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Enactment Number	18-1147
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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Curtis Sarikey, Chief of Staff
Robert Law, Acting Executive Director of Nutrition Services, Warehouse & Distribution

Board Meeting Date

Subject Request for Approval of Agreement Extension and Amendment No. 1 to the Agreement Between Oakland Unified School District and Gregory Packaging, Inc.

Action Requested Approval by the Board of Resolution No. 1718-0052 - One year extension and Amendment No. 1 of Contract for Shelf Stable Fruit Juice Bid No. 16-17/02 to Gregory Packaging Inc., of Morristown, NJ for the amount not to exceed \$220,000.00. This agreement Extension and Amendment is for a one year contract extension term effective July 1, 2018 through June 30, 2019.

Background The Nutrition Services Department provides juice at breakfast and snack (for After School Programs) throughout the District. The District has an agreement with California Department of Education Nutrition Services Division to provide meals under the "Child Care Food Program."

Discussion Nutrition staff and the Legal Department has written the contract between the District and vendor. The vendor has agreed with and signed said contract.

Recommendation Approval by the Board of Education of Resolution No. 1718-0052 One year extension and Amendment No. 1 of Contract for Shelf Stable Fruit Juice, Bid No. 16-17/02 to Gregory Packaging Inc., Morristown, NJ for an amount not to exceed \$220,000.00.

Fiscal Impact Funding Source Nutrition Services 991 - Resource 5310

Attachments One (1) Year Term Extension of Amendment No. 1, Resolution No. 1718-0052, Request for Proposal No. 16-17/02, Contract

ONE (1) YEAR TERM EXTENSION OF AND AMENDMENT NO. 1 TO THE AGREEMENT BETWEEN GREGORY PACKAGING, INC. AND OAKLAND UNIFIED SCHOOL DISTRICT

This Agreement Extension and Amendment No. 1 is entered into by and between Oakland Unified School District ("OUSD"), and Gregory Packaging, Inc. ("GPI") (collectively, the "Parties").

RECITALS

1. WHEREAS, OUSD issued a notice of award of contract to GPI on November 11, 2016 (OUSD Enactment No. 16-1787), a true and correct copy of which is attached hereto as Exhibit A.
2. WHEREAS, OUSD and GPI entered into a one (1) year agreement effective July 1, 2017 (OUSD Enactment No. 17-1189) ("Agreement"), as may be amended or supplemented from time to time, a true and correct copy of which is attached hereto as Exhibit B.
3. WHEREAS, the Agreement expires on June 30, 2018.
4. WHEREAS, OUSD and GPI agree to extend and amend the Agreement for one (1) year (*i.e.*, through June 30, 2019), pursuant to Section 3 of the Agreement.
5. The foregoing recitals are agreed to by the Parties.

TERMS AND CONDITIONS

1. Term of Agreement Extension and Amendment - This Agreement Extension and Amendment is for a one (1) year contract extension term effective July 1, 2018 through June 30, 2019.
2. Not To Exceed – The Parties hereby agree that the total consideration payable and paid to GPI by OUSD for the Term of this Agreement Extension and Amendment No. 1 shall not exceed \$220,000.
3. Extension of Prior Terms and Conditions – All other terms and conditions embodied in the Agreement that was in effect from July 1, 2017 to June 30, 2018, are extended by incorporation herein.
4. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion** – OUSD and GPI certify to the best of their knowledge and belief that OUSD's, GPI's, and their respective principals: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or contractor according to Federal Acquisition Regulation Subpart 9.4, and by signing this Agreement

Extension and Amendment No. 1 to the Agreement, verify that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov>.

5. Integration of Agreement and Extension and Amendment No. 1 – All understandings, agreements, covenants, and representations, express or implied, oral or written, between the Parties are contained and merged herein. No other agreements, covenants, or representations, express or implied, oral or written, have been made by or between the Parties concerning the subject of this Agreement Extension and Amendment No. 1. This is an integrated Agreement Extension and Amendment No. 1. It may not be altered, modified or otherwise changed in any respect except in a writing signed by OUSD and GPI.

Dated: 5/25/2018

Gregory Packaging, Inc.

