

SUBMIT TO:
 The School District of Osceola County,
 Florida
 Purchasing Department, Building 2000
 817 Bill Beck Blvd.
 Kissimmee, FL 34744



REQUEST FOR PROPOSAL

AN EQUAL OPPORTUNITY EMPLOYER
www.osceola.k12.fl.us/depts/Purchasing/Index.asp

CONTACT PERSON:
Linda L. Ciraldo

Telephone #: 407.870.4630
 Fax #: 407.870.4616

Date issued: **June 22, 2009**

TITLE: BEVERAGE; EXCLUSIVE CONTRACT	NUMBER: SDOC 09-P-114 LC	SUBMITTAL DEADLINE: August 5, 2009 at 2:00 PM
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PRE PROPOSAL CONFERENCE - DATE, TIME AND LOCATION: July 1, 2009, 9:00 AM Purchasing Conference Room	SUBMITTALS RECEIVED AFTER ABOVE DATE AND TIME WILL NOT BE CONSIDERED
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FIRM'S NAME:	
MAILING ADDRESS:	<input checked="" type="checkbox"/> _____ Authorized Signature _____ Typed Name _____ Title Date _____ Email Address
CITY - STATE - ZIP:	
TELEPHONE NO:	
FAX NO:	
FEDERAL ID NO. OR SOCIAL SECURITY NO.	

**THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE
 GENERAL CONDITIONS AND INSTRUCTIONS**

***** PLEASE READ CAREFULLY *****

Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations to attend public openings or meetings sponsored by the School District of Osceola County Purchasing Department shall contact the Purchasing Department at 407.870.4630, at least five (5) days prior to the scheduled opening or meeting.

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| <p>1. SUBMISSION OF OFFERS: All offers shall be submitted in a sealed envelope or package. The invitation number, title, and opening date shall be clearly displayed on the outside of the sealed envelope or package. The delivery of responses to the School District of Osceola County Purchasing Department prior to the specified date and time is solely and strictly the responsibility of the offeror. Any submittal received in the Purchasing Department after the specified date and time will not be considered.</p> <p>Responses shall be submitted on forms provided by the School Board. Additional information may be attached to the submittal. Facsimile submissions are NOT acceptable. No offer may be modified after acceptance. No offer may be withdrawn after opening for a period of sixty (60) days unless otherwise specified.</p> <p>2. EXECUTION OF OFFER: Offer shall contain a manual signature in the space(s) provided of a representative authorized to legally bind the offeror to the provisions therein. All spaces requesting information from the offeror shall be completed. Responses shall be typed or printed in ink. Use of erasable ink or pencil is not permitted. Any correction made by the offeror to any entry must be initialed.</p> <p>3. OPENING: Opening shall be public in the School District Purchasing Department immediately following the advertised deadline date and time for receipt of submittals. Pursuant to Section 119.07(3) (b) Florida Statutes (1991) no further information regarding offers submitted will be made public until such time of intended award or ten (10) days, whichever is earlier.</p> <p>4. PUBLIC RECORD: The School District is governed by the Public Record Law, Chapter 119, Florida Statutes. Pursuant to Chapter 119 only trade secrets as defined in Section 812.081, Florida Statute shall be exempt from disclosure.</p> | <p>5. CLARIFICATION/CORRECTION OF ENTRY: The School Board reserves the right to allow for the clarification of questionable entries and the correction of OBVIOUS MISTAKES.</p> <p>6. INTERPRETATION/ADDENDA: Any questions concerning conditions and specifications shall be directed to the designated contact person. Those interpretations which may affect the eventual outcome of the invitation/offer shall be furnished in writing to prospective offerors.</p> <p>No interpretation shall be considered binding unless provided in writing by the School District Purchasing Department in the form of an addendum. Any addenda issued shall be acknowledged by signature and returned with offeror's response.</p> <p>Failure to acknowledge addenda may result in the offer not being considered.</p> <p>7. INCURRED EXPENSES: This invitation does not commit the School Board to make an award nor shall the School Board be responsible for any cost or expense which may be incurred by any respondent in preparing and submitting a reply, or any cost or expense incurred by any respondent prior to the execution of a purchase order or contract agreement.</p> <p>8. PRICING: Unless otherwise specified prices offered shall remain firm for a period of at least sixty (60) days; all pricing of goods shall include FOB DESTINATION, all packing, handling, shipping charges and delivery to any point(s) within the School District to a secure area or inside delivery; all prices of services shall include all expenses necessary to provide the service at the location specified.</p> |
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9. **ADDITIONAL TERMS & CONDITIONS:** The School Board reserves the right to reject offers containing terms or conditions contradictory to those requested in the invitation specifications.
10. **TAXES:** The School District of Osceola County is exempt from Federal and State Tax for Tangible Personal Property. Florida State Exemption Certificate No. 85-8012500806C-9. Vendors or Contractors doing business with the School District of Osceola County shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the District, nor shall any Vendor/Contractor be authorized to use the District's Tax Exemption Number in securing such materials.
11. **DISCOUNTS:** All discounts except those for prompt payment shall be considered in determining the lowest net cost for evaluation purposes.
12. **MEETS SPECIFICATIONS:** The offeror represents that all offers to this invitation shall meet or exceed the minimum requirements specified.
13. **BRAND NAME OR EQUAL:** If items requested by this invitation have been identified in the specifications by a Brand Name "OR EQUAL" description, such identification is intended to be descriptive and not restrictive and is to indicate the quality and characteristics of products that will be acceptable. Offers proposing "equal" products will be considered for award if such products are clearly identified in the offer and are determined by the School Board to meet fully the salient characteristic requirements listed in the specifications.

Unless the offeror clearly indicates in his/her offer that he/she is proposing an "equal" product, the offer shall be considered as offering the same brand name product referenced in the specifications.

If the offeror proposes to furnish an "equal" product, the brand name of the product to be furnished shall be clearly identified. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the School Board and will be based on information furnished by the offeror. The Purchasing Department is not responsible for locating or securing any information which is not identified in the response and reasonably available to the Purchasing Department. To insure that sufficient information is available the offeror shall furnish as part of the response all descriptive material necessary for the Purchasing Department to determine whether the product offered meets the salient characteristics required by the specifications and establish exactly what the offeror proposes to furnish and what the School Board would be binding itself to purchase by making an award.

14. **SAMPLES:** When required, samples of products shall be furnished with response to the School Board at no charge. Samples may be tested and will not be returned to the offeror. The result of any and all testing shall be made available upon written request.
15. **SILENCE OF SPECIFICATIONS:** The apparent silence of these specifications or any supplemental specifications as to details or the omission from same of any detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail and that only materials of first quality and correct type, size, and design are to be used. All workmanship shall be first quality. All interpretations of specifications shall be made upon the basis of this statement.
16. **GOVERNING LAWS AND VENUE:** All legal proceedings brought in connection with this Contract shall only be brought in a state or federal court located in the State of Florida. Venue in state court shall be in Osceola County, Florida. Venue in federal court shall be in the United States District Court, Middle District of Florida, Orlando Division. Each party hereby agrees to submit to the personal jurisdiction of these courts for any lawsuits filed there against such party arising under or in connection with this Contract. In the event that a legal proceeding is brought for the enforcement of any term of the contract, or any right arising there from, the parties expressly waive their respective rights to have such action tried by jury trial and hereby consent to the use of non-jury trial for the adjudication of such suit.
All questions concerning the validity, operation, interpretation, construction and enforcement of any terms, covenants or conditions of this Contract shall in all respects be governed by and determined in accordance with the laws of the State of Florida without giving effect to the choice of law principles thereof and unless otherwise preempted by federal law.

17. **ASSIGNMENT:** Any agreement to purchase issued pursuant to this invitation and award thereof and the monies which may become due hereunder are not assignable except with the prior written approval of the School Board.
18. **CONTENT OF INVITATION/RESPONSE:** The contents of this invitation, all terms, conditions, specifications, and requirements included herein and the accepted and awarded response thereto may be incorporated into an agreement to purchase and become legally binding. Any terms, conditions, specifications, and/or requirements specific to the item or service requested herein shall supersede the requirements of the "GENERAL CONDITIONS AND INSTRUCTIONS."
19. **INDEMNIFICATION OF SCHOOL BOARD**
The respondent shall indemnify, hold harmless and defend the School Board, its officers, agents, and employees, from or on account of any claims, losses, expenses, injuries, damages, or liability resulting or arising solely from the respondent's performance or nonperformance of services pursuant to this contract, excluding any claims, losses, expenses, injuries, damage, or liability resulting or arising from the actions of School Board, its officers, agents, or employees. The indemnification shall obligate the respondent to defend, at its own expense or to provide for such defense, at School Board's option, any and all claims and suits brought against School Board that may result from the respondent's performance or nonperformance of services pursuant to the contract.
20. **PATENTS, COPYRIGHT, AND ROYALTIES:** The supplier/provider, without exception, shall indemnify and save harmless the School Board, its officers, agents and employees from liability of any nature of kind, including cost and expenses for or on account of any copyrighted, registered, patented, or unpatented invention, process, or article manufactured or used in the provision of goods and/or services, including use by the School Board. If the supplier/provider uses any design, device, or materials covered by letters, patent, copyright, or registration, it is mutually agreed and understood without exception that the quoted price shall include all royalties or costs arising from the use of such design, device, or materials in any way involved.
21. **TRAINING:** Unless otherwise specified suppliers/providers may be required at the convenience of and at no expense to the School Board to provide training to School Board personnel in the operation and maintenance of any item purchased as a result of this invitation.
22. **ACCEPTANCE:** Products purchased as a result of this invitation may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at respondent's expense. Those items and items not delivered by the delivery date specified in accepted offer and/or purchase order may be purchased on the open market. Any increase in cost may be charged against the respondent.
23. **SAFETY WARRANTY:** Any awarded supplier/provider including dealers, distributors, and/or manufacturers shall be responsible for having complied with all Federal, State, and local standards, regulations, and laws concerning the product or service specified, and the use thereof, applicable and effective on the date of manufacture or use or date in service including safety and environmental standards as apply to both private industry and governmental agencies.
24. **WARRANTY:** The offeror agrees that, unless otherwise specified, the product and/or service furnished as a result of this invitation and award thereto shall be covered by the most favorable commercial warranty the offeror gives to any customer for comparable quantities of such products and/or services and that the right and remedies provided herein are in addition to and do not limit any rights afforded to the School Board by any other provision of the invitation/offer.
25. **AWARD:** As the best interest of the School Board may require, the School Board reserves the right to make award(s) by individual item, group of items, all or none, or a combination thereof; on a geographical basis and/or on a district wide basis with one or more supplier(s) or provider(s); to reject any and all offers or waive any irregularity or technicality in offers received. Offerors are cautioned to make no assumptions unless their offer has been evaluated as being responsive. Any or all award(s) made as a result of this invitation shall conform to applicable School Board Rules, State Board Rules, and State of Florida Statutes.

- 26. VIOLATIONS:** Any violation of any of the stipulations, terms, and/or conditions listed and/or included herein may result in the respondent being removed from the School Board Bid list and the /respondent being disqualified from doing business with the School Board for a period of time to be determined on a case-by-case basis.
- 27.** For purposes of this Invitation and evaluation of responses hereto the following shall apply: unit prices shall prevail over extended prices; written matter shall prevail over typed matter; numbers spelled in word form shall prevail over Arabic numerals (“one” over “1”). When not inconsistent with context words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.
- 28. GENERAL INFORMATION ABOUT THE DISTRICT:** The District and its governing board were created pursuant to Section 4, Article IX of the Constitution of the State of Florida. The District is an independent taxing and reporting entity managed, controlled, operated, administered, and supervised by School District Officials in accordance with Chapters 1000-1013, Florida Statutes. The Board consists of five elected officials responsible for the adoption of policies, which govern the operation of the District public schools. The Superintendent of Schools is responsible for the administration and management of the schools and it’s departments within the applicable parameters of state laws, State Board of Education Rules, and School Board policies. The Superintendent is also specifically delegated the responsibility of maintaining a uniform system of records and accounts in the District by Section 1010.01, Florida Statutes as prescribed by the State Board of Education.
- The District is coterminous with Osceola County. The annual budget for the District for 2007-2008 school year totals \$999,422,956, including an operating budget of \$461,355,469, and a capital budget of \$401,140,409. The District operates thirty-nine schools, which includes twenty -one (21) elementary schools, seven (7) middle schools, eight (8) high schools, two (2) K thru 8 schools, and one (1) 6th thru 12th grade school. The District is also responsible for twelve alternative education sites, and seven charter schools. The total full-time K-12 projected enrollment of public school students for August 2007 is 53,070. Growth is projected to continue in the future at an average of 2000 students per year.
- 29. UNIFORM COMMERCIAL CODE:** The Uniform Commercial Code (Florida Statutes, Chapter 672) shall prevail as the basis for contractual obligations between the awarded Contractor and the School District of Osceola County for any terms and conditions not specifically stated in this Request For Proposal.

