold harmless and defend the DISTRICT against any and all actions, proceedings, penalties or claims arising out of the bidder's failure to comply strictly with the IRCA.

11. It is understood and agreed that if requested by the DISTRICT, the bidder shall furnish a notarized financial statement, references, and other information required by the DISTRICT that is sufficiently comprehensive to permit an appraisal of bidder's ability to perform the work.

12. Time is of the essence.

13. The required Noncollusion Declaration is attached as required by Public Contract Code Section 7106. Bidder understands and agrees that failure to submit a completed and signed declaration will render the bidder automatically nonresponsive.

14. Failure to complete the Bid Form and Bid Form Pricing Sheet in its entirety will render a bidder nonresponsive.

15. Bid prices are to include shipping, Oakland Unified School District, assembly, inside delivery, and any required installation.

16. Pursuant to Public Contract Code Sections 20118 and 20652, other public agencies in the State of California may procure identical items off this bid under the same terms and conditions. Public agencies in the State of California shall process their purchase orders and warrants directly to the successful bidder upon agreement by their District and the successful bidder. Acceptance or rejection of this clause will not affect the outcome of this bid.

OPTION GRANTED: _____ **OPTION NOT GRANTED:** X

17. List of References. Please provide references of school districts and/or any public agencies that bidder has contracted with to provide kitchen equipment as required under Section 30, Information for Bidders.

1. Name: Sacramento City USD _____
Address and Telephone: 3051 Redding Ave, Sacramento, CA

Contact Person: Robert Aldama 916-395-5600 ext 460027, Robert-aldama@scusd.edu
Description of Product: Various Kitchen Equipment and supplies

2. Name: UC Davis _____
Address and Telephone: 1 Shields Ave, Davis, CA 95616

Contact Person: Rosabelle Fox 530-752-2252, rlfox@ucdavis.edu
Description of Product: Various Kitchen Equipment and Supplies

3. Name: Santa Clara County _____
Address and Telephone: San Jose, CA 408-491-7466

Contact Person: Justin Singleton, justin.singleton@prc.sccgov.org
Description of Product: Various Kitchen Equipment & Supplies

4. Name: _____

Address and Telephone: _____

Contact Person: _____

Description of Product: _____

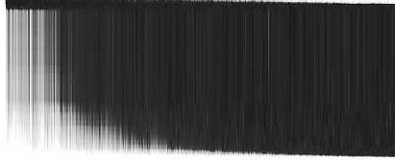
5. Name: _____

Address and Telephone: _____

Contact Person: _____

Description of Product: _____

BID ITEM INFORMATION



Bids should include:

Catalog of the vendors equipment and pricing

- Include any catalog discounts by category/brand etc.

For each item category provide the following information

- The price of delivery and installation of equipment
- The price for removal of broken equipment

Please provide information on, but not limited to categories listed below. We are interested in seeing the full spectrum of your catalog.

Refrigeration

- School Milk Coolers
- Refrigerated Cabinets
- Freezer Cabinets
- Reach-in solid swing door freezers 1 door & 2, 3, 4 doors
- Upright and Chest Freezers
- Reach-in solid swing door freezers 1 door & 2, 3, 4 doors
- Upright and Chest Freezers
- Reach-in solid swing door refrigerators 1 door & 2, 3, 4 doors
- Upright and Chest Refrigerators
- Walk-in Refrigeration
- Walk-in Freezers
- Air Screen Refrigeration

Heating & Serving

- Retherm Carts
- Hot Cabinets
- Hot Food Table
- Sneeze Guard Double Sided Cabinets
- Salad Bars

Cooking Preparation

- Stainless Steel Prep Tables
- Upright Pot and Pan Holding Table

Oven and Holding

- Convection Ovens
- Heavy Duty Range
- Double Deck Full Size Gas Conversion Oven
- Self Cooking Center Combi Ovens
- Holding Cabinets

Steamers and Pan

- Single Compartment Steamer with Stand and Pan
- Double Compartment Steamer with Stand and Pan

Shelving & Racks

Culinary Lab Equipment


- Smallwares

Sinks

- 3 Compartment Sink
- 2 Compartment Sink
- Hand Washing Sink

Company Name: Trimark

Vendor Name: Trimark R.W. Smith & Co.