By: Ryan Molnar
Ryan Molnar, Sales Manager

Dated: 6/28/18

Oakland Unified School District

Aimee Eng
By: _____
Aimee Eng, Board President

Kyla Johnson-Trammell
By: _____
Kyla Johnson-Trammell, Superintendent
& Board Secretary

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the General Counsel
APPROVED FOR FORM & SUBSTANCE
By: Andrea Epps
Andrea Epps, Attorney at Law

Board Office Use: Legislative File Info.	
File ID Number	17-1365
Introduction Date	August 23, 2017
Enactment Number	17-189
Enactment Date	8/23/17 EA



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Vernon Hal, Senior Business Officer
Jennifer Le Barre, Executive Director Nutrition Services, Warehouse & Distribution

Board Meeting Date August 23, 2017

Subject Resolution No. 1718-0052 Approval of Contract Shelf Stable Fruit Juice Bid No. 1617-02

Action Requested Approval by the Board of Education of Resolution No. 1718-0052 – Approval of Contract for Shelf Stable Fruit Juice Bid# 16-17/02 to Gregory Packaging incorporated of Morristown, NJ for the amount \$165,193.60 as the lowest, responsive, responsible bidder, for one year commencing on July 01, 2017.

Background The Nutrition Services Department provides fruit juice at breakfast and snack (for After School Programs) throughout the District. The District has an agreement with California Department of Education Nutrition Services Division to provide meals under the "Child Care Food Program".

Discussion Nutrition staff with the Legal Department has written the contract between the District and vendor. The vendor has agreed with and signed said contract.

Recommendation

Approval by the Board of Education of Resolution No. 1718-0052- Approval of Contract for Shelf Stable Fruit Juice, Bid #16-17/02 to Gregory Packaging, of Morristown NJ, for the amount \$165,193.60 as the lowest, responsive, responsible bidder, for one year commencing on July 01, 2017.

Fiscal Impact

Funding Source- Nutrition Services.

Attachments

- Resolution No. 1718-0052
- Bid Package
- Contract

**RESOLUTION OF THE BOARD OF EDUCATION
OAKLAND UNIFIED SCHOOL DISTRICT
RESOLUTION NO.1718-0052**

SHELF STABLEFRUIT JUICE K-12 SCHOOLS

WHEREAS, The Board of Education of the Oakland Unified School District of Alameda County, via the Superintendent of Schools, heretofore authorized its Nutrition Services Department to advertise for sealed Request for Proposals, **No.16-17/02 for Shelf Stable Fruit Juice K -12 Schools** to be delivered to designated site, in said District;

WHEREAS, The Nutrition Services Department and the Legal Department of the District has written the Contract for Shelf Stable Fruit Juice and the Vendor has agreed to and signed said Contract,

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby accepts the recommendation of staff, and does approve the Contract for Shelf Stable Fruit Juice K-Gregory Packaging, Inc., Morristown NJ, as the lowest, responsive, responsible bidder, in the amount of \$165,193.60, for one year commencing on July 01, 2017.

Passed by the following vote:

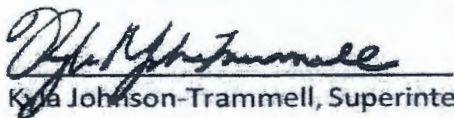
AYES: Jody London, Aimee Eng, Jumoke Hinton Hodge, Roseann Torres, Vice President
Nina Senn, President James Harris

NOES: None

ABSTAINED: None

ABSENT: Shanthi Gonzales

I certify that the foregoing is a true and correct copy of a Resolution adopted by the Board of Education of the Oakland Unified School District at a Regular Meeting held August 23, 2017 at Oakland, CA.



Kyla Johnson-Trammell, Superintendent and Board
Secretary Oakland Unified School District

Shelf Stable Fruit Juice

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By Oakland Unified School District Board of Education of Resolution No. 1718-0052, the Board of Education authorized the Award of Bid for Shelf Stable Fruit Juice pursuant to Request for Proposal ("RFP") No. 16-17/02, such award deemed issued on July 1, 2017, to Gregory Packaging Inc. and authorized the Superintendent to enter into a Contract consistent therewith. Gregory Packaging, Inc. (at times hereinafter, "Contractor" or "Gregory Packaging") and the Oakland Unified School District (hereinafter "District") hereby agree to the following terms:

1. SCOPE OF WORK

Contractor shall provide shelf stable fruit juice at the agreed upon price and scope of services as outlined fully in RFP No. 16-17/02, as well as the September 27, 2016 Gregory Packaging Proposal to RFP No. 16-17/02, which is incorporated herein by reference as Exhibits A and B, respectively, as reflected below.