30. AVAILABILITY OF FUNDS

The obligations of the School District of Osceola County under this award are subject to the availability of funds lawfully appropriated for its purpose by the State of Florida and the School Board. All purchases are contingent upon available District funding.

- 31. NO CONTACT:** Vendors, contractors, consultants, or their representatives shall not meet with, speak individually with, or otherwise communicate with School Board members, the Superintendent, or School District staff, other than the designated purchasing agent, and School Board members, the Superintendent, or School District staff, other than the designated purchasing agent, shall not meet with, speak individually with, or otherwise communicate with vendors, contractors, consultants, or their representatives, about potential contracts with the School Board once an Request For Proposal, request for quote, request for proposal, invitation to negotiate, or request for qualifications has been issued.

Any such communication shall disqualify the vendor, contractor, or consultant from responding to the subject Request For Proposal, request for quote, request for proposal, invitation to negotiate, or request for qualifications. (*School Board Rule 7.70.I.G*)

32. DEFINITIONS:

RESPONDENT – The term “respondent” used herein refers to any dealer, manufacturer, representative, distributor, or business organization that will be or has been awarded a contract and/or purchase order pursuant to the terms and conditions of the invitation and accepted offer.

OFFEROR – The term “offeror” used herein refers to any dealer, manufacturer, representative, distributor, or business organization submitting an offer to the County in response to this invitation.

SCHOOL BOARD – The term “School Board” herein refers to the School Board of Osceola County, Florida, and its duly authorized representatives and any school, department, or unit within the School District.

USING AGENCY – The term “using agency” used herein refers to any school, department, committee, authority, or another unit in the School District using supplies or procuring contractual services as provided for in the Purchasing Department of the School District.

**THE SCHOOL BOARD RESERVES THE RIGHT TO REJECT ANY OR ALL OFFERS,
TO WAIVE INFORMALITIES, AND TO ACCEPT ALL OR ANY PART OF ANY OFFER
AS MAY BE DEEMED TO BE IN THE BEST INTEREST OF THE SCHOOL BOARD**

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1.0 PURPOSE & OVERVIEW

The purpose of this Request For Proposal (RFP) is to solicit competitive sealed proposals for an ***Exclusive Beverage Contract*** for the School District of Osceola County, Florida.

1.01 General Information about the District:

The District and its governing board were created pursuant to Section 4, Article IX of the Constitution of the State of Florida. The District is an independent taxing and reporting entity managed, controlled, operated, administered, and supervised by School District Officials in accordance with Chapters 1000-1013, Florida Statutes. The Board consists of five elected officials responsible for the adoption of policies, which govern the operation of the District public schools. The Superintendent of Schools is responsible for the administration and management of the schools and its departments within the applicable parameters of state laws, State Board of Education Rules, and School Board policies. The Superintendent is also specifically delegated the responsibility of maintaining a uniform system of records and accounts in the District by Section 1010.01, Florida Statutes as prescribed by the State Board of Education.

- 1.02** The District is coterminous with Osceola County. The annual budget for the District for 2008-2009 school year totals \$954,129,820, including an operating budget of \$446,994,491, and a capital budget of \$356,639,533. The District operates forty schools, which includes twenty-one (21) elementary schools, seven (7) middle schools, eight (8) high schools, three (3) K thru 8 schools, and one (1) 6th thru 12th grade school. The District is also responsible for eleven (11) alternative education sites, and seven (7) charter schools. The total full-time K-12 enrollment of public school students as of September 2008 is 51,594.

2.0 SCOPE OF SERVICES

This is a Request for Proposals (RFP) for an agreement between The School District of Osceola County and a beverage company for exclusive beverage sales and distribution rights and exclusive advertising/marketing rights in all Osceola County Schools and departments. The successful Respondent's product line will be offered as the exclusive beverage product line available through district/school vending machines, concessions and athletic events, the successful Respondent's product line will be the featured product line available in Food Service. This would include, but not limited to the following: carbonated beverages, non-carbonated beverages, fruit juices, fruit drinks, sport beverages, teas, bottled water and flavored water products. Sales in addition to beverage purchased by staff and students will be realized through additional avenues including athletic events, academic events, open houses, parent nights, carnivals, fundraisers and the performing arts program events. The selected Respondent's product line will be the "featured" product line available in the Food and Nutrition Services areas. This would include carbonated beverages, non-carbonated beverages, fruit juice, fruit drinks, sport beverages, teas, bottled water and flavored water products.

Beverages purchased for the school meal programs will be delivered directly to each school. Currently, Food Service serves approximately 32,120 meals per day. It is the School District's intent to comply fully with the rules and regulations regarding the National School Lunch Program. Nothing in this RFP or in the resulting contract shall be interpreted or construed in such a manner as to jeopardize the District's participation in this program.

IT SHALL BE UNDERSTOOD THAT, FOR THE PRIVILEGE OF EXCLUSIVITY, THE RESPONDENT SHALL AFFORD THE DISTRICT A SPONSORSHIP PREMIUM (REBATES), CONTINUING SALES COMMISSION, MAINTENANCE OF ATHLETIC SCOREBOARDS AND OTHER INCENTIVES AS MAY BE REQUIRED OR ARE OFFERED.

2.01 GOALS AND OBJECTIVES

The goal of this RFP is to establish a long-term exclusive beverage contract which includes beverage advertising benefits with a qualified Respondent.

2.02 AWARD TERM

The School Board's goal is to promote long term partnership relationships within the policies and procedures of public procurement. Pursuant toward that end, the successful Respondent shall be awarded an initial five (5) year term. The contract may be renewed for an additional five (5) year term, under the same terms and conditions as the original contract, with the consent and agreement of both parties.

2.03 RESPONDENT

Proposals shall demonstrate that the Respondent has the capability, experience, expertise and resources necessary to provide the District with beverages and beverage advertising benefits.

2.04 TECHNICAL REQUIREMENTS

2.05 PRODUCT

- A. The products prepared from mixes/concentrates, milk, lemonade, and punch are dispensed by Food Service. Four ounce, six ounce and eight ounce fruit juices are served as part of the National School Lunch Program. The District requires a full-line of carbonated and non-carbonated beverage including bottled waters, flavored waters, juices, juice drinks, punch, sport drinks, and iced tea to be offered by the Respondent. Preference will be given to products meeting the Alliance for the Healthier Generation school beverage guideline. This shall include both pre-mix and post-mix products (no "Amp", "Red Bull", etc.). Once the District has approved the initial product line offered by the Respondent, the Respondent will be allowed to add new product with prior written approval from the District.
- B. The product line(s) to be sold at each location will be by mutual agreement between the school principal or administrator and the successful Respondent.
- C. If the District desires to sell over-the-counter beverages at special events, the successful Respondent shall provide beverages at a cost not greater than that charged for other District or School related events.
- D. The Respondent shall provide, at no cost, any necessary dispensing equipment for either pre-mix or post-mix products, as may be requested by the school principal or District Administrator. Placement of all pre/post mix equipment shall be upon mutual agreement.

2.06 EXCLUSIVITY

- A. Exclusivity will be granted to the Respondent for the distribution of carbonated, non-carbonated, fruit juice, fruit drinks, sport drinks, punches, iced tea, flavored water and bottled water products normally distributed by the Respondent. Concession stands are included, but subject to all applicable laws, regulations or policies with respect to the District Wellness Program. At the present, no known laws, regulations or policies exist (with the exception of applicable Health Department codes), which may have an impact upon the sale of beverages at concession stands.
- B. The successful Respondent shall provide all products in a timely manner to keep all vending machines and concessions operating fully for maximize sales.
- C. The successful Respondent may receive exclusive beverage advertising opportunities in District owned facilities and at District functions to the extent outlined in this document. Exclusive advertising rights shall NOT apply to the District Internet website, any District sponsored websites, the cable television station or the instructional television station. The District reserves the right to afford advertising opportunities to any and all commercial enterprises in the event that internet advertising is determined to be in the District's best interest. Principals may elect to "sell" advertisements in their athletic programs and year books that may contain competitor's products.

- D. The District will attempt to ensure the benefits described above are exclusive to the successful Respondent. However, these exclusive rights shall apply only with respect to District owned and controlled facilities in which the District retains control of space utilization except for areas controlled by Food Service. The successful Respondent's products will be "featured" in these areas.
- E. These exclusive rights shall NOT apply to Charter Schools. The District will not participate in the establishment of supply contracts between beverage companies and Charter Schools within Osceola County. Charter School Boards may act upon their own authority to enter into such agreements.

2.07 PRICING

The commission percentage rate on vended products and unit prices for products to be purchased for resale shall be firm fixed percentage for the first contract year and shall include all freight and handling charges, F.O.B. Destination. The successful Respondent shall include an initial pricing proposal for every product to be offered. The successful Respondent will be allowed to increase product pricing on vended products once annually after the first year of the contract. However, price increases shall be governed by prevailing market conditions and in no instance shall be greater than any increase experienced in similar markets within the State of Florida. Guaranteed fixed pricing for each renewal year must be submitted sixty days prior to the end of the current term of the contract. In the event vending prices are increased, the guaranteed commission shall be increased by at least the same percentage amount.

- A. Within forty-five (45) calendar days from the effective date of the Contract, the successful Respondent shall furnish Contractor-owned beverage vending machines at all agreed upon locations. By participating in this proposal, the awarded Respondent agrees to coordinate the removal of equipment with the companies currently providing vending machines at the designated locations.
- B. All vending machines shall be modern and of current mechanical/electronic technology. All machines shall have bill changing capability, be electrically efficient, have unit sales counting capabilities and be aesthetically acceptable to District. The District expects each machine to be delivered with USA Technologies, Inc. VendMiser® device or approved equal. VendMiser® is an energy efficiency product for vending machines. It works by managing the power consumption of a vending machine.
- C. The location and size of vending equipment may vary from site to site.

2.08 PRODUCT

- A. **IN ALL SCHOOLS**
Carbonated beverages may not be sold where student breakfast or lunch is being served or eaten. If students are allowed to eat their meals in locations outside the cafeteria, the sale of carbonated beverages is prohibited in these areas.
- B. **HIGH SCHOOLS**
All low calorie beverage products may be vended and sold at all hours on the campus if a beverage of one hundred percent (100%) fruit juice, is sold in vending machines.
- C. **MIDDLE SCHOOLS**
Non-carbonated beverages and fruit juices that meets the Alliance for a Healthier Generation Guidelines (Attachment I), may be vended and sold at all hours on the campus. Restrictions of the sale of carbonated beverages shall be in strict compliance with the requirements of Department of Education Rule 6A-7.041.
- D. **ELEMENTARY SCHOOLS**

May elect to have vending machines that are only accessible to students for after school programs, or athletic fields where joint use agreements are in effect with other governmental entities. All beverages may be vended and sold at all hours from machines in faculty lounges and other non-student vending areas. Respondents shall, as a part of their proposal, address the methods by which the above requirements will be met.

2.09 EQUIPMENT

- A. Vending machines shall be quiet and not disruptive to the ongoing activities on District property.
- B. The successful Respondent shall be solely responsible for all damages and all theft that occurs due to vandalism. While site administrators will make every reasonable effort to assist in minimizing damage and/or loss from vandalism, the District will bear no monetary responsibility for damage to the successful Respondents property or loss of the successful Respondent's product.
- C. The installation of machines, cages, and anchoring devices and the expense of installation of vending machines shall be the successful Respondent's responsibility excluding electrical line installation. The District will cooperate with, and support, reasonable requests from the successful Respondent in this regard. The Respondent will work closely with the District's Maintenance and Facilities Department in the installation of machines.
- D. The District may reject machine signage or logos if deemed objectionable or a distraction to the activities in any District site.
- E. The successful Respondent shall supply coolers and special events trailers for events where the successful Respondent's products are going to be sold, if requested.
- F. The successful Respondent shall maintain the cleanliness of all vending machines.

2.10 VENDING EQUIPMENT MAINTENANCE (Turnkey Premium Service)

The Respondent shall be responsible for the maintenance and repair of all equipment it provides for use on District property. The successful Respondent shall ensure that no vending machine is out of service for more than 24 hours from the time of notification by any District employee. The successful Respondent shall replace machines that are chronically out of service or malfunctioning as determined by the site administrator. The successful Respondent shall provide a local contact name and phone number of the individual(s) assigned responsibility for the repair and maintenance of equipment.