Vendor Signature: 

Date: 5/21/21

Please Note: Bid prices are to include shipping, Oakland Unified School District, assembly, inside delivery, and any required installation.

The undersigned hereby declares that all of the representatives of this bid are made under penalty of perjury under the laws of the State of California.

Individual Name: _____

Signed by: _____

Print Name: _____

Date: _____

Business Address: _____

Telephone: _____

Partnership Name: _____

Signed by: _____

Print Name: _____

Date: _____

Business Address: _____

Telephone: _____

Other Partner(s): _____

Corporation Name: Trimark R. W. Smith & Co.

(a _____ Corporation¹)

Business Address: Remit To: PO Box 51847 Los Angeles, CA, 90051-6147

Telephone 1-800-942-1101

Signed by: , Vice President Date: 5/14/21

Print Name: Dan Swingos, Vice President Date: 5/14/21

Signed by: _____, Secretary Date: _____

Print Name: _____, Secretary Date: _____

¹A corporation awarded the contract shall furnish evidence of its corporate existence and evidence that the officer signing the Agreement and bonds is duly authorized to do so.

Joint Venturer Name: _____

Signed by: _____

Print Name: _____

Date: _____

Business Address: _____

Telephone: _____

**Other Parties
to Joint Venturer**

If an individual Name: _____

Signed by: _____

Print Name: _____

Date: _____

Doing Business as: _____

Business Address: _____

Telephone: _____

If a Partnership Name: _____

Signed by: _____

Print Name: _____

Date: _____

Business Address: _____

Telephone: _____

If a Corporation Name: _____

(a _____ Corporation)

Signed by: _____

Print Name: _____

Title: _____

Date: _____

Business Address: _____

Telephone: _____

**NONCOLLUSION DECLARATION TO BE
EXECUTED BY BIDDER AND SUBMITTED WITH
BID**

(Public Contract Code Section 7106)

The undersigned declares:

I am the Business Development Manager [Title] of Trimark[Name of Company], the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed
on 5/21/21

Stockton [City],
California[State].

Signature



Print Name

Allison Pannabecker

[Date] 5/21/21

**CERTIFICATION OF PRIMARY PARTICIPANT
REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS**

The Trimark
Firm name/principal

certified to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department agency;
2. Have not within a three-year period preceding this proposal been convicted of a or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local), with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this proposal had one or more public transactions (federal, state or local) terminated for cause of default.

If unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.

THE PRIMARY PARTICIPANT Trimark
Firm name/principal

CERTIFIED OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTION 3801 ET SEQ. ARE APPLICABLE THERETO.



Signature and Title of Authorized Official

**CERTIFICATE OF
RESTRICTIONS ON LOBBYING**

I, Allison Pannabecker _____, hereby certify on behalf (name of offeror) of
Trimark _____ that:

(Firm Name)

1. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds, other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the attached, Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in all subcontracts, and that all subcontracts shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction is made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this 21st ___ day of May 2021 ___

By:  _____
(Signature of authorized official)

Business Development Manager

(Title of authorized official)

1/11 GA

**NUTRITION SERVICES CONTRACT
KITCHEN EQUIPMENT AND SUPPLIES**

This Agreement is entered into by and between Oakland Unified School District ("OUSD") and TriMark, Inc., (Contractor), (collectively, the "Parties").