2. RFP AND CONTRACTOR'S RESPONSE THERETO EXPRESSLY INCORPORATED HEREIN; COMPONENT PARTS OF CONTRACT

The terms and conditions in the RFP are expressly incorporated into this Contract and shall govern all transactions between the parties, as will Gregory Packaging Proposal to RFP No. 16-17/02.

This Contract consists of the following documents, each of which is on file with the District, and is incorporated into and made a part of this Contract by reference. In the event of a conflict, these documents shall control in order of precedence set forth below from A descending to C:

- A. This Contract.
- B. Request for Proposal No. 16-17/02 and all addenda, as applicable. (collectively, Exhibit A.)
- C. Gregory Packaging 9/27/16 Proposal. (Exhibit B.)

3. PERIOD OF PERFORMANCE

Services under this Contract shall commence on July 1, 2017, and continue for a period of one (1) year, unless extended by the Parties for two (2) additional one year extensions as outlined fully in the Request for Proposal No. 16-17/02.

4. CONTRACT PRICE

The District agrees to pay for shelf stable fruit juice, as needed, at the prices set forth in the Contractor's submitted Proposal. (See Exhibit B.) Award for these services will be on a firm-fixed price basis. The District and Contractor must mutually agree upon any adjustments in payment. Invoices for services performed shall be submitted to accounts

Shelf Stable Fruit Juice

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payable. **The Purchase Order Number must be referenced on all invoices. Failure to do so could delay payment.**

5. NOTICES

- Any notice which may be required under this Contract shall be in writing, and shall be effective either upon personal service or five (5) calendar days after mailing by certified mail, return receipt requested, to the addresses set forth below, or to such other addresses which may be specified in writing by the parties to this Contract.

THE DISTRICT:

Oakland Unified Nutrition Services
900 High Street
Oakland, California 94601

CONTRACTOR:

Gregory Packaging, Inc.
365 South Street, Suite 103
Morristown, NJ 07960

6. DEFAULT REMEDIES; TERMINATION

DEFAULT REMEDIES

Each of the following shall constitute an event of default under the Contract:

- A. Contractor fails or refuses to perform or observe any term, covenant or condition contained in the Contract, provided that Contractor shall have thirty (30) days to cure to the District's satisfaction after transmission of written notice from the District to Contractor of any such event of default.
- B. Contractor (a) is generally not paying its debts as they become due; (b) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law in any jurisdiction; (c) makes an assignment for the benefit of its creditors; (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; (e) takes action for the purpose of any of the foregoing; or (f) is the subject of any order of a court or government authority related to the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection or rights of creditors. The Contractor shall notify the District in writing within ten (10) days of the occurrence of any of the events listed in the immediately preceding sentence.

On and after any event of default, the District shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate the Contract for cause as set forth below, or to seek specific performance of all or any part of the Agreement. In addition, the District shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any event of

Shelf Stable Fruit Juice

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default, in which event Contractor shall pay to the District on demand all costs and expenses incurred by the District in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The District shall have the right to offset from any amounts due to Contractor under the Contract or any other agreement between the District and Contractor all damages, losses, costs, or expenses incurred by the District as a result of such event of default. Any such offset by the District will not constitute a waiver of any other remedies the District may have against Contractor for financial injury or otherwise.

If any of the provisions of this Contract are not performed in accordance with their specific terms or were otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages will be difficult to determine. The Parties shall be entitled to specific performance of the terms hereof and injunctive relief, in addition to any other remedy at law or equity.

All remedies provided for in the 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.

TERMINATION OF CONTRACT

- A. In the event of Contractor default pursuant to the Default Remedies above, in addition to any other remedies available to the District, the District may terminate the Agreement, and all of the Contractor's rights hereunder ended. Termination shall be effective ten (10) days after District's transmission to Contractor of written notice of termination by the District, unless a later effective date of termination is provided by the District in such notice. As of the effective date of termination, no new work will be undertaken by Contractor with the exception of actions necessary to effectuate the termination as provided for in this Section.
- B. In the event of termination for cause, Contractor shall be paid for those services performed under the Contract to the satisfaction of the District up to the effective date of the termination. However, pursuant to the Default Remedies above, the 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.
- C. The District may terminate the Contract, in whole or in part, for the District's convenience and without cause at any time by giving Contractor at least 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 provided. In event of termination for convenience, Contractor will be paid for those services performed pursuant to the Contract and to the satisfaction of the District up to the specified effective date of termination.