2.11 ELECTRICITY

The District will furnish, at no cost to the successful Respondent, the necessary electricity for the operation of vending machines. A projection of the maximum annual electrical cost and maximum aggregate annual electrical consumption per machine shall be included in the proposal. The District will take reasonable measures to avoid power loss and to restore power if, and when, a power outage occurs.

2.12 LOCATION OF VENDING MACHINES

The District will not be required to relocate any electrical outlets in order to provide electrical power to vending machines at desired locations. The use of electrical cords for vending machine power which are longer than five feet (5') must be approved by the District's Health and Safety Department. Extension cords or drop cords are NOT allowed.

2.13 STORAGE SPACE

The District will not be required to furnish any storage space for beverage products owned by the successful Respondent unless compensation is made to the District. The District may provide temporary storage of concession equipment after athletic or other events without charge. Informal arrangements may be agreed upon between individual site administrators and the successful Respondent for limited storage of product owned by the Respondent. However, the product stored shall only be for the intended use of the site at which it is stored. Additionally, the District will bear no financial responsibility in the event of theft or product damage.

2.14 SPONSORSHIP PREMIUM PAYMENT/PROCEDURE

- A. As part of a large-scale business partnership arrangement with exclusivity terms, sponsorship fees (rebates) in the form of a series of cash payments based on projected and/or actual usage are a strategic component of the RFP. The successful Respondent should expect to pay out at least 70% of the sponsorship premium within thirty (30) days after the effective date for the fiscal school year 2009/2010, (year one). In years two through five, the advanced rebate will equal 70% of the total rebates that were actually earned in the immediate prior agreement year. Effectively, these sponsorship fees should be determined by the value of the contract itself, as well as the value added.
- B. The Respondent acknowledges that the Respondent is responsible for, and is taking all risk with respect to any reduction of gross sales due to theft, fire, accident, vandalism, temporary loss of power, weather, acts of God, changes to the District or individual school calendars, temporary or permanent school closures, changes to school or facility construction plans, changes to the athletic or extracurricular program or schedule, machine failure (refunds), other acts beyond the District's control, and actions within the District control that are necessary for sound educational reasons (e.g., relocation of vending machines) and that are considered typical for public school systems. Unless otherwise expressly agreed by all parties, no reduction in gross sales attributable to such factors shall constitute a basis for reducing or renegotiating any other payments to the District.
- C. All machines shall have automatic sales counters that can be used for sales verification by the District, or its representatives. All machines in elementary school student accessible areas and machines vending carbonated beverages in middle schools shall be timer controlled when located in areas where product sales are restricted in accordance with Department of Education Rule 6A-7.0411. School principals may not further restrict the time(s) during which products may be sold.

2.15 COMMISSION ACCOUNTING REQUIREMENTS

- A. All financial records of the successful Respondent pertaining to this contract shall be made available for audit during normal working hours by the District or its designated auditor.
- B. The District must approve the successful Respondent's monthly management report format for the purpose of tabulating and monitoring sales receipts and the calculation of monthly commission payments. Such reports shall be submitted to a designated District representative monthly and shall include detailed sales reports by product and machine location, as well as periodic reconciliation of the sales dollars from each location with the gross expected sales dollars based on the product sold. The report shall separate sales and commission payments and rebates by site and by program. The successful Respondent shall maintain complete and accurate records of vending transactions for each machine in accordance with the accepted industry standards, and will keep such financial records for a minimum period of five years after the close of each year's operation. The monthly payment in the form of a single draft accompanied by an approved management report must be received by the District Finance Department no later than the 20th of each month for activity for the preceding month. Failure to provide

monthly drafts or management reports in a timely manner may result in cancellation of the contract or the imposition of penalties. Monies generated from this agreement will benefit students; hence, payment to the District of the projected monthly commission revenues, will be scheduled as part of the District's annual budgeting process. Respondents must submit realistic projections in their proposal.

2.16 LICENSES AND TAXES

- A. All required state, county and city license fees shall be paid by the successful Respondent. The District shall be promptly reimbursed for any penalties or necessary and reasonable expenses due to the successful Respondent's failure to obtain necessary licenses.
- B. The successful Respondent shall pay all required sales and use taxes pertaining to sales of the successful Respondent's products under this contract. The District shall be promptly reimbursed by the successful Respondent for any penalties or costs resulting from the successful Respondent's failure to promptly pay such taxes.
- C. The successful Respondent shall comply with all Federal, State, Local and District regulations governing the preparation, handling and serving of beverages and shall procure and keep in effect all necessary licenses and permits required by law and agrees to post such permits in a prominent place as may be required by law.

2.17 SERVICE PERSONNEL AND SERVICE VEHICLES

The successful Respondent's personnel shall, at all times while on District property, be dressed in proper company uniforms and shall observe all District regulations in effect. The successful Respondent's vehicles must adhere to District advertising policies and must not include advertisement of alcoholic beverages.

2.18 PROGRAM PLANNING

The School District expects the successful Respondent to offer a consistent level of customer service. This means that the successful Respondent's proposal should specifically address the issues of stocking cycles to minimize outages, the process for detecting disabled or out of stock machines, machine repair turnaround time in hours, the process for installation of new machine/technology over time, general maintenance/cleaning of equipment and the methodology for optimizing the selection of brands in the machine. As part of the service plan, the successful Respondent must have an experienced individual dedicated to servicing the beverage contract and the related needs of District on a daily basis. The successful respondent must file a detailed management report each month with payments.

- A. The successful Respondent must have one dedicated individual who serves as a single point of contact for the District. The single point of contact must understand the beverage industry and have ready access to expert marketing support to optimize discretionary sales to the students. They must meet every ninety (90) days with the assigned District Representative at the District Representative's work site. The successful Respondent must provide a quarterly progress report and an annual progress report. As part of the Respondent's proposal, include a resume of the individual and their available local resources to implement an exclusivity agreement with a major public school system.

2.19 EXCLUSIVE BEVERAGE ADVERTISING BENEFITS

The Exclusive Beverage Advertising Benefits may include, but not limited to the following benefits:

- A. The following advertising and other rights:
 - 1. Point of Sale advertising
 - 2. Signage on campus – banners
 - 3. Product cups/containers
 - 4. Scoreboard panel advertising

5. On-campus promotions
6. Sponsorship of events on campus
7. Complimentary print advertising needs to be provided within established deadlines voids this provision (including team, club or organization printed material and one-half page ad in appropriate yearbooks and athletic programs)
8. Other advertisement opportunities as included in the successful respondent's proposal – subject to final contract negotiation.

The Principal or site administrator will have final approval regarding quantity, positioning, placement, size and content of all advertisement.

- B. The successful Respondent will have the right of first refusal for sponsorship of any long-standing event previously sponsored by a beverage company. The successful Respondent shall notify the District in writing of any such refusal.

NOTE: The above benefits shall be inclusive of, and not in addition to, any existing advertising of a similar nature being received by the proposer for which payment has not been made.

2.20 ATHLETIC SCOREBOARDS

As part of this exclusive agreement, the District shall require the successful Respondent to supply the signage and the sports scoreboard assets District Wide. At school sites now using equipment provided by another beverage provider, funds will be needed early in the life of the agreement to remove these signage/logos. It is critical that this transition is managed in a way as to not disrupt student activities during the school year. The successful Respondent's proposal must include an explanation of the logistical support in making the necessary transfers and installations where warranted. The successful Respondent shall provide to the District all new, replacement and/or additional athletic scoreboards, as may be required throughout the term of the contract. It will be permissible to refurbish any scoreboard scheduled for replacement, as long as the scoreboard can be brought into compliance with the technical specifications and aesthetic appearance of a new scoreboard of the same make and model. Scoreboards provided shall be as listed below or an alternative makes/models approved by a designated District representative. Supplied scoreboards shall be new and unused; scoreboards shall be complete with two sets of controls and cable of appropriate length and shall be delivered and installed/erected at the desired location, at no cost to the District.

The successful Respondent shall bear the responsibility and expense for maintenance and repair of ALL District scoreboards in a timely manner throughout the term of the contract. Purchase and installation of replacement bulbs will be excluded from this requirement and will be the responsibility of the District. All Scoreboard repairs will be performed within a specific time frame based upon scheduled events and needs.

2.21 SCOREBOARDS FOR NEW SCHOOLS

The successful Respondent prior to the opening of any new secondary school, which is brought into service while the contract is in effect, will provide an equivalent scoreboard.

2.22 SCOREBOARDS FOR EXISTING SCHOOLS

The existing District schools have Nevco and Daktronics scoreboards. The successful Respondent shall provide and quantities of scoreboards, at a minimum, as follows:

High Schools

- 2 - basketball/volleyball scoreboards
- 1 - wrestling scoreboard
- 1 - football/soccer scoreboard
- 1 - baseball scoreboard
- 1 - softball scoreboard
- 3 - mobile wrestling timekeepers

- 2 - multi lane swimming timers
- 2 - 8 lane track timers with display

Middle School

- 2 - basketball/volleyball scoreboards
- 1 - wrestling scoreboard

Advertising panels may need to be updated depending on award.

2.23 FINANCIAL INCENTIVES

In addition to any other offers (financial or otherwise) presented by the respondents, each proposal shall include, without limitation, independent offers relating to the following incentives (to be in certified funds only):

- A. **Sponsorship Premium**: As part of a large-scale business partnership arrangement with exclusivity terms, sponsorship fees (rebates) in the form of a series of cash payments based on projected and/or actual usage is a strategic component of the RFP. The successful Respondent should expect to pay out at least 70% of the sponsorship premium within thirty (30) days after the effective date for fiscal school year 2009/2010 (year one). In years two through five, the advanced rebate will equal 70% of the total rebates that were actually earned in the immediate prior agreement year. Effectively, these sponsorship fees should be determined by the value of the contract itself, as well as the value added.
- B. **Full Service Revenue**: The proposal shall include a percentage offered by the respondent as commission on monthly vending machine sales. The commission percentage offered shall be based upon gross sales amounts. In the event vending prices are increased, the guaranteed commission shall be increased by at least the same percentage amount.

*Respondents are encouraged to offer such additional revenue as **Growth Revenue** – based upon an amount for each case of product sold to the District after specified volume levels have been reached. Revenue is to be paid to the District annually.*

Respondents are advised to provide their best financial incentives with the initial proposal since the District reserves the right to award a contract based on initial proposals without further discussion or negotiation.

2.24 COMPLIMENTARY PRODUCTS AND EQUIPMENT

A. SCHOOLS

Each proposal shall include information regarding annual donations to be provided to each school as complimentary product. The individual school principal shall determine the type of beverage products that are suitable for their sites.

Examples:

- Cases of powdered mix sport drinks or equivalent
- Sleeves of cups
- Towels
- Sport bottles with holders
- Sport bottle carriers
- Five (5) gallon round coolers
- Ten (10) gallon round coolers
- Clip boards
- Stop watches
- Practice balls

B. FOOD SERVICE

Food Service serves approximately 32,120 meals per day. They serve Bag N Box fountain drinks, bottle water, and bottled sports drinks. Historically, Food Service has received the following items on an annual basis. Each proposal shall include proposed annual donations to Food Service:

- Merchandising barrels (on casters) for cold drinks
- Merchandising cold cabinets
 - These cabinets should be equal to or better than a TRUE GDM-23, glass door cold merchandiser with casters and locking door.
- Merchandising cold cabinets – half size
 - These cold cabinets should be equal to or better than a TRUE GDM-5, glass door merchandiser with casters and locking door.
- Other creative ideas

C. DISTRICT SITES

Yearly sponsorship for “Education in the Park”. Historically the Community Relations Department has received the following items on an annual basis. Each proposal shall include proposed annual donations to the Community Relations Department.

- Cash donations
- Soft Drinks
- Other creative ideas:

2.25 ADDITIONAL INFORMATION

Each proposal shall provide additional information that may contribute to the proposal as being considered the most advantageous to the District. This section may include, but is not limited to: distribution of promotional items; plan for improving concession sales; award programs for students and/or school achievement/attendance; school-to-work program enhancements; and, other plans that will provide additional support to or for the schools, student programs, or Foundation for Osceola Education, Inc.