1. DEFINITIONS

- a. "District" and "OUSD" each mean the Oakland Unified School District.
- b. "Contractor" or "Vendor" means TriMark, Inc.
- c. "Purchaser" means a representative of the District's Nutrition Services Department.
- d. "Parties" means the District and Contractor together, and "Party" means either the District or the Contractor in the singular and depending upon the context in which the term is used.
- e. "Contract" "Agreement" and "Purchase Agreement" shall each mean this Agreement entered into between the District and the Contractor.
- f. "Unit" means kitchen equipment, supplies, and products identified in Contractor's catalog (i.e. Sourcewell Contract Discounts) and Contractor's bid response and delivered by Contractor.

2. TERM; EFFECTIVE DATE; AMOUNT OF AGREEMENT

- a. The initial term of this Agreement shall be for September 9, 2021 through September 9, 2024, unless terminated earlier pursuant to Section 12 (Termination).
- b. Notwithstanding the foregoing, this Agreement shall be effective only upon execution of this Agreement by the duly authorized representatives of the Parties. The District shall not be bound by the terms of this Agreement until it has been formally approved by the District's Governing Board.
- c. The dollar amount of this Agreement shall not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000) per District fiscal year. This Agreement is subject to the budget and fiscal policies, regulations, and practices of the District, and approval and appropriation of funds for this Agreement. The District's obligation hereunder shall not, without District's written approval, at any time exceed the amount herein stated.

3. PAYMENT FOR PRODUCTS AND SERVICES PROVIDED

- a. The District agrees to pay the per unit price included in the Contractor's bid form pricing sheet (i.e. Contractor's catalog; Contractor's Sourcewell Contract Discounts). Contractor's bid proposal, bid form pricing sheet, catalog, and Sourcewell Contract Discounts are herein incorporated by reference. Prices must be firm for the initial term of this Agreement.

2/11 GHA

b. Payment to the Contractor by the District shall be net thirty (30) days pursuant to this Agreement, and after receipt of properly documented invoices. Invoices submitted by Contractor must be in an invoicing form acceptable to the District pursuant to Section 26 ("Invoicing").

4. ESTIMATED USAGE. The District does not guarantee a minimum of orders nor shall the District be required to limit its orders (except that the District shall not exceed the funds appropriated, unless approved by the District). Contractor shall allow unlimited orders within the term of the Agreement at the per unit prices referenced in Section 3.a. District reserves the right to make purchases of products from other than Contractor when District determines that such products are immediately needed.

5. PRODUCT SUBSTITUTION. Brand names included in the Bid Packet were included for descriptive purposes to indicate the quality, design, and utility desired. Specific makes and models are required in some circumstances in order to be compatible with existing District equipment. Brands of equal make or type may be acceptable but require written authorization by the District. If during the course of this Agreement there is a manufacturer's brand or model change, the Contractor shall not automatically substitute the product.

6. QUANTITY AND QUALITY OF MATERIALS AND SERVICES. Contractor shall furnish and deliver the units and services designated by this Agreement.

7. PAYMENT DOES NOT IMPLY ACCEPTANCE OF PRODUCTS. No payment shall in any way lessen the liability of Contractor to remedy or replace unsatisfactory products/units, if the unsatisfactory character of such products/units was not detected at the time of payment. Service, products, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by the District and in such case must be remedied or replaced by Contractor without delay at no additional cost to the District. Nothing in this Section shall preclude, limit, or waive any other remedy or remedies available to the District.

Manufacturer and freight carrier windows for reporting of freight damage do not exceed 72 hours. Upon receipt of delivery, District representative will thoroughly inspect shipment contents and condition prior to acceptance of product(s). If any damage is detected, District representative shall refuse acceptance/delivery of product(s) and notify Contractor immediately. If District representative does not thoroughly inspect shipment prior to acceptance, the District representative will indicate acceptance of such shipments by signing "concealed damage." District representative shall report freight damage within 24 hours of acceptance/delivery of product(s).

8. TAXES. Contractor will enter State and local sales or use tax, and excise tax if applicable on invoices. Any and all current and valid sales tax exemption documentation will be honored.