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- D. Upon receipt of any notice of termination of the Contract, Contractor shall commence and perform with diligence all actions necessary on the part of Contractor to effectuate the termination of the Contract on the date specified by the District in a manner that minimizes the liability of Contractor and the District to third parties as a result of termination. All such actions shall be subject to prior approval by the District and shall include, without limitation: canceling orders; assigning interests to the District, as applicable; settling outstanding liabilities and claims; securing and safe-guarding District property; and halting or completing services in the manner specified by the District.
- E. In no event shall District be liable for costs incurred by Contractor, or any of its subcontractors, after the effective date of termination, except for those costs specifically approved in writing by the District, if any, as necessary to effectuate the termination in a manner acceptable to the District. Such non-recoverable costs include, but are not limited to, anticipated profits on the Contract; post-termination employee salaries; post-termination administrative expenses; post-termination overhead or unabsorbed overhead; and attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, including but not limited to prejudgment interest.
- F. Within thirty (30) days after the effective date of termination, the Contractor will submit an itemized invoice detailing the unpaid costs incurred for the services rendered pursuant to the Contract up to the effective date of termination. The District's payment obligations specified under this Termination of Contract section shall survive the termination or expiration of the Contract. Upon payment by the District of approved charges under such Contractor invoice, the District shall be under no further obligation to the Contractor, monetarily or otherwise.

7. SEVERABILITY

If any provision of this Contract is deemed legally void or unenforceable, such provision shall be deemed severed from this Contract, which shall otherwise remain in full force and effect.

8. BINDING EFFECT

All of the terms, provisions, and conditions of the Contract hereunder shall be binding upon and inure the parties hereto and the respective successors, assigns and legal representatives.

9. CONFLICT OF INTEREST

By signing this Contract, Contractor covenants that it presently has no actual knowledge of any interest, direct or indirect, that would conflict in any manner or degree with the performance of the services called for under this contract. Contractor further covenants that in the performance of this contract, no person having any such interest shall be employed by Contractor, and that Contractor receives no commissions or other payment from parties other than the District as a result of work performed hereunder. Failure to

Shelf Stable Fruit Juice

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comply with this provision serves as a basis for termination for default and the collection of any damages.

10. INDEMNIFICATION/DEFENSE

Contractor agrees to hold harmless, indemnify, and defend the District and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Contract. Contractor also agrees to hold harmless, indemnify, and defend OUSD and its elective board, officers, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the performance of this Contract. This provision survives termination of this Contract.

11. INSURANCE

CONTRACTOR shall meet all insurance requirements as set forth in the RFP. In addition, Contractor agrees that all insurance coverage shall be primary as to the District and shall name the District as an additional insured. Endorsement of the District as an additional insured shall not affect the District's rights to any claim, demand, suit or judgment made, brought or recovered against the District. The policies shall protect Contractor and the District in the same manner as though each were separately issued.

12. STATUS OF CONTRACTOR

The Contract is not one of employment. The Contractor, in the performance of the Contract, shall be and act as an independent contractor. The Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which the District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. The Contractor shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to the Contractor's employees. In the performance of the work contemplated in the Contract, the Contractor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, the District being interested only in the results obtained.

11. DRUG-FREE/SMOKE FREE POLICY

No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.

12. NO ASSIGNMENT

Shelf Stable Fruit Juice

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The obligations of the Contractor under the Contract shall not be assigned by the Contractor without the District's express prior written consent.

13. GOVERNING LAW/VENUE

This Contract shall be performed in Oakland, California and is governed by the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any state court litigation initiated to enforce or interpret this Contract.

14. ATTORNEYS' FEES AND COSTS

In the event a suit or action is instituted in connection with any controversy arising out of the Contract, the prevailing party shall be entitled to recover such sum as the court may adjudge reasonable as to attorneys' fees and costs.

15. 1CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION: Contractor certifies to the best of his/her/its knowledge and belief, that it is 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/>)

16. INTEGRATION/ENTIRE AGREEMENT OF PARTIES: This Contract represents the entire agreement of the parties with respect to the subject matter hereof, and all such agreements entered into prior hereto are revoked and superseded by this Contract, and no representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements.