Examples:

1. Annual Educational resources
2. Fundraising Sales
3. Educational Recognition Awards for teacher, administrators, instructional support staff or students
4. Athletic Kits for each high school, middle school and elementary school
5. Menu boards for concession stands
6. District-wide academic competitions
7. Foundation for Osceola Education, Inc. – scholarship fees

2.26 VALUE ADDED SERVICES

The District is interested in considering all value added services that a respondent would like to propose. The District is specifically interested in those services that will enhance the business relationship and benefit all parties. Value-added Services may include but not be limited to:

- ❖ Signing bonus
- ❖ Rebates
- ❖ Thresholds for additional rebates
- ❖ Purchase incentives
- ❖ Outside (other entities) agency rebates
- ❖ Other creative ideas and suggestions

2.27 SERVICE PERSONNEL GUIDELINES – GENERAL

General Supervision: The successful Respondent shall be responsible to ensure that the services are being accomplished correctly, safely, and on-time. Respondent shall work jointly

and cooperatively to resolve performance problems with Contract Administrator. It shall be the sole responsibility of the Respondent to see that all specification and codes are being followed. These general supervision responsibilities apply specifically to all Respondent personnel.

School Calendar: It shall be the responsibility of the successful Respondent to maintain a current SDOC calendar and stay informed of school and facility operating hours. A complete listing of current school hour and holiday schedules can be found on SDOC website: www.osceola.k12.fl.us.

Work Scheduling: All stocking service and maintenance work shall be coordinated and scheduled with the school principal or site administrator, or their designee.

Site Access: It shall be the responsibility of the successful Respondent to coordinate site access directly with the school Principal or site administrator, or their designee, at each District site and follow customary check-in procedures when physically on-site at any District facility. **Schools Only** – While on School grounds, the successful Respondent shall perform all services with a minimum amount of disruption to the normal operations of the school. For the safety of staff and students, the successful Respondents shall, if feasible, avoid performing services during periods of peak student activity. Successful Respondent desires to work after regular school operating hours, a request shall be made to and approved by the school Principal or their designee. The successful Respondent's personnel shall be fingerprinted and Level 2 cleared in accordance with the Jessica Lunsford Act prior to entering any school's property.

Emergency Services: The successful Respondent shall have the capability to provide qualified personnel for service calls, on an emergency basis, twenty-four (24) hours per day, seven (7) days per week. Emergency service is defined as those activities necessary to maintain a safe environment and continue vending machine operations at any SDOC school or administrative site. The successful Respondent shall give first priority to servicing the District's emergency shelters in the event of a hurricane, flood, or other natural disaster.

Equipment: The successful Respondent shall have on hand at all times and in good working order such customary and necessary service vehicles, equipment, hand/power tools and accessories of the trade to adequately and efficiently to perform its contractual duties.

SDOC assumes no direct or implied responsibility for the theft, vandalism, injury or improper use occurring to or performed with any equipment rented or owned by the Respondent.

Safety Measures: The successful Respondent shall take necessary steps to protect the students, faculty, and general public from injury in the course of the work. Respondent shall specifically warn its employees of the potential hazards of working in the proximity of students and of the necessity for them to exercise extreme caution. While onsite, the successful Respondent shall not obstruct any egress and shall not leave the site without first securing the work area and eliminating any hazardous condition resulting from the successful Respondent's activities. The successful Respondent shall conform to all applicable OSHA, State of Florida, County and local safety requirements and existing codes.

Protection: The successful Respondents shall be responsible, while on District property, for the protection of all facilities and utilities (underground and surface) against operations that may be hazardous and/or damaging to said facilities. The successful Respondent shall be cognizant of all existing utilities and shall operate with due care in the pavements, etc. adjacent to the work area from damage by equipment or other traffic.

Property Damage: All damage or loss of public and/or private building and/or property incurred as the result of successful Respondent operations shall be the responsibility of the Respondent. Should any public or private property be damaged or destroyed, the successful Respondent at its

expense shall repair or make restoration as is practical and acceptable to the District and owners of destroyed or damaged property, within a reasonable length of time.

Cleaning Up: The successful Respondent shall, when stocking, servicing, or repairing its vending machines, keep the premises free from accumulation of debris and trash. Upon completion of work, Respondent shall remove all work materials, tools, and surplus stock and packaging material and shall leave vending equipment in ready to use condition.

Personnel Conduct: The successful Respondent's personnel while on location at any District site are expected to maintain a high standard of civility, deportment, and appearance, and act in a professional manner at all times. Personnel shall not at any time fraternize with students, teachers, or other SDOC staff not directly involved with the contract services.

When in contact with school personnel, successful Respondent's personnel shall be courteous, helpful, and reflect appropriate courtesies and forms of address. Violation of this provision may result in removal of the individual(s) involved from the site.

3.0 SPECIAL TERMS & CONDITIONS

3.01 RFP Closing Date

Proposals must be received by the School District of Osceola County's Purchasing Department, 817 Bill Beck Blvd, Building 2000, Kissimmee, Florida 34744-4495, no later than **2:00 p.m., local time, on August 5, 2009**. Proposals received after this time will not be considered.

3.02 Proposed Schedule

<i>June 22, 2009</i>	Release date for Request for Proposal
<i>July 1, 2009</i>	Pre-proposal Conference – 9:00AM
<i>July 15, 2009</i>	Final date to receive written questions
<i>July 22, 2009</i>	Release date for Addenda to answer written questions
<i>August 5, 2009</i>	Closing Date
<i>August 11, 2009</i>	Written Evaluations (Committee) – 7:30AM
<i>August 12, 2009</i>	Oral Presentations – 7:30AM
<i>September 1, 2009</i>	Recommendation of Top-Ranked Firm
<i>October 10, 2009</i>	Submittal of Final Contract for Board Approval

3.03 Delivery of Proposals

All proposals shall be sealed and delivered or mailed to (faxes/e-mails will not be accepted):

School District of Osceola County, Florida
Purchasing Department, Building 2000
817 Bill Beck Blvd
Kissimmee, Florida 34744-4495

Mark package(s) "**RFP #09-P-114 LC, Beverage Exclusive Contract for the School District of Osceola County, Florida.**"

Note: Please ensure that if a third party carrier (Federal Express, Airborne, UPS, USPS, etc.) is used, that they are properly instructed to deliver your proposal **only** to the Purchasing Department, Building 2000 at the above address. To be considered, **a proposal must be received and accepted in the Purchasing Office before the RFP Closing Date and Time.**

Cut out the Label above and attach it to your envelope/package

* DO NOT OPEN * SEALED PROPOSAL * DO NOT OPEN *	
SEALED PROPOSAL NUMBER:	_____
PROPOSAL TITLE:	_____
PROPOSAL DUE ON	_____ P.M.
PROPOSAL ENCLOSED _____	“NO PROPOSAL LETTER” ENCLOSED _____
Deliver To:	The School District of Osceola County, Florida PURCHASING DEPARTMENT 817 Bill Beck Blvd., Building 2000 Kissimmee, FL 34744-4495

3.04 Pre-proposal Conference

- A. A pre-proposal conference will be held in the ***Purchasing Conference Room located at 817 Bill Beck Boulevard, Building 2000, Kissimmee, Florida, at 9:00 AM, on Wednesday, July 1, 2009.*** While this is not mandatory, all interested parties are encouraged to attend and participate.
- B. Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations to attend public RFP openings or meetings should contact the School Board's Purchasing Department, Kissimmee, Florida, (407) 870-4625 at least five (5) days prior to the date.

3.05 Public RFP Opening

- A. Only the names of the firms submitting proposals will be read aloud at the RFP opening. The proposals will be available for inspection during normal business hours in the Purchasing Department, Conference Room, ten (10) days after the closing date, by appointment (Florida Statute 119.071 (1) (b)).
- B. A complete recap of proposals will be available after the committee makes a recommendation. A copy of the completed proposal recap will be available on our Purchasing web page at <http://www.osceola.k12.fl.us/depts/Purchasing/index.asp> within ten (10) days.
- C. Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations to attend public RFP openings or meetings should contact the School Board's Purchasing Department, Kissimmee, Florida, (407) 870-4625 at least five (5) days prior to the date.

3.06 PROPOSAL FORM

- A. See **Submittal Requirements** for complete details.
It is not necessary to return every page of this document with the Proposal; if you are taking exception to any of the terms and or conditions, include them on corporate stationary indicating the page number and the paragraph. Please do not reformat or change this document in any way as it may cause the response to be considered non-responsive.
- B. Each respondent shall submit eleven (11) complete sets of the Proposal Submittals:
 - **One (1)** hard copy marked "ORIGINAL"
 - **Eleven (11)** hard copies marked "COPY"

- One (1) COMPLETE electronic copies on CD's, in PDF format (Excel spreadsheets shall not be recorded in PDF). Note: solicitation number and name of company on the disk.

If a Non-disclosure Agreement is signed and confidential materials are submitted, such confidential materials shall not be included on the master CD. Confidential materials shall be segregated on a separate CD, plainly labeled "Confidential Materials".

- C. Terms and conditions differing from those in this RFP may be cause for disqualification of the proposal.

3.07 QUESTIONS CONCERNING RFP

- A. Questions concerning any portion of this RFP shall be directed in writing or by e-mail to the Purchasing Agent named herein, who shall be the official point of contact for this RFP. Questions should be submitted no later than ten (10) days prior to the closing date.
- B. Mark cover page or envelope(s) "**Questions on RFP #SDOC 09-P-114 LC, Beverage, Exclusive Contract.**"

Submit questions to:

Linda L. Ciraldo, Senior Buyer
 Telephone: (407) 343-8604
 Fax : (407) 870-4616
 E-mail : <mailto:ciraldol@osceola.k12.fl.us>

3.08 CLARIFICATION AND ADDENDA

- A. It is incumbent upon each respondent to carefully examine all specifications, terms, and conditions contained herein. Any inquiries, suggestions, or requests concerning interpretation, clarification or additional information shall be made in writing, (facsimile transmissions acceptable, (407) 870-4616) through the Purchasing Agent named herein. The School Board will not be responsible for any oral representation(s) given by any employee, representative or others. The issuance of a written addendum is the only official method by which interpretation, clarification or additional information can be given.
- B. If it becomes necessary to revise or amend any part of this RFP, notice may be obtained by accessing our web site. Respondents in their proposal must acknowledge receipts of amendments. **Each respondent should ensure that they have received all addenda and amendments to this RFP before submitting their proposal. Please check the School District's web site at <http://www.osceola.k12.fl.us/depts/Purchasing/index.asp> for any addenda. The District will not mail/fax/email addenda to prospective respondents.**

3.09 AWARD

The School Board reserves the right to award the contract to the respondent(s) that the School Board deems to offer the best overall proposal(s). The School Board is therefore not bound to accept a proposal on the basis of lowest price. In addition, the School Board at its sole discretion, reserves the right to cancel this RFP, to reject any and all proposals, to waive any and all informalities and/or irregularities, or to re-advertise with either the identical or revised specifications, if it is deemed to be in the best interest of the School Board to do so. The School Board also reserves the right to make multiple awards, based on experience and qualifications if it is deemed to be in the School Board's best interest. The District reserves the right to further negotiate any proposal, including price, with the highest rated proposer. If an agreement cannot be reached with the highest rated proposer, the District reserves the right to negotiate and recommend award to the next highest proposer or subsequent proposers until an agreement is reached.

3.10 OTHER AGENCIES

- A. All respondents awarded contracts from this solicitation may, upon mutual agreement with the awarded respondent(s), permit any school board, community college, state university, municipality or other governmental entity to participate in the contract under the same prices, terms and conditions.
- B. Further, it is understood that each entity will issue its own purchase order to the awarded respondent(s).

3.11 F.O.B. POINT

F.O.B. Destination applies to this contract, pricing includes delivery, and for all purchases made under it and shall be as specified by the using entity (in accordance with the RFP proposal form), in Osceola County, Florida. Delivery will not be complete until the using department has accepted each item. Delivery to a common carrier shall not constitute delivery to the ordering agency. All disputes shall be between the seller/respondent and the carrier.

3.12 ASSIGNMENT

The Respondent shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the School Board. In the event of any assignment, the Bidder remains secondarily liable for the performance of the Contract, unless the School Board expressly waives such secondary liability. The School Board may assign the Contract with prior written notice to Bidder of its intent to do so. For the purpose of this Contract, "assignment" means any voluntary, involuntary, direct or indirect assignment, sale, or other transfer by Bidder or its owner(s), of any interest in this Agreement, more than ten percent (10%) of the ownership interest in Bidder, or one of a series of transfers that in the aggregate constitute the transfer of more than ten percent (10%) of the ownership interest in Bidder. The term includes, without limitation: (1) transfer of ownership of capital stock or any partnership interest; (2) merger, consolidation, or issuance of additional securities representing more than ten percent (10%) of the ownership interest in Bidder; (3) sale of common stock of Bidder pursuant to a private placement or registered public offering, which transfers more than ten percent (10%) of the ownership interest in Bidder; (4) transfer of any interest in Bidder in a divorce proceeding or otherwise by operation of law; or (5) transfer of more than ten percent (10%) of the ownership interest in Bidder in the event of the death of an owner, by will, declaration of or transfer in trust, or under the laws of intestate succession.