9. FORCE MAJEURE CLAUSE. The Contractor will be excused from performance during the time and to the extent that they are prevented from obtaining, delivering, or performing by an act of God, fire, or commandeering of materials, products, plants, or facilities by the government, when satisfactory evidence thereof is presented, provided that the non-performance is not due to the fault or neglect of the Contractor.

3/11 GA

10. INSURANCE.

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, prior to award, Contractor shall procure and maintain during the full term of this Agreement, at the Contractor's expense, insurance acceptable to the District and as follows:

i. Comprehensive General Liability Insurance, including bodily injury, property damage and contractual liability with minimum limits of:

General Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
Products/Completed Operations	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000
Medical Expense (any one person)	\$5,000

ii. Umbrella (excess) liability insurance coverage with a limit of \$3,000,000, unless waived by the District. The policy may not contain an exclusion for sexual molestation or abuse coverage, may be waived by the District.

iii. Business Automobile Liability Insurance for owned, scheduled, non-owned or hired automobiles with a combined single limit not less than \$1,000,000 per occurrence. (Required only if the bidder drives on behalf of the District in the course of performing Services).

iv. Professional Liability Insurance with a limit of \$1,000,000 per occurrence.

v. Workers' Compensation and Employers Liability Insurance in a form and amount covering Contractor's full liability under the California Workers' Compensation Insurance and Safety Act and in accordance with applicable state and federal laws. The policy shall be endorsed with the insurer's waiver of rights of subrogation against the District.

c. All policies shall provide thirty (30) days advance written notice to the District of cancellation, nonrenewal or reduction in coverage to the following office:

Oakland Unified School District
Attn: Risk Management
1000 Broadway, Suite 440
Oakland, CA 94607

d. If any policies are written on a claims-made form, Contractor agrees to maintain such coverage continuously throughout the term of this Agreement and, without lapse, for the period of this Agreement, such that should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered.

4/11 *STG*

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the District receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the District may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor must provide the District with the certificates of insurance, an endorsement showing the additional insured policy, all with insurers satisfactory to the District, evidencing all coverage set forth above, and shall furnish complete copies of policies promptly upon the District's request. Contractor also understands and agrees that the District may withhold payment for products/services performed for any violations of the insurance provisions of this Agreement.

h. Approval of the insurance by the District shall not relieve or decrease the liability of Contractor hereunder.

11. CONTRACTOR DEFAULT; REMEDIES. If the Contractor fails to fulfill its obligations under this Contract, such failure shall constitute an event of default. On or after any event of default, District shall have the right to exercise its legal and equitable remedies, including without limitation, the right to: (a) seek specific performance of all or any part of this Contract, (a) terminate this Contract at no cost to District in accordance with Section 12 ("Termination") herein; or (c) exercise any other legal or equitable remedy. In addition, District shall have the right (but no obligation) to cure (or cause to be cured) on behalf of the Contractor any event of default. Contractor shall pay to District on demand all costs and expenses incurred by District in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. District shall have the right to offset from any amounts due to Contractor under this Contract or any other contract between District and Contractor all damages, losses, costs or expenses incurred by District as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this Contract or any other contract between District and Contractor. Any such offset by District will not constitute a waiver of any other remedies the District may have against Contractor for financial injury or otherwise. All remedies provided for in this Contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

12. TERMINATION.

a. In the event of Contractor default pursuant to Section 11 ("Contractor Default; Remedies") of this Contract, wherein Contractor fails to perform any of its obligations under this Contract, in addition to any other remedies available to the District, the District through the Purchaser may terminate this Agreement, and all of the Contractor's rights hereunder ended. Termination shall be effective thirty (30) days after Contractor's receipt of written notice of termination from the District delivered pursuant to Section 20 ("Notice to the Parties"). No new work will be

5/11 CRH

undertaken, and no new deliveries will be made, as of the effective date of termination. In the event of termination for cause, the Contractor shall be paid for those services performed under this Contract to the satisfaction of the District up to the effective date of the termination. However, pursuant to Section 11 ("Contractor Default; Remedies") herein, District may offset from any such amounts due Contractor any costs to District arising from Contractor's default and may otherwise demand payment from Contractor of such costs.