This Contract may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Contract shall be void and of no effect.

IN WITNESS WHEREOF, the parties have executed this Contract on the dates set forth below.

OAKLAND UNIFIED SCHOOL DISTRICT:

GREGORY PACKAGING, INC.:

James Harris
Board President

Ryan Molnar

Ryan Molnar- Sales Manager
Name and Title

**OAKLAND UNIFIED SCHOOL DISTRICT
PROCUREMENT DEPARTMENT**

**[REQUEST FOR PROPOSAL
NO. 16-17/02]**

Shelf Stable Fruit Juice

John

CONTRACT

James Harris
President, Board of Education

May 19, 2017
Date

Chas. H. Johnson

Kyle Johnson-Trammell
Superintendent and Board Secretary

Date _____

Approved as to Form:

m 2

Michael L. Smith, Esq.
Deputy General Counsel

5/30/17

Date _____

approved Vernon Hall
Vernon Hall
Senior Business Officer



OAKLAND UNIFIED SCHOOL DISTRICT

Community Schools, Thriving Students

900 High Street
Oakland, California 94601

REQUEST FOR BID PROPOPOSAL

**BID #16-17/02
SHELF STABLE
FRUIT JUICE
K-12 SCHOOLS**

Advertising Dates: September 13, 2016; September 20 , 2016

**OAKLAND UNIFIED SCHOOL DISTRICT
Procurement Department
900 High Street
Oakland, CA 94601**

DATE : September 12, 2016
SUBJECT : Request for Pricing
FOR : **Shelf Stable Fruit Juice K-12 Schools**

Bid Opening Date: September 27, 2016 Time: 2:00 p.m.

Please bid your **lowest prices** for the items or services on the attached sheets. Before bidding, please read the **Instructions, Conditions** and **Specifications**, which are attached.

Submit all bids in a sealed envelope showing the Bid Number, opening date, and opening time. Bid **must** reach the Procurement Office at the address listed below by the time and date shown above.

If further information is desired contact Robert Law, Child Nutrition Services at (510) 434-2253.

The undersigned hereby proposes and agrees to furnish and deliver the goods or services as quoted in accordance with the terms, conditions, specifications, and process herein quoted. Bid is subject to cash discount of _____ % _____ days.

FIRM NAME: _____

SIGNED BY: _____

(Manual signature – unsigned bids will be rejected)

TITLE: _____

ADDRESS: _____

PHONE NO.: _____ FAX NO.: _____

NOTE: BIDS SUBMITTED BY FAX ARE NOT ACCEPTABLE.

This form is to be submitted with your bid.

Oakland Unified School District

INSTRUCTIONS AND CONDITIONS – BID NUMBER 16-17/02

1. PREPARATION OF BIDS

Bids must be submitted in ink or typewritten. The **Unit price and extension** (where applicable) for all line items, must be shown where required on the bid form. Signature on bids must be in ink to be considered acceptable. Bid on each item separately. Prices should be stated in units specified hereon.

2. ERRORS AND CORRECTIONS

No erasures permitted. Mistakes may be crossed out and corrections made adjacent but must be initialed in ink by person signing bid. Verify your bids before submission as they cannot be withdrawn or corrected after being opened or withdrawn once the specified time period has elapsed.

3. SUBSTITUTIONS

Certain specifications are set forth herein for the purpose of establishing standards, and are not intended to preclude any vendor from bidding who can substantially meet these specifications. Vendors may propose material equal to those specified herein, but each deviation from the specification must be clearly identified as such. On food and supply bids, a sample of the equal product must be provided by vendor at the time of bid submission. The suitability and valuation of "equals" rests in the sole discretion of the Board of Education or their designees. If a bidder does not indicate that he is proposing an item other than that which is unauthorized substitutions will be returned at the Vendor's expense. Whenever in these specifications, any material is indicated or specified by the proprietary name or patent or by the name of a manufacturer, such specifications shall be deemed to be used for the purposes of facilitating description of the items desired, and shall be deemed to be followed by words "or equal".

4. SALES TAX

Do not include California State Sales or Use Taxes in unit prices. This tax will be added and paid for by the District. Do not include or add Federal Excise Tax, as the District is exempt.