3.13 CONTRACT

- A. The contents of this RFP and all provisions of the successful Respondent deemed pertinent by the School Board may be incorporated into a contract and will become legally binding. A separate contract document, other than the purchase order, will be issued; see attached preliminary draft (Attachment "H"). The attached draft contract is the School Board's standard contract and may be revised subject to negotiation between the School Board and the respondent. Content of the final contract may contain changes from the School Board's perspective as a result of the RFP process and submittal(s) received. The final negotiated contract shall include the scope of services as outlined in Section 2.0 of the RFP along with the successful respondent's submittal. School Board contracts are subject to review by the School Board Attorney or designee for determination of legal form and substantive sufficiency.
- B. The Superintendent and Board Chair are the sole Contracting Officers for the School Board, and only they or their designee is authorized to make changes to any contract.
- C. The School Board shall be responsible for only those orders placed by the School Board on an authorized signed Purchase Order or Price Agreement. The School Board shall not be responsible for any order, change substitution or any other discrepancy from the

Purchase Order or Price Agreement. If there is any question about the authenticity of a Purchase Order, Price Agreement or change order, the respondent should promptly contact the Purchasing Department at (407) 870-4625.

3.14 DISCLOSURE OF PROPOSAL CONTENT

- A. All material submitted becomes the property of the School Board and may be returned only at the School Board's option. The School Board has the right to use any or all ideas presented in any reply to this Bid. Selection or rejection of any Bid Submittal does not affect this right.
- B. The School Board is governed by the Public Record Law, Chapter 119, Florida Statutes (F.S.). Only trade secrets as defined in Section 812.081(1)(c), F.S. or financial statements required by the School Board for road or public works projects as defined in 119.071(1)(c), F.S. (hereinafter "Confidential Materials"), may be exempt from disclosure. If a respondent submits Confidential Materials, the information **must be segregated**, accompanied by an executed Non-disclosure Agreement for Confidential Materials and each pertinent page must be clearly labeled "confidential" or "trade secret." The School Board will not disclose such Confidential Materials, subject to the conditions detailed within the Agreement, which is attached to this solicitation. When such segregated and labeled materials are received with an executed Agreement, the School Board shall execute the Agreement and send the respondent a "Receipt for Trade Secret Information."

RETURN THIS FORM ONLY IF CONFIDENTIAL MATERIALS ARE BEING INCLUDED IN THE SUBMITTAL. PLEASE READ THE SECTION IN THE RFP DOCUMENT TO DETERMINE IF THIS APPLIES. THE CONFIDENTIAL MATERIALS WILL ONLY BE HANDED OUT TO THE SELECTION COMMITTEE ON THE DAY OF THE EVALUATION, THEREFORE, THE EVALUATION OF THIS MATERIAL WILL BE LIMITED TO THAT TIME ONLY.

3.15 RESPONDENT'S RESPONSIBILITY

A respondent, by submitting a proposal, represents that:

- A. The respondent understands the RFP in its entirety and that the proposal is made in accordance therewith, and;
- B. The respondent possesses the capabilities, resources, and personnel necessary to provide efficient and successful service to the School Board, and;
- C. Before submitting a proposal, each respondent shall make all investigations and examinations necessary to ascertain site and/or local conditions and requirements affecting the full performance of the contract and to verify any representations made by the School Board, upon which the respondent will rely. If the respondent receives an award because of its proposal submission, failure to have made such investigations and examinations will in no way relieve the respondent from its obligations to comply in every detail with all provisions and requirements of the contract, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim by the respondent for additional compensation or relief, and;
- D. The respondent will be held responsible for any and all discrepancies, errors, etc. in discounts or rebates which are discovered during the contract term or up to and including three (3) fiscal years following the School Board's annual audit.

3.16 Payment Terms

- A. The School Board will remit full payment on all undisputed invoices within forty-five (45) days from receipt by the appropriate person(s) (to be designated at time of contract) of the invoice(s) or receipt of all products or services ordered.
- B. Pursuant to Chapter 218, Florida Statutes, the School Board will pay interest not to exceed one percent (1%) per month on all undisputed invoices not paid within forty-five (45) days after receipt of the entire order of the commodity or service, and a properly completed invoice, whichever is later.
- C. The School Board has the capabilities of Electronic Fund Transfer (EFT). List discounts, if any, for payments through Electronic Funds Transfer (EFT).
- D. By submitting a proposal (offer) to the School Board, the respondent expressly agrees that if awarded a contract, the School Board may withhold from any payment, monies owed by the respondent to the School Board for any legal obligation between the respondent and the School Board.
- E. The School District shall pay such invoices pursuant to the provisions of the Local Government Prompt Payment Act (Florida Statute 218.70 – 218.80).
- F. The School District shall pay such invoices pursuant to the provisions of the Local Government Prompt Payment Act (Florida Statute 218.70 – 218.80).

3.17 CONFLICT OF INTEREST FORM

All respondents shall complete and have notarized the attached disclosure form of any potential conflict of interest that the respondent may have due to ownership, other clients, contracts, or interest associated with this project.

3.18 LICENSES AND CERTIFICATES

- A. The School Board reserves the right to require proof that the respondent is an established business and is abiding by the ordinances, regulation, and the laws the State of Florida, such as but not limited to: Business Tax Receipts, business licenses, Florida sales tax registration, Federal Employers Identification Number, AND;
- B. Each firm and personnel who will be performing services on behalf of the firm for the Board are to be properly licensed to do business in its area of expertise in the State of Florida. Each firm shall submit with their proposal a copy of, and maintain the appropriate licenses and certificates during the term of the contract and any extensions. Failure to maintain these requirements shall be cause for immediate termination of the contract.
- C. The Respondent shall pay all required sales and use taxes pertaining to sales of the Respondents products under this contract. The District shall be promptly reimbursed by the respondent for any penalties or costs resulting from the Respondent's failure to promptly pay such taxes.
- D. The Respondents shall comply with all Federal, State, Local and District regulations governing the preparation, handling and serving of beverages and shall procure and keep in effect all necessary licenses and permits required by law and agree to post such permits in a prominent place that may be required by law.

3.19 MINOR IRREGULARITIES

The School Board reserves the right to waive minor irregularities in proposals, providing such action is in the best interest of the School Board. Minor irregularities are defined as those that have no adverse effect on the School Board's best interests, and will not affect the outcome of

the selection process by giving the respondent an advantage or benefit not enjoyed by other respondents.

3.20 INSURANCE REQUIREMENTS

Each respondent shall include in their submittal proof of insurance capabilities, including but not limited to, the following requirements:

- A. Workers' Compensation – The Board requires all contractors to maintain Workers' Compensation insurance within the statutory limits. Employers' Liability is required for minimum limits of \$1,000,000 Each Accident/\$1,000,000 Disease-Policy Limit/\$1,000,000 Disease-Each Employee. The Workers' Compensation policy shall state that it cannot be canceled or materially changed without first giving thirty (30) days prior notice thereof in writing to the School Board. Firms that have owner/operators that have filed a "Notice of Election to be Exempt" shall supply a copy of said notice.

Requirements for Respondents that qualify for an exemption under the Florida Worker's Compensation law in Chapter 440 Florida Statutes are detailed below:

Incorporated or unincorporated firms with less than four employees shall be required to sign a Hold Harmless Agreement relieving the School Board of liability in the event they and/or their employees are injured while providing goods and/or services to the School Board.

Incorporated or unincorporated firms with four or more employees shall be required to provide a copy of their "Notice of Election to be Exempt", along with valid proof of coverage for non-exempt employees.

The waiver mentioned above is included as an attachment to this bid. Waivers shall be returned with the bid proposal as detailed in the Submittal Requirements.

- B. Commercial General Liability Insurance
 - 1. Each occurrence
 - (a) One Million Dollars (\$1,000,000)
 - 2. Aggregate
 - (a) Two Million Dollars (\$2,000,000)
- C. Automobile Liability Insurance
 - 1. Combined Single Limit (Each Accident) One Million Dollars (\$1,000,000) or
 - 2.
 - (a) Bodily Injury (Per Person) One Million Dollars (\$1,000,000)
 - (b) Bodily Injury (Per Accident) One Million Dollars (\$1,000,000)
 - (c) Property Damage One Million Dollars (\$1,000,000)

All insurance policies shall be issued by insurers licensed to do business in the State of Florida and any insuring company is required to have a minimum rating of "A-", Class VII in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.

The respondent shall either cover any subcontractors on its policy or require the subcontractor to obtain coverage to meet these requirements and file appropriate forms with the School Board.

Certificate of Insurance: A certificate of insurance indicating that the respondent has coverage in accordance with the requirements herein set forth shall be furnished by the respondent to the School Board Representative prior to the execution of the contract and annually upon renewal thereafter. Respondent agrees that School Board will make no payments pursuant to the terms of the contract until all required proof or evidence of

insurance have been provided to the School Board Representative. Respondent agrees that the insurer shall waive its rights of subrogation, if any, against the School Board. These shall be completed by the authorized Resident Agent and returned to the Purchasing Office. This certificate shall be dated and show:

- (1) The name of the insured respondent, the specified job by name, name of the insurer, the number of the policy, its effective date and its termination date.
- (2) Statement that the Insurer will mail notice to the School Board at least thirty (30) days prior to any material changes in provisions or cancellation of the policy.
- (3) School Board shall be named as an additional insured on General Liability Insurance as evidenced by the endorsement.

Loss Deductible Clause: The School Board shall be exempt from, and in no way liable for, any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the respondent and/or subcontractor providing such insurance.

3.21 DEVIATIONS

All proposals must clearly and with specific detail, note all deviations to the **exact** requirements imposed upon the respondent by the Specifications. Such deviations must be stated upon the Proposal Form otherwise School Board will consider the subject proposals as being made in strict compliance with said Specifications to respondents; the respondent being held therefore accountable and responsible. Respondents are hereby advised that the School Board will only consider proposals that meet the exact requirements imposed by the Specifications; except, however, said proposals may not be subject to such rejection where, **at the sole discretion of the School Board**, the stated deviation is considered to be equal or better than the imposed requirement and where said deviation does not destroy the competitive character of the RFP process by affecting the amount of the proposal such that an advantage or benefit is gained to the detriment of the other respondents.

3.22 WAIVER OF CLAIMS

Once this contract expires, or final payment has been requested and made, the awarded respondent shall have no more than thirty (30) calendar days to present or file any claims against the School Board concerning this contract. After that period, the School Board will consider the respondent to have waived any right to claims against the School Board concerning this agreement.

3.23 TERMINATION / CANCELLATION OF CONTRACT

The School Board reserves the right to cancel the contract without cause with a minimum thirty (30) days written notice.

Termination or cancellation of the contract will not relieve the respondent of any obligations for any deliverables entered into prior to the termination of the contract (i.e., reports, statements of accounts, etc., required and not received).

Termination or cancellation of the contract will not relieve the respondent of any obligations or liabilities resulting from any acts committed by the respondent prior to the termination of the contract.

The Respondent may cancel the resulting contract with ninety (90) days **written** notice to the Director of Purchasing and Warehouse. Failure to provide proper notice to the School Board may result in the respondent being barred from future business with the School Board.

3.24 TERMINATION FOR DEFAULT

The School Board's Contract Administrator shall notify, in writing, the respondent of deficiencies or default in the performance of its duties under the Contract. Three separate documented instances of deficiency or failure to perform in accordance with the specifications contained herein shall constitute cause for termination for default, unless specifically specified to the contrary elsewhere within this solicitation. It shall be at the School Board's discretion whether to exercise the right to terminate. Respondent shall not be found in default for events arising due to acts of God.

3.25 TERMINATION FOR SCHOOL BOARD'S CONVENIENCE

The performance of work under this contract may be terminated in accordance with this clause in whole, or from the time in part, whenever the School Board representative shall determine that such termination is in the best interest of the School Board. Any such termination shall be effected by the delivery to the respondent of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. Upon such termination for convenience, respondent shall be entitled to payment, in accordance with the payment provisions, for services rendered up to the termination date and the School Board shall have no other obligations to respondent. Respondent shall be obligated to continue performance of contract services, in accordance with this contract, until the termination date and shall have no further obligation to perform services after the termination date. The respondent may cancel the resulting contract with ninety (90) days **written** notice to the Director of Purchasing and Warehouse.