b. The District may terminate this Contract prior to expiration of the term without cause and without penalty, in whole or in part for District's convenience and without cause at any time by giving Contractor thirty (30) days written notice of such termination. The notice shall specify the date on which termination shall become effective. In no case shall the termination become effective in fewer than thirty (30) days from the date that the notice is deemed received pursuant to Section 20 ("Notice to the Parties"). The District reserves the right to immediately terminate the awarded contract if the circumstances are detrimental to the health and welfare of the students and/or school personnel, the quality of services are seriously affected, or the vender ceases operations.

In event of termination for convenience, Contractor will be paid for those services performed, or deliveries made, pursuant to this Contract and to satisfaction of District up to the specified date of termination. In no event will District be liable for costs incurred by Contractor after the specified date termination. Such non recoverable costs include, but are not limited to, anticipated profits on this Contract, post-termination employee salaries, post-termination administrative expenses, or any other costs which is not reasonable or authorized under this Section.

c. With mutual agreement of both Parties, this Contract may be terminated by giving not less than thirty (30) days written notice of such termination.

13. INDEMNIFICATION.

Contractor shall indemnify and hold harmless the District, its Board, officers, employees, agents from every claim or demand which may be made by reason of:

- a. Any injury to person or property sustained by the supplier or by a person, firm, or corporation employed directly or indirectly by him, in connection with his performance under the order.
- b. Any injury to person or property sustained by any person, firm, or corporation caused by any act of neglect, default, or omission of the supplied or of any person, firm or corporation employed directly or indirectly employed by him in connection with his performance under the purchase order.
- c. Any liability that may arise from the furnishing of the use of any copyrighted or uncopyrighted composition, secret process, or patented, or unpatented invention in connection with his performance under the order.
- d. Failure to comply with the criminal background check requirements of Education Code section 45125.1 and/or disclosure of confidential information which might be obtained by the Contractor or Contractor's agents in the performance of this Agreement.

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14. **LIABILITY OF DISTRICT.** District's payment obligations under this Agreement shall be limited to the payment of the compensation provided under this Agreement. Notwithstanding any other provision of this Agreement, in no event shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

15. **INDEPENDENT CONTRACTOR.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and not an employee of the District. Contractor shall be wholly responsible for the manner in which it performs the services required by District under this Contract. Contractor or any agent or employee of Contractor shall not have employee status with the District, nor be entitled to participate in any plans, arrangements, or distributions by District pertaining to or in connection with any retirement, health, or other benefits that District may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including but not limited to, FICA, income tax withholdings, unemployment compensation, insurance and other similar responsibilities related to Contractor's performing services and work, or any agents or employee of Contractor providing same. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the District and Contractor or any agent or employee of Contractor. Any terms in this Contract referring to direction from District shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. District does not retain the right to control the means or the method by which Contractor performs work under this Agreement. If any governmental authority should, nevertheless, determine that Contractor is an employee, then the District's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to Contractor and to the applicable governmental authority does not exceed the maximum amount of compensation specified in this Agreement. Contractor shall refund any amounts necessary to effect such reduction.

16. **ENTIRE CONTRACT; SEVERABILITY.** All of the agreements between the Parties are included in the Agreement and Contractor's attached proposal. No warranties, expressed or implied, representations, promises or statements have been made by either Party except as expressly provided. Should the application of any provision of this Contract to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of the other provisions of this Contract shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

17. **MODIFICATION OF AGREEMENT.**

- a. No oral statement of any person whatsoever shall in any manner or degree modify, alter, or otherwise affect the terms of this Agreement.
- b. The District reserves the right to modify the awarded contract by mutual agreement so long as such modification would not result in a material change to the solicitation an awarded contract. Such modifications will be evidenced by the issuance of a written authorized amendment by the District.