5. FAILURE TO BID

If you do not bid on any line item, please mark "no bid" in the space provided and sign it and return the bid, otherwise your name may be removed from the bidder's list.

6. ACCEPTANCE OF BIDS

Awards will be made on a unit and line item basis unless otherwise specified on bid form. The right is reserved by the District to reject any or all bids and to accept or reject any line items thereon and to make any combination of line item awards. Bids may be rejected on grounds of non-responsiveness or non-responsibility. Bids are subject to acceptance at any time within sixty (60) days after opening of same unless otherwise stipulated.

7. PATENTS, ETC.

The vendor shall hold the Oakland Unified School District, its officers; agents, servants, and employees harmless and free from liability of any nature or kind on account of use by the publisher, manufacturer, or author of any copyrighted or non-copyrighted composition, secret process, patented invention, article or appliance furnished or used under this bid.

8. FAILURE TO FULFILL CONTRACT

When any contractor or vendor shall fail to deliver any article or service or shall deliver any article or service which does not conform to the specifications, the District may, at its sole discretion, annul and set aside the contract entered into a new contract for the same items in such manner as seems to the Board of Education to be to the best advantage of the Oakland Unified School District. Any failure for furnishing such articles or services by reason of the failure of the vendor or contractor, as above stated, shall be a liability against such vendor and his sureties. The Board of Education reserves the right to cancel any articles or services which the successful bidder may be unable to furnish because of economic conditions, governmental regulations or other similar causes beyond the control of the bidder provided satisfactory proof is furnished to the Board if requested.

9. BID SIGNATURES

All bids must show the firm name and must be signed by a responsible officer or employee fully authorized to bind the organization to the terms and conditions herein. Obligations assumed by such signature must be fulfilled.

10. CANCELLATION FOR INSUFFICIENT OR NON-APPROPRIATED FUNDS

The bidder hereby agrees and acknowledges that monies utilized by the District to purchase or lease the items bid is public money appropriated by the State of California or acquired by the District from similar public sources and is subject to variation. The District fully reserves the right to cancel this bid at any time and/or to limit quantities of items due to non-availability or non-appropriation of sufficient funds.

11. REQUIRED DELIVERY DATES (RDD)

Actual delivery of the supply item(s) shall be coordinated with the District or contractor designated by the District but shall not exceed the required delivery dates (RDD) specified on the bid form for each particular product. The District, as a matter of bid non-responsiveness, shall reject all bids (regardless of price) that fail to indicate ability to

deliver the product within the require time. **Give careful attention to any Required Delivery Dates (RDD) included in the Specifications or Bid Sheets.** Upon award of bid, supplier shall keep sufficient stocks of product and service material to insure prompt delivery and service schedules. There shall be no minimum quantities required in order for the District to place orders for needed items. **Bid all items OUSD.**

12. LOCAL/SMALL LOCAL/ SMALL LOCAL RESIDENT POLICY PARTICIPATION REQUIREMENT

In 2008 the District instituted a local business policy, the Local/Small Local/ Small Local Resident Business Enterprise program ("L/SL/SLRBE"). The S/SL/SLRBE provides economic opportunity to local residents and businesses by supporting local economic development while paying competitive prices for goods and services.

The S/SL/SLRBE establishes a 20% minimum local participation requirement on all contracts and professional service agreements between OUSD and outside vendors. In addition, the program provides for preference points in negotiated professional services contracts and bid discounts in competitively bid contracts, up to 5 points or 5 % as the level of local, small local and small local resident business participation increases. (A copy of the District's S/SL/SLRBE may be found at www.ousd.k12.ca.us).

Prior to the issuance of a formal invitation for bid, the District determines that there are at least three certified businesses listed in the industry, trade or profession that constitutes a major category of work. If at least three L/SL/SLRBEs are not certified, then the requirement may, subject to the discretion of the District, be waived, or the 20% requirement may be re-set from 19% to 0%, depending on the particular circumstances at time of bid.

For the present Shelf Stable Fruit Juice Proposal, the District's awarding authority has reason to believe that the availability of certified firms will not satisfy the 20% requirement. Thus, the District shall exercise its discretion to modify the requirement, as follows:

The *mandatory* 20% requirement is waived.

However, a proposer who demonstrates a minimum 20% small business or local resident employee participation will earn a bid discount 5% off its total bid, affording an advantage over a low bidder with no small business or local resident participation. (Public Contract Code section 2002).