3.26 INCURRED EXPENSES

This RFP does not commit the School Board to award a contract nor shall the School Board be responsible for any cost or expense which may be incurred by the respondent in preparing and submitting the proposal called for in this RFP, or any cost or expense incurred by the respondent prior to the execution of a contract agreement.

3.27 POST-PROPOSAL DISCUSSIONS WITH RESPONDENTS

It is the School Board's intent to award a contract(s) to the respondent(s) deemed most advantageous to the School Board in accordance with the evaluation criteria specified elsewhere in this RFP. The School Board reserves the right however, to conduct post-closing discussions with any respondent who has a realistic possibility of contract award including, but, not limited to: request for additional information, competitive negotiations, and best and final offers.

3.28 PRESENTATIONS BY RESPONDENTS

- A. The School Board, at its sole discretion, may ask individual respondents to make oral presentations, informal telephone interviews and/or demonstrations without charge to the School Board.
- B. The School Board reserves the right to require any respondent to demonstrate to the satisfaction of the School Board that the respondent has the fiscal and managerial abilities to properly furnish the services proposed and required to fulfill the contract. The demonstration must satisfy the School Board and the School Board shall be the sole judge of compliance.
- C. Respondents are cautioned not to assume that presentations will be required and should include all pertinent and required information in their original proposal package.

3.29 COMPLIANCE WITH LAWS AND REGULATIONS

The respondent shall be responsible to know and to apply all applicable federal and state laws, all local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Respondent shall always observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees. Respondent shall protect and indemnify the

School Board and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by respondent, its representatives, subcontractors, sub consultants, professional associates, agents, servants, or employees. Additionally, respondent shall obtain and maintain at its own expense all licenses and permits to conduct business pursuant to this contract from the Federal Government, State of Florida, Osceola County, or municipalities when legally required and maintain same in full force and effect during the term of the contract.

3.30 INDEMNIFICATION OF SCHOOL BOARD

The respondent shall indemnify hold harmless and defend the School Board, its officers, agents, and employees, from or on account of any claims losses, expenses, injuries, damages, or liability resulting or arising solely from respondent's performance or nonperformance of services pursuant to this contract, excluding any claims, losses, expenses, injuries, damage, or liability resulting or arising from the actions of School Board, its officers, agents, or employees. The indemnification shall obligate the respondent to defend at its own expense or to provide for such defense, at School Board's option, any and all claims and suits brought against School Board, which may result from respondent's performance or nonperformance of services pursuant to the contract.

3.31 RECORDS & RIGHT TO AUDIT

The respondent shall maintain such financial records and other records as may be prescribed by the School Board or by applicable federal and state laws, rules, and regulations. The respondent shall retain these records for a period of five (5) years after final payment, or until they are audited by the School Board, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three year period for examination, transcription, and audit by the School Board, its designees, or other entities authorized by law.

3.32 CHANGES IN SCOPE OF SERVICES

- A. The School Board may order changes in the work consisting of additions, deletions, or other revisions within the general scope of the contract. No claims may be made by the respondent that the scope of the project or of the respondent's services has been changed, requiring changes to the amount of compensation to the respondent or other adjustments to the contract, unless such changes or adjustments have been made by written amendment to the contract signed by the School Board Representative, School Board's Director of Purchasing and Warehouse, and the respondent.
- B. If the respondent believes that any particular work is not within the scope of services of the contract, is a material change, or will otherwise require more compensation to the respondent, the respondent must immediately notify the School Board's Representative in writing of this belief. If the School Board's Representative believes that the particular work is within the scope of the contract as written, the respondent will be ordered to and shall continue with the work as changed and at the cost stated for the work within the scope. The respondent must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order.
- C. The School Board reserves the right to negotiate with the awarded respondent(s) without completing the competitive RFP process for materials, products, and/or services similar in nature to those specified within this RFP for which requirements were not known when the RFP was released.

3.33 MODIFICATIONS DUE TO PUBLIC WELFARE OR CHANGE IN LAW

The School Board shall have the power to make changes in the contract as the result of changes in law and/or Ordinances of the School Board to impose new rules and regulations on the respondent under the contract relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare. The School Board shall give the respondent notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally

construed to include, but is not limited to the manner, procedures, operations and obligations, financial or otherwise, of the respondent. In the event any future change in Federal, State or County law or the Ordinances of Osceola School Board materially alters the obligations of the respondent, or the benefits to the School Board, then the contract shall be amended consistent therewith. Should these amendments materially alter the obligations of the respondent, then the respondent or the School Board shall be entitled to an adjustment in the rates and charges established under the contract. Nothing contained in the contract shall require any party to perform any act or function contrary to law. The School Board and respondent agree to enter into good faith negotiations regarding modifications to the contract which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to the contract, the School Board and the respondent shall negotiate in good faith, a reasonable and appropriate adjustment for any changes in services or other obligations required of the respondent directly and demonstrably due to any modification in the contract under this clause.

3.34 RIGHT TO REQUIRE PERFORMANCE

- A. The failure of the School Board at any time to require performance by the respondent of any provision hereof shall in no way affect the right of the School Board thereafter to enforce same, nor shall waiver by the School Board of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.
- B. In the event of failure of the respondent to deliver services in accordance with the contract terms and conditions, the School Board, after due written notice, may procure the services from other sources and hold the respondent responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the School Board may have.

3.35 FORCE MAJEURE

The School Board and the respondent will exercise every reasonable effort to meet their respective obligations as outlined in this RFP and the ensuing contract, but shall not be liable for delays resulting from force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any Government law or regulation, acts of God, acts or omissions of the other party, Government acts or omissions, fires, strikes, national disasters, wars, riots, transportation problems and/or any other cause whatsoever beyond the reasonable control of the parties. Any such cause will extend the performance of the delayed obligation to the extent of the delay so incurred.

3.36 RESPONDENT'S PERSONNEL

The respondent shall be responsible for ensuring that its employees, agents and subcontractors comply with all applicable laws and regulations and meet all federal, state and local requirements related to their employment and position.

The respondent certifies that it does not and will not during the performance of the contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986, as amended.

During the performance of the contract, the respondent agrees to the following:

The respondent shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap or national origin, except when such condition is a bona fide occupational qualification reasonably necessary for the normal operations of the respondent. The respondent agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

The respondent, in all solicitations or advertisements for employees placed by or on behalf of the respondent, shall state that such respondent is an Equal Opportunity Employer.

Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The respondent shall include the provisions of the foregoing paragraphs above in every subcontract or purchase order so that the provisions will be binding upon each respondent.

The respondent and any subcontractor shall pay all employees working on this contract not less than minimum wage specified in the Fair Labor Standards Act (29 CFR 510-794) as amended.

Any information concerning the School Board, its products, services, personnel, policies or any other aspect of its business learned by the respondent or personnel furnished by the respondent in the course of providing services pursuant to the Agreement, shall be held in confidence and shall not be disclosed by the respondent or any employee or agents of the respondent or personnel furnished by the respondent, without the prior written consent of the School Board.

3.37 CLAIM NOTICE

The respondent shall immediately report in writing to the School Board's designated representative or agent any incident that might reasonably be expected to result in any claim under any of the coverage mentioned herein. The respondent agrees to cooperate with the School Board in promptly releasing reasonable information periodically as to the disposition of any claims, including a resume of claims experience relating to all respondent operations at the School Board project site.

3.38 CONTRACT/RESPONDENT RELATIONSHIP

The School Board reserves the right to award one or more contracts to provide the required products and or services as deemed to be in the best interest of the School Board.

Any awarded respondent shall provide the products and services required herein strictly under a contractual relationship with the School Board and is not, nor shall be, construed to be an agent or employee of the School Board. As an independent respondent the awarded respondent shall pay any and all applicable taxes required by law; shall comply with all pertinent Federal, State, and local statutes including, but not limited to, the Fair Labor Standards Act, The Americans with Disabilities Act, the Federal Civil Rights Act, and any and all relevant employment laws. The respondent shall be responsible for all income tax, FICA, and any other withholdings from its employees or sub-respondent's wages or salaries. Benefits for same shall be the responsibility of the respondent including, but not limited to, health and life insurance, mandatory social security, retirement, liability/risk coverage, and worker's and unemployment compensation.

The independent respondent shall hire, compensate, supervise, and terminate members of its work force; shall direct and control the manner in which work is performed including conditions under which individuals will be assigned duties, how individuals will report, and the hours individuals will perform.

The independent respondent shall not be provided special space, facilities, or equipment by the School Board to perform any of the duties required by the contract nor shall the School Board pay for any business, travel, or training expenses or any other contract performance expenses not specifically set forth in the specifications.

Prior to commencing work the successful respondent will be required to sign a written contract incorporating the specifications and terms of the Request for Proposal and the response thereto (See Attachment "H"). Any contract awarded as a result of this RFP shall begin on or about July 7, 2009 and continue through July 6, 2012. A renewal period of one (1) two year term will be allowed upon mutual consent of the School Board and the awarded respondent. The renewal option shall be exercised only if all original contract terms, conditions, and prices remain the same.

The independent respondent shall not be exclusively bound to the School Board and may provide professional services to other private and public entities as long as it is not in direct conflict and does not provide a conflict of interest with the services to be performed for the School Board.

3.39 PROPOSAL ACCEPTANCE/REJECTION

The School Board reserves the right to accept or reject any or all proposals received as a result of this RFP, or to negotiate separately with competing respondents, and to waive any informalities, defects, or irregularities in any proposal, or to accept that proposal or proposals, which in the judgment of the proper officials, is in the best interest of the School Board.

3.40 POSTING OF RFP CONDITIONS/SPECIFICATIONS

This RFP will be posted for review by interested parties on the School Board's Purchasing Department's web site and will remain posted up to and including the Due Date of this RFP. Failure to file a specification protest within the time prescribed in Florida Statutes 120.57(3) will constitute a waiver of proceeding under Chapter 120, Florida Statutes.

3.41 POSTING OF RFP RECOMMENDATION

The recommendation for award will be posted for review by interested parties on the School Board's Purchasing Department's web site and will remain posted for a period of 72 hours. Any person who may be adversely affected by an intended decision with respect to the award of any bid may protest such a decision by following the bid protest procedure of the School District of Osceola County. Failure to follow the requirements of the bid protest procedures and Section 120.57(3), Florida Statutes, shall constitute a waiver of all protest rights.

3.42 EXAMINATION OF DOCUMENTS

Document files may be examined, during normal working hours, ten (10) days after proposals have been opened.

3.43 TOBACCO FREE

The School District is a Tobacco free District. Tobacco and tobacco products are prohibited on any of the District properties.

3.44 SCHOOL SECURITY

Respondent acknowledges and understands that the goods or services contemplated by this contract/agreement that are delivered to or performed on school grounds, which may at various times be occupied by students, teachers, parents and school administrators. Accordingly, in order to secure the school, protect students and staff, and other wise comply with applicable law, the respondent (awarded firm) agrees to the following provisions and agrees that the failure of the respondent to comply with any of these provisions may result in the termination of this contract by the District:

- A. Unauthorized Aliens. The District considers the employment of unauthorized aliens by the awarded firm, or any of awarded firm's sub-contracted Firms, a violation of the Immigration and Naturalization Act. The awarded firm shall certify that no unauthorized aliens are working on the project site at any time. If it is determined that an unauthorized alien is working on the Project, the awarded firm shall immediately take all steps necessary to remove such unauthorized alien from the property and the project.

- B. Possession of Firearms. Possession of firearms will not be tolerated on School District property. No person, who has a firearm in their vehicle, may park their vehicle on the District's property. Furthermore, no person may possess or bring a firearm on District property. If any employee/independent Awarded Firm of the awarded vendor, or any of its sub-Awarded Firms, is found to have brought a firearm(s) on to the District's property, said employee/independent Awarded Firm shall be immediately removed and terminated from the project by the awarded vendor. If sub-Awarded Firm fails to terminate said employee/independent Awarded Firm, the awarded vendor shall terminate its agreement

with the sub-Awarded Firm. If the awarded vendor fails to terminate said employee/independent Awarded Firm or fails to terminate the agreement with sub-Awarded Firm who fails to terminate said employee/independent Awarded Firm, the District may terminate this Agreement. "Firearm" means any weapon (including a starter gun or antique firearm) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any destructive devise, or any machine gun. Powder actuated construction nailers and fasteners are excluded from this definition.