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18. CHOICE OF LAW/VENUE. This Agreement shall be deemed to be made in and shall be construed in accordance with the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

19. SUSPENSION AND DEBARMENT CERTIFICATION. Through its execution of this Agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

20. NOTICE TO THE PARTIES. District and Contractor understand and agree that notice to the Parties shall be as follows:

- a. Except as otherwise expressly provided herein, any notices given under this Agreement shall be effective only if in writing and given by delivering the notice in person, by sending it via first class mail or certified mail with a return receipt requested, or via nationally-recognized overnight courier that guarantees next day delivery and provides a receipt therefore, with postage prepaid, addressed as in Subsection D of this Section, below.
- b. Notices herein shall be deemed to have been received two (2) business days after the date when they shall have been mailed if sent by first class mail, certified mail or overnight courier, or upon the date personal delivery is made.
- c. Either party may change the address to which notice is to be sent by giving written notice thereof to the other party.
- d. Notice to the Parties shall be addressed as follows (or such alternative address as may be provided in writing):

NOTICE TO THE DISTRICT:

Nutrition Services Department

Attn: Carmelita Reyes

2850 West Street

Oakland, CA 94608

EMAIL ADDRESS carmelita.reyes@ousd.org

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NOTICE TO THE CONTRACTOR:

CONTRACTOR: TriMark

CONTACT NAME: Allison Pannabecker

STREET ADDRESS: 10101 Old Grove Road

CITY, STATE, ZIP: San Diego, CA 92121

TELEPHONE: (916)558-3032

EMAIL ADDRESS: allison.pannabecker@trimarkusa.com

21. NON-DISCRIMINATION. The District is committed to providing equal opportunity for all individuals. Contractor understands and agrees that in providing services to the District, it is Contractor's obligation to comply with District Board Policy 0410 – Nondiscrimination in District Programs and Activities.

22. BYRD ANTI-LOBBYING AMENDMENT. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee or any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

23. DRUG-FREE WORKPLACE. Contractor acknowledges that pursuant to the Drug-Free Workplace Act the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on District premises. Any violation of this prohibition by the Contractor, its employees, agents, or assigns shall be deemed a material breach of contract.

24. TESTING AND SCREENING.

- a. **Tuberculosis Screening.** Contractor is required to screen employees who will be working at District sites for more than six hours. Contractor agents who work with students must submit to a tuberculosis risk assessment as required by Education Code section 49406 within the prior 60 days. If tuberculosis risk factors are identified, Contractor's agents must submit to an intradermal or other approved tuberculosis examination to determine that he/she/they is/are free of infectious tuberculosis. If the results of the examination are positive, Contractor shall obtain an x-ray of the lungs. Contractor, at its discretion, may choose to submit the agent to the examination instead of the risk assessment. Contractor shall maintain on file documents confirming that Contractor's employees/agents received a TB test or TB assessment that complies with the requirements of Education Code section 49406. These documents shall be available to the District upon request or audit.
- b. **Fingerprinting/Criminal Background Investigation.** If Contractor or any of its employees, agents, or volunteers will have more than limited contact with District students, Contractor is required to fingerprint and conduct a criminal background investigation in accordance with Education Code section 45125.1. Contractor must conduct criminal background checks

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through the California Department of Justice (CDOJ), including both CDOJ and Federal Bureau of Investigation background checks and must obtain subsequent arrest notification for all Contractor employees, agents, and volunteers who will have more than limited contact with District pupils pursuant to this Agreement. It is the Contractor's sole responsibility to comply with CDOJ fingerprint, criminal background investigation requirements, subsequent arrest notification requirements, and maintain compliance throughout the duration of this Agreement.