13.PAYMENT

Prompt payment for supplies is requested after actual delivery of goods to the required destination as outlined in the **REQUIRED DELIVERY DATES (RDD)** conditions. Payment for service contracts may be invoiced per the conditions set forth and agreed to in the service agreement.

14.HOLD HARMLESS

The vendor shall save, defend, hold harmless and indemnify the District against any and all liability, claim, and costs of whatsoever kind and nature for injury to or death of any person and for loss or damage to any property occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operations, or performance under the terms of this contract, resulting in whole or in part from the negligent acts or omissions of vendor, and subcontractor, or any employee, agent, or representative of vendor and/or subcontractor.

15.AWARD OF BID

Award of this bid shall be made on an **"all or none"** basis to the lowest-priced responsible bidder (for each item or group) who is fully responsive to the terms of this solicitation. A bidder **must** deliver the items within the required delivery date (RDD) in order to be declared responsive to this bid. The District may consider prompt payment discounts (only terms of 2%/20 days or better will be considered) and other rebates offered on the bid form in determining lowest net cost.

The District also reserves the right to make no award of bid and further reserves the right to reject any and all bids and to waive any irregularity or discrepancy associated with this bid.

16.PRICING – TERMS OF CONTRACT

Contract term is one year. Quoted prices must include all delivery charges and surtaxes. No extra charges will be allowed. Contract may be extended upon mutual consent of District and vendor for an additional two (2) years in accordance with provisions contained in the Education Code, Sections 17596 (K-12) and 81644 (Community Colleges). **In no case shall a price increase be negotiated without being submitted 30 days in advance in writing.** In the event of a general price decrease the District reserves the right to revoke the bid award unless the decrease is passed on to the District.

17.MULTI-YEAR EXTENSIONS

Subject to the provisions of **Paragraph 15** (above), and pursuant to Education Code, Sections 17596 and 81644, this bid may be extended (by mutual consent expressed in writing) for an additional two (2) year increment (total potential bid life of 36 months from Board of Education award).

18.NO MINIMUM OR MAXIMUM QUANTITIES, ORDER CHARGES, OR LIMITATIONS UPON NUMBER OF ORDERS

The District anticipates contract term requirements for the supplies and commodities as listed in the quantities shown on the bid form. The District, however, does not guarantee orders in these amounts nor shall the District be required to limit its orders to only those figures. This is an indefinite-quantity bid. Bidders shall not specify minimum or maximum quantities or charges for specific order types. Unlimited orders within the term of the contract shall be allowed to the awarding district at prices quoted.

19.PIGGYBACK CLAUSE

For the term of the Contract and any mutually agreed extensions pursuant to this request for bids, **at the option of the vendor**, other school districts and community college districts, any public corporation or agency, including any county, city, town or public corporation or agency within the State of California, may purchase, lease-purchase, or rent the identical item(s) at the same price and upon the same terms and conditions pursuant to sections 20118 (K-12) and 20652 (Community Colleges) of the Public Contract Code.

The Oakland Unified School District waives its right to require such other districts and officers to draw their warrants in the favor of the District as provided in said Code sections.

Acceptance or rejection of this clause will not affect the outcome of this bid.

Piggyback option granted _____
(Please initial)

Piggyback option not granted _____
Exclusions:

20.DOMESTIC ORIGIN

Items of foreign origin must be so indicated, in accordance with the provisions of Chapter 226 of the 1933 Statutes of the State of California and California Public Contract Code Section 3410. Your signature to this document will be taken as your certification that all manufactured articles, processed foods, produces, materials and supplies not so indicated have been made, grown or produce in the United States or its' insular possessions from articles, materials or supplies mined, grown, produced or manufactured as the case may be, in those areas.

Specifications and/or bid sheets are attached

SPECIFICATIONS

I. INSURANCE REQUIREMENTS: The bidder shall have in effect at all times while performing services for the DISTRICT the following types of insurance with insurers satisfactory to the DISTRICT:

- a. "All Risk" property damage insurance covering property of the DISTRICT while in the care, custody or control of vendor, including while in transit, written with sufficient limits to insure that a; property owned, leased or in the custody of vendor will be fully insured in the event of loss.
- b. Workers Compensation insurance for statutory limits, and Employers Liability insurance with minimum limits of \$1,000,000.00 per occurrence.
- c. Completed Operations liability insurance with minimum amounts of \$1,000,000.00 per occurrence and in the aggregate annually.
- d. Automobile liability insurance with minimum limits of \$1,000,000.00 per occurrence.
- e. As respects all insurance noted in sub-paragraphs c. and d. above, the DISTRICT shall be named as additional insured under such policies. Vendor shall provide DISTRICT with Certificates of Insurance for all categories of insurance as noted in sub-paragraphs a through d.