- C. Criminal Acts. Employment on the project by the awarded vendor, or any of its sub-Awarded Firms, of any employee, or independent Awarded Firm, with any prior convictions of any crimes against children, crimes of violence or crimes of moral turpitude will not be tolerated. If it is determined that any person with such criminal history is on the project site, the awarded vendor agrees to take all steps necessary to remove such person from the project. The District shall have the right to terminate this Agreement if the awarded vendor does not comply with this provision.
- D. Possession/Use/Under the Influence of Mind Alerting Substances. Possession/use and/or being under the influence of any illegal mind altering substances, such as, but not limited to alcohol and/or substances delineated in Chapter 893, Florida Statutes, by the awarded vendor's employee/independent Awarded Firm or its sub-Awarded Firms' employees/independent Awarded Firms, will not be tolerated on the District's property. If any employee/independent Awarded Firm is found to have brought and/or used or is under the influence of any illegal mind altering substances as described above on the District's property, said employee/independent Awarded Firm shall be removed and terminated from the project by the awarded vendor. If a sub-Awarded Firm fails to terminate said employee/independent Awarded Firm, the agreement with the sub-Awarded Firm for the project shall be terminated by the awarded vendor. If the awarded vendor fails to terminate said employee/independent Awarded Firm or fails to terminate the agreement with the sub-Awarded Firm who fails to terminate said employee/independent Awarded Firm, the District may terminate this Agreement.
- E. Compliance with the Jessica Lunsford Act. Recent changes to the Florida Statutes require that all persons or entities entering into contracts with the School Boards/School Districts/Charter Schools who may have personnel who will be on school grounds when students may be present, or who will have contact with students shall comply with the level 2 screening requirements of the Statute. The required level 2 screening includes fingerprinting that must be conducted by the District. Any individual who fails to meet the screening requirements shall not be allowed on school grounds. Failure to comply with the screening requirements will be considered a material default of this contrast/agreement.

3.45 TAXES

The School District of Osceola County is exempt from Federal and State Tax for Tangible Personal Property. A copy of the District's Tax Exempt Certificate is available upon request and on the District's website at www.osceola.k12.fl.us/depts/Purchasing. Firms or Respondents doing business with the School District of Osceola County shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the District, nor shall any Vendor/Respondent be authorized to use the District's Tax Exemption Number in securing such materials.

3.46 ADVERTISING

The successful respondent shall not publicly disseminate any information concerning the Contract without prior written approval from the District, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the District, Individual

Departments, District Personnel, as a reference, or otherwise linking the Customer's name and either a description of the Contract or the name of the District, its departments, or employees, in any material published, either in print or electronically, to any entity that is not a party to the Contract, except potential or actual authorized subcontractors, distributors, dealers, resellers, or service representatives.

3.47 SECURITY AND CONFIDENTIALITY

The successful respondent shall comply fully with all security procedures of the District in performance of the Contract. The successful respondent or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the District. The successful respondent shall not be required to keep confidential information or material that is publicly available through no fault of the successful respondent, material that the successful respondent developed independently without relying on the District's confidential information or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the successful respondent shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

3.48 SUSPENSION OF WORK

The School Board's Authorized Representative may in its sole discretion suspend any or all activities under the Contract, at any time, when in the best interest of the School District to do so. The School Board's Authorized Representative shall provide the successful respondent written notice outlining the particulars of suspension, including the length of time the contract shall be suspended (i.e.: 90 days). Examples of the reason for suspension include, but are not limited to; budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the successful respondent shall comply with the notice and shall not accept any purchase orders during the specified time of suspension. Within ninety days, or any longer period agreed to by the successful respondent, the School Board's Authorized Representative shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract. Suspension of work shall not entitle the Vendor/Respondent to any additional compensation.

3.49 PACKAGING, TRANSPORTATION AND DELIVERY

Any tangible product delivered under this Contract shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers.

All prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point in Osceola County, as specified on each Purchase Order. Delivery shall be within fifteen (15) calendar days after the receipt of the notice to proceed or purchase order. The Respondent must notify the School District within five (5) calendar days after receiving a purchase order, if there are any potential delivery delays. Evidence of inability to deliver or intentional delays shall be cause for Contract Termination and possible Respondent suspension for a period up to 12 months.

3.50 LITERATURE

The Respondent shall furnish literature reasonably related to the Services offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc. Submittals should be pertinent to and consistent with the Respondents proposal.

3.51 INSPECTION AND ACCEPTANCE

The Customer will accept each Deliverable when it meets the requirements of this Contract and the relevant project noted on the Purchase Order. Inspection may include validation of

information or software through the use of automated tools and/or testing of the Deliverables, as specified in the projects proposal. The scope and nature of this testing should be negotiated prior to the Purchase Order and should be sufficiently comprehensive to ensure the completeness, quality and adequacy of all Deliverables.

3.52 INTELLECTUAL PROPERTY

The terms and conditions contained in this section shall apply to all Purchase Orders issued under this contract unless the Customer specifically details other terms on the Purchase Order. The Customer and the Respondent should take care to ensure that project specific changes to these terms are as explicit as possible. All inconsistencies will be resolved in the best interests of the School District.

3.53 KEY PERSONNEL

Respondent's Key Personnel (if any) shall be identified on the projects proposal/quote, and may include employees, agents, subcontractors, or other personnel of the Respondent. The Respondent agrees that in the event it becomes necessary for the Respondent to change Key Personnel while performing Services under the purchase order, substitution of Key Personnel shall take place only upon Customer's prior written consent. Failure to notify Customer prior to the change of Key Personnel, or a substantial change in Key Personnel as determined by the Customer, may be sufficient cause for Termination.

3.54 LITIGATION

Bidders shall submit details of all litigation, arbitration or other claims, whether pending or resolved in the last five years, with the exception of immaterial claims which are defined herein as claims with a possible value of less than \$25,000.00 or which have been resolved for less than \$25,000.00. Notwithstanding the foregoing, all litigation, arbitration or other claims, of any amount, asserted by or against a state, city, county, town, school district, political subdivision of a state, special district or any other governmental entity shall be disclosed. Please indicate for each case, the year, name of parties, cause of litigation, matter in dispute, disputed amount, and whether the award was for or against the Bidder.

3.55 RESOLUTION OF BID PROTESTS

The School Board Rule 7.70.V shall be followed as outlined below for the resolution of any bid protests:

- A. The School Board shall follow the procedure specified in Florida Statutes, Section 120.57(3) and as the same may be amended from time to time for the resolution of bid protests.
- B. The Purchasing Department shall provide notice of a decision or intended decision concerning a solicitation, contract award, or exceptional purchase by electronic posting.

The notice shall contain the following statement:

Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

- C. Any person who is adversely affected by the intended award of a solicitation or contract by the School Board or the recommendation of the Director of Purchasing or other responsible employee of the School Board shall file with the Director of Purchasing as agent for the School Board a notice of protest in writing within 72 hours after the electronic posting of the award or intended decision, and shall file a formal written protest

within ten (10) days after the date he or she has filed the notice of protest. With respect to a protest of the specifications contained in a solicitation, the notice of protest shall be filed in writing within 72 hours after the electronic posting of the solicitation, and the formal written protest shall be filed within ten (10) days after the date the notice of protest is filed. All formal written protests must be filed with a bond payable to the School District equal to 1% of the estimated contract amount (Florida Statute 287.042(2)(c)). Failure to file a notice of protest or failure to file a formal written protest and bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes. The School Board may, in its discretion, waive any procedural irregularity or defect in procedures so long as any opposing party is not materially prejudiced by such waiver. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time periods provided by this paragraph. The notice of protest and formal written protest shall be filed in the Purchasing Department between the hours of 8:00 a.m. and 4:30 p.m. upon any day the office is open for business.

The provisions specified herein constitute the exclusive remedy for any adversely affected party with respect to a bid protest. The formal written protest shall state with particularity the facts and law upon which the protest is based.

- D. Upon receipt of the formal written protest which has been timely filed, the Purchasing Director shall stop the bid solicitation process or the contract award process until the subject of the protest is resolved by final agency action, unless the School Board, by duly enacted resolution sets forth in writing the particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process without delay in order to avoid an immediate and serious danger to the public health, safety or welfare.

The School Board finds that a substantial interest in the public welfare is the timely award of contracts when required as a condition of receiving grants or funds from outside sources which will be in addition to the regular school budget.

- E. The Purchasing Director shall schedule a meeting to provide an opportunity to resolve the protest by mutual agreement between the parties within seven (7) days, excluding Saturdays, Sundays, and state holidays, after receipt of a formal written protest and bond.
- F. If the Purchasing Director cannot resolve the protest by mutual agreement within the seven (7) day period referred to in Paragraph E., the School Board shall conduct an informal administrative hearing, under Section 120.57(2), Florida Statutes, acting as the agency head, where there are no disputed issues of material fact. The informal hearing shall be held with notice of no less than 72 hours, excluding Saturdays, Sundays, and legal holidays within thirty (30) days of receipt of the formal written protest and bond, unless the parties, with the consent of the School Board, agree to extend the time for the hearing. The School Board shall have the right to schedule the hearing subject to these provisions.

3.59 DEFINITIONS

As used in this RFP, the following terms shall have the meanings set forth below:

Campus Grille: Food Service Department.

Contract: The document resulting from this solicitation between the School Board and the Respondent, including this RFP, along with any written addenda and other written documents, which are expressly incorporated by reference.

Contract Administrator: The Director of Purchasing and Warehouse or designee shall serve as Contract Administrator. The Contract Administrator shall be responsible for addressing any concerns within the scope of the contract.

Day: The word “day” means each calendar day or accumulation of calendar days.

Director: The Director is the Director of Purchasing and Warehouse for the School Board.

Exceptions to RFP: An exception is defined as the Respondent's inability or unwillingness to meet a term, condition, specification, or requirement in the manner specified in the RFP.

Person or Persons: An individual, firm, partnership, corporation, association, executor, administrator, trustee or other legal entity, whether singular or plural, masculine or feminine, as the context may require.

Respondent: That person or entity, including employees, servants, partners, principals, agents and assignees of the person or entity that submits a proposal for the purpose of obtaining a contract with the School Board for the provision of the services set forth herein.

Respondent's Project Manager: The Project Manager has responsibility for administering this contract for the Respondent and will be designated prior to execution of the contract.

School Board: The term School Board refers to the School District of Osceola County, Florida.

School Board's Project Manager(s): The Project Manager(s) have responsibility for the day to day administration of the resulting contract for the School Board and will be designated prior to award of contract.

Site Administrator: District personnel that is responsible for departments or sites.

Successful Respondent: That person or entity that is awarded a contract with the School Board for the provision of the services set forth herein.

Service Provider: The certified and or authorized individual or firm who will act in place of the successful Respondent to provide value added services on an as needed or required basis.

Value Added Service: These services may include, but may not be limited to any or all of the following: installation, warranty/repair services, provision of parts, computers for financial hardship cases, employee purchase program, etc.

Vended: Product that is sold by means of a vending machine.

End of Section

4.0 SUBMITTAL REQUIREMENTS/WRITTEN EVALUATION CRITERIA

Proposals shall include all of the information solicited in this RFP, and any additional data that the Respondent deems pertinent to the understanding and evaluating of the proposal. Proposals shall be organized and sections tabbed in the following order. The Respondent should not withhold any information from the written response in anticipation of presenting the information orally or in a demonstration, since oral presentations or demonstrations may not be solicited. Each proposer will be ranked based on an analysis of the criteria herein addressed.

4.01 SCORING: An adjectival scoring system shall be applied throughout the evaluation process for the evaluation of the written responses and the oral presentation/informal interviews. A score of 0 is the least favorable and a score of 4 is the most favorable in all sections.

The Proposer's response will be scored by Committee members in accordance with the following scale:

- 0 = Unsatisfactory: Not responsive to the question.
- 1 = Below Minimum Standards: Responsive to the question but below acceptable standards.
- 2 = Marginal: Minimal acceptable performance standards and responsive to the question.
- 3 = Satisfactory: Above minimum performance, Effective and Responsive to the question.
- 4 = Exceeds Expectations for effectiveness and responsiveness to the question.

NOTE: The Committee member's score times the "weighted value" assigned to the different sections listed here equals the total score for that section.

4.02 ALL PROPOSALS SHALL INCLUDE AT MINIMUM:

Tab 1 – Respondent's Profile and Submittal Letter – (Weighted Value 5)

RFP Submittal Letter signed by authorized agent of the business/corporation with proof of authorization from business.