Through its execution of this Agreement, Contractor certifies its compliance with these provisions as follows:

Contractor has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Contractor's employees, subcontractors, agents, and subcontractors' employees or agents ("Workers") regardless of whether those Workers are paid or unpaid, concurrently employed by District, or acting as independent contractors of Contractor, who may have contact with District pupils in the course of providing Services pursuant to this Agreement, and the California Department of Justice has determined that none of those Workers has been convicted of a felony, as that term is defined in Education Code section 45122.1. Contractor has also received and reviewed fingerprint results for each Worker and Contractor has requested and reviewed subsequent arrest records for all Workers who may come into contact with District pupils in providing services to District under this Agreement.

Notwithstanding this certification, Contractor agrees to immediately remove or cause the removal of any employee, representative, agent, or person under Contractor's control person from District property upon receiving notice from District of such desire. District is not required to provide Contractor with a basis or explanation for the removal request.

25. DELIVERIES TO DISTRICT. The Contractor shall be responsible for delivery to all locations designated by the District (F.O.B. Destination). The location of delivery sites will be specified upon placement of order. The Contractor shall furnish all labor, materials, costs incurred and equipment necessary for the delivery of items specified herein to the District's facilities. All work shall be performed in a thorough and workman-like manner under the administration of, and to the approval of the District. Two copies of an itemized delivery form will be left with the site representative. Damaged and unacceptable items will be noted on the delivery slip. Items not accepted must not be billed to the District. The District reserves the right to reject any product. Emergency next day deliveries may occasionally be required.

26. INVOICES. Invoices shall be provided upon delivery of materials or services performed. Quantities, item descriptions, unit prices, date and delivery site name must be on all invoices. Payment terms shall be net thirty(30) days. The person receiving the material must sign the invoice. The District shall make payment for materials, supplies, or services furnished under the Agreement within a reasonable and proper time after acceptance thereof and approval of invoices by the authorized District representative.

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The invoices shall contain the following; purchase order number, site location, date, item number, SNS item number, description, commodity designation, quantity, price and extended totals. Failure to provide the above information may result in delay of payment.

Invoices shall be matched to SNS purchase order by item, quantities and case price. For any invoice that does not match, SNS will correct the invoice based on the receiving documents at time of delivery.

Contractor shall issue credits for products that do not meet the District's standards such as: Product shortage upon delivery; product quality; food safety and/or sanitation.

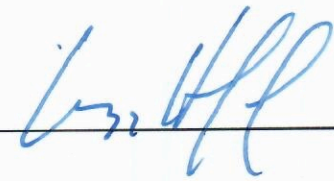
27. ASSIGNMENT. It is understood and agreed that the services to be performed by the Contractor under this Agreement, the duties and obligations hereunder shall not be assigned or delegated by the Contractor without the prior consent of the District.

28. WAIVER. District or Contractor's waiver of any term, condition, covenant or waiver of a breach of any term, condition, or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

29. NON-WAIVER OF RIGHTS. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, not shall it in any way effect the right of the party to enforce such provisions thereafter.

30. DOCUMENTATION. Any and all documents, books, records, invoices, and/or quotations of District's purchases shall be made available, upon demand, in an easily accessible manner for a period of at least five (5) years from the end of the contract term (including renewals) to which they pertain and after all other pending matters are closed, for audit, examination, excerpts and transcriptions by the District, State, and Federal representatives and auditors in accordance with Federal regulations. Contractor must ensure that any such records held by a subcontractor are likewise subject to these provisions.

TRIMARK, INC.

GREGG WALKER Director Institutional Sales	
Printed Name and Title	Signature

8/24/2021

Date

OAKLAND UNIFIED SCHOOL DISTRICT

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Preston Thomas
Chief Systems and Services Officer

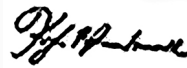
8/25/21

Date

APPROVAL BY OUSD BOARD OF EDUCATION



Shanthi Gonzales
President, Board of Education



Dr. Kyla Johnson-Trammell
Superintendent and Secretary,
Board of Education

Approved as to Form:



Andrea Epps, Deputy General Counsel

8/25/21

Date