SPECIAL CONDITIONS FOR SHELF STABLE FRUIT JUICE:

1. **Assignment of Contract:** The vendor shall not assign in whole or any part or any payment due or to become due hereunder without the consent of the Oakland Unified School District in writing.
2. **Financial Responsibility:** Upon request from the District, a bidder whose bid is under consideration for award shall promptly submit satisfactory evidence of his financial responsibility and resources. The District may also request the names of three (3) references with whom similar transactions were made during the previous year.
3. **Bidder contact:** During this time of selection of vendors, all vendors and/or vendor representatives shall direct inquiries regarding this bid **ONLY** to the Child Nutrition Services located at District office, 900 High St. Oakland, Ca. 94601. Any bidder making contact with any other person(s) within the District such as, but not limited to board members, other District employees or their agents, parents, students, etc., either before the bid opening or during the period before the Board of Education takes action to award the contract, may have their bid removed from consideration.

4. Period of this contract is one year from Board approval. Multi year extensions may be negotiated per paragraph 16 and 17 of Instruction and Conditions.
5. Delivered prices are to be quoted – no extra charges will be accepted. Prices changes due to production costs will be allowed only as set forth in paragraph 16 of Instructions and Conditions. The District reserves the right to recheck price changes with other companies and purchase from the company that best serves the needs of the School District.
6. Quantities indicated are intended as a guide only and the District is not obligated to purchase exact amounts shown.
7. Vendors may be requested to submit samples to determine quality and acceptability. Awards may not be made if requested samples are not supplied.
8. Packaging and Brand must be indicated where different from that specified. The District shall be the sole judge on determining whether an item bid is equal to that specified.
9. The District reserves the right to award similar items as a group(s), for example, if it is to the advantage of the District and Vendors to have like items delivered by one vendor.
10. All products shall confirm to provisions set forth in Federal, State, County, and City laws for their production, handling, processing, marketing, and labeling. In the event of off-flavor damage, or items found to be unsatisfactory for consumption, the Contractor shall replace items or issue credit to the District.
11. Price quotes shall be based on requirements as outlines on attachment (1).
12. Orders will be made by Child Nutrition Services staff employees directly to the successful bidder.
13. Orders will be delivered to Oakland Unified School District Warehouse, (900 High St. Oakland, Ca), between the hours of 8:00 a.m. and 3:00 p.m.
14. Invoices must be sent to:

Oakland Unified School District
Accounts Payable Department Ste. 450
1000 Broadway Oakland, CA 94607.

Attachment (1)

OAKLAND UNIFIED SCHOOL DISTRICT
REQUEST FOR BID QUOTATION
Shelf Stable Fruit Juice

Shelf Stable Fruit Juice

Fruit Juice shall be 100% Fruit juice based, (from concentrate) with no added sugars, artificial sweeteners, or high fructose corn syrup. Flavors requested: Apple juice, Orange based juice, Berry based juice, and a Fruit Punch flavored juice.

YEARLY USAGE EA.

4oz. - 4.23oz. Carton Assorted juices.

1,155,200 units.

\$ _____
per unit.

Total Bid Amount: _____

Signature

Date

NOTICE OF BID

Notice is hereby given that the Board of Education Oakland Unified School District, Oakland, CA (Alameda County), will receive BID Number 16-17/02 for the purchase of the following:

SHELF STABLE FRUIT JUICE

Sealed proposals must be delivered to the Oakland Unified School District, Procurement Department, 900 High Street, Oakland, CA 94601 **September 27, 2016 no later than 2:00p.m.**

Companies interested in bidding should request appropriate documents from the Nutrition services Department, (510) 434-3334.

The Board of Education reserves the right to reject any and all Bids. No vendor **may withdraw their proposal for a period of sixty (60) days after the date set for the opening of Bids. Refer to the formal documents and specifications for** additional information, terms, and conditions.

Jennifer LeBarre

Executive Director, Nutrition Services