1. A brief profile of the firm, including:
 - A. A brief history of the business
 - B. Organizational structure of business
 - C. Designation of the legal entity by which the business operates (i.e. sole proprietorship, partnership, limited liability partnership, corporation, Limited Liability Corporation, etc.)
 - D. For non-Florida businesses submit documentation from the state in which the business was formed and documentation from the State of Florida providing authorization to perform business in the state of Florida
 - E. Ownership interests
 - F. Active business venues (counties, states, etc.)
 - G. Present status and projected direction of business
 - H. Documentation from the appropriate state's agency confirming firm's legal entity type (i.e. sole proprietorship, partnership, limited liability partnership, corporation, Limited Liability Corporation, etc.). For non-Florida businesses submit documentation from the state in

which the business was formed and documentation from the State of Florida providing authorization to perform business in the state of Florida

- I. Those firms located within the Osceola County must include a copy of their County Business Tax Receipt (formerly known as an occupational license). If a Respondent is located within Osceola County, failure to have or obtain an Osceola County Business Tax Receipt prior to the RFP closing date and time shall automatically render a Respondent non-responsive. **Note: Charitable organizations that qualify under Florida Statute No. 205.192 are exempt from this requirement.**
- J. Federal Identification Number of firm
- K. Litigation History

Tab 2 – Completed Respondents Information Form (page 1 of this RFP) (Non-Scored)

Tab 3 – References – (Weighted Value 5)

List at least three (3) recent and relevant references where the proposed services have been used within the past year. The degree of relevant experience of the Respondent with Florida School Boards will be a primary factor.

Tab 4 – Ability, Capacity, and Skill of the Firm – (Weighted Value 20)

The ability, capacity, and skill of the Firm to be able to provide the services here in addressed.

Tab 5 – Experience of Personnel – (Weighted Value 15)

The overall qualifications/resumes of the key personnel providing the service requested, including education and training, and experience in services herein addressed.

Tab 6 – Approach and Methodology – (Weighted Value 15)

The Respondent's approach and methodology of how the services herein addressed will be provided.

Tab 7 – Value-Added Services – (Weighted Value 20)

Services relevant to this contract that are in addition to the duties as outlined in the Scope may be submitted in this section. The Respondent will provide Value Added Services as outlined in the Scope, including signing bonus, educational recognition, menu boards, academic competitions, scholarships.

Tab 8 – Financial Statement – (Required - but Non-Scored in this section)

Short list firms will be evaluated by the School Board's Finance Department. Scores will be included in the Oral Presentation Scores.

Tab 9 – Exception to Draft Contract (Attachment H) – (Weighted Value 5)

Include any/all exceptions taken to the content of the solicitation, the attached contract (Attachment "H") or legal agreement(s) or document(s) related to the solicitation.

Tab 10 – Conflict of Interest Form (Attachment "C") (Non-Scored)

All Respondents shall properly complete, have notarized and attach with their proposal the attached notarized disclosure statement.

Tab 11 – Addenda (Non-Scored)

Any addenda issued subsequent to the release of this solicitation must be signed and returned with the firm's proposal. **Failure to return signed addenda may be cause for the proposal to be considered non-responsive.**

Tab 12 – Confidential Materials (Attachment “E”, Exhibit “A”) (Non-Scored)

All materials that qualify as “trade secrets” shall be segregated, clearly labeled and accompanied by an executed Non-disclosure Agreement for Confidential Materials shall be submitted in this section.

Tab 13 – Revenue Earnings Schedule– (Weighted Value – 10)

Provide a list of services with detail of projected revenue by month, by year for the first five years grand total. Also provide projected revenue for the second five year term.

Tab 14 – Pricing (Weighted Value – 10)

Provide pricing proposal for every product to be offered as a result of this RFP, see example Attachment “J”.

Tab 15 – Additional Requirements Attachments (Non-Scored)

Drug Free Workplace Certification, Attachment “A”

Debarment Certification, Attachment “B”

Hold Harmless Certification, Attachment “F”

End of Section

5.0 ORAL PRESENTATION EVALUATION CRITERIA

Each Respondent will be ranked based on an analysis of the criteria required below. The adjectival scoring system shall be applied for the evaluation of the oral presentation/informal interviews. A score of 0 is the least favorable and a score of 4 is the most favorable in all sections.

The Proposer’s response will be scored by Committee members in accordance with the following scale:

- 0 = Unsatisfactory: Not responsive to the question.
- 1 = Below Minimum Standards: Responsive to the question but below acceptable standards.
- 2 = Marginal: Minimal acceptable performance standards and responsive to the question.
- 3 = Satisfactory: Above minimum performance, Effective and Responsive to the question.
- 4 = Exceeds Expectations for effectiveness and responsiveness to the question.

All presentations shall include at minimum:

Tab 1 – Ability, Capacity, and Skill of the Proposer – (Weighted Value 10)

The ability, capacity, and skill of the Respondent to be able to provide the services here in addressed

Tab 2 – Relevant Experience – (Weighted Value 10)

The experience of the Respondent with Florida School Boards and/or other political subdivisions as it relates to the required provision of commodities and services.

Tab 3 – Approach and Methodology – (Weighted Value 20)

The Respondent’s approach and methodology of how the commodities and services herein addressed will be provided. Address all Food Service , Community Relations and School Site’s needs.

Tab 4 – Value-Added Services – (Weighted Value 35)

Provide all details on all value-added services proposed to the District. List any relevant services that are in addition to the duties outlined in this solicitation.

Tab 5– Commission Schedule – (Weighted Value 20)

The fee proposed for the services as outlined in this Request for Proposal.

Tab 6 – Financial Analysis (Weighted Value 10)

Review of Financial Statements; supplied financial statements shall be reviewed and evaluated.

Tab 7 – List any relevant Revisions to the Attached Contract (“H) – (Weighted Value 20)

Tab 8 – Pricing (Weighted Value – 10)

Provide pricing proposal for every product to be offered as a result of this RFP.

End of Section

Solicitation Tentative Schedule

Date	Description
June 22, 2009	RFP Project Posted to SDOC Website: www.osceola.k12.fl.us/depts/Purchasing/Index.asp
July 1, 2009	None Mandatory Pre-Proposal Meeting Location: School District of Osceola County Purchasing Dept. Conference Room 817 Bill Beck Blvd., Bldg 1000 Kissimmee, FL 34744 Time: 9:00 AM
July 15, 2009	Question Deadline - due before 1:00 PM Location: School District of Osceola County Purchasing Department 817 Bill Beck Blvd., Bldg 2000 Kissimmee, FL 34744
July 22, 2009	Addenda released (if necessary) Addenda addressing questions received prior to the question deadline will be sent to Firms attending the Mandatory Pre-Proposal Meeting
August 5, 2009	Submittals Due before 2:00 PM Deliver to: School District of Osceola County Purchasing Department 817 Bill Beck Blvd., Bldg. 2000 Kissimmee, FL 34744
August 11, 2009	Committee to Evaluate Submittals Selection Committee Short List Meeting Location: Purchasing Conference Room Time: 7:30 AM Short Listed Firms Notified
August 12, 2009	Short Listed Firms Oral Presentations/Informal Interviews Oral Presentations before the Selection Committee Location: School District of Osceola County Purchasing Conference Room 817 Bill Beck Blvd., Bldg 2000 Kissimmee, FL 34744 Time: 7:30 AM - 4:30 PM
September 1, 2009	School Board Meeting: Approval to negotiate with Top - Ranked firm
October 6, 2009	School Board Meeting: Approval of Final Contract

Solicitation Date of Events Continued

Date	Description
To Be Announced	Deadline to deliver Certificate of Insurance and all documents required by contract to: Purchasing Department Linda Ciraldo, Senior Buyer 817 Bill Beck Blvd., Bldg 2000 Kissimmee, FL 34744
To Be Announced	Contract Start Date

End of Section

PROPOSAL FORM

TO: School District of Osceola County, Florida
Director of Purchasing and Warehouse
817 Bill Beck Blvd., Building 2000
Kissimmee, Florida 34744-4495

The undersigned hereby declare that [firm name] _____
_____ have carefully examined the specifications to furnish:

RFP-09-P-114-LC – BEVERAGE, EXCLUSIVE CONTRACT, AS PER THE ATTACHED PROPOSAL

For which proposals were advertised to be received **no later than 2:00 p.m., local time, August 5, 2009**
and further declare that [firm name] _____
_____ will furnish the Beverage Exclusive Contract
according to specifications.

Prompt Payment Terms: _____ % _____ Days; Net 30 Days

Do you accept electronic funds transfer (ETF)? YES _____ NO _____

Do you offer a discount for electronic funds transfer (EFT)? YES _____ % NO _____

The School District of Osceola County, Florida, reserves the right to reject any or all proposals, to waive
informalities, and to accept all or any part of any proposal as they may deem to be in the best interest of
the School Board.

I hereby certify that I have read and understand the requirements of this Request for Proposals No.
SDOC 09-P-114-LC and, that I as the respondent, will comply with all requirements, and that I am duly
authorized to execute this proposal/offer document and any contract(s) and/or other transactions required
by award of this RFP.

Company _____

Per _____ (Print name)

Signature _____

Address _____

City _____ State _____ ZIP _____

Telephone _____ Fax _____

E-Mail Address: _____

Dunn & Bradstreet # _____ Fed. I.D. # _____

END OF FORM

Attachment "A"

**DRUG FREE WORKPLACE
CERTIFICATION FORM**

In accordance with Florida Statute 287.087, preference shall be given to businesses with drug-free workplace programs. Whenever two or more proposals are equal with respect to price, quality and service are received by the State or by any political subdivision for the procurement of commodities or contractual services; a proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie proposals will be followed if none of the tied vendors have a drug-free workplace program. In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs and penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under contract a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1) notify employees that as a condition of working on the commodities or contractual services that are under contract, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo-contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Vendor's Signature

Attachment "B"

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION
INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

This certification is required by the regulations implementing *Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510 Participants responsibilities*. The regulations were published as ***Part IV of the January 30, 1989, Federal Register (pages 4722-4733)***.

***** BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON NEXT PAGE *****

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department of agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attached an explanation to this proposal.

RFP SDOC #09-P-114 LC,
Beverage Exclusive Contract

Organization Name

Names and Titles of Authorized Representative(s)

Signature(s)

Date

INSTRUCTIONS FOR DEBARMENT CERTIFICATION

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out herein in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department of agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", "voluntarily exclude", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions", without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a perspective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction may pursue available remedies, including suspension and/or debarment.

Attachment "C"
Conflict of Interest

I HEREBY CERTIFY that

1. I (*printed name*) _____ am
the (*title*) _____ and the duly authorized representative
of the firm of (*Firm Name*) _____
whose address is _____, and
that I possess the legal authority to make this affidavit on behalf of myself and the firm for
which I am acting; and,

2. Except as listed below, no employee, officer, or agent of the firm have any conflicts of
interest, real or apparent, due to ownership, other clients, contracts, or interests
associated with this project; and,

3. The business nor any authorized representative or significant stakeholder of the
business has been determined by judicial or administrative board action to be in
noncompliance with or in violation of any provision/contract of the School Board of
Osceola County, nor has any outstanding past due debt to the School Board of Osceola
County, Florida; and

4. This Submittal is made without prior understanding, agreement, or connection with
any corporation, firm, or person submitting a response for the same services, and is in all
respects fair and without collusion or fraud.

EXCEPTIONS (List)

Signature: _____

Printed Name: _____

Firm Name: _____

Date: _____

COUNTY OF _____ STATE OF _____

Sworn to and subscribed before me this _____ day of _____,
20____, by _____, who is personally known
to me or who has produced _____ as
identification.

NOTARY PUBLIC – STATE OF _____

Type or print name: _____

Commission No.: _____

Commission

Expires _____ (Seal)

Attachment "D"
**Notification Regarding Public Entity Crime and Discriminatory Vendor List Requirements
and Disqualification Provision**

A. Pursuant to Florida Statutory requirements, potential Respondents are notified:

287.133(2)(a) A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

287.133(2)(b) A public entity may not accept any bid, proposal, or reply from, award any contract to, or transact any business in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO with any person or affiliate on the convicted vendor list for a period of 36 months following the date that person or affiliate was placed on the convicted vendor list unless that person or affiliate has been removed from the list pursuant to paragraph (3)(f). A public entity that was transacting business with a person at the time of the commission of a public entity crime resulting in that person being placed on the convicted vendor list may not accept any bid, proposal, or reply from, award any contract to, or transact any business with any other person who is under the same, or substantially the same, control as the person whose name appears on the convicted vendor list so long as that person's name appears on the convicted vendor list.

287.134(2)(a) An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

287.134(2)(b) A public entity may not accept any bid, proposals, or replies from, award any contract to, or transact any business with any entity or affiliate on the discriminatory vendor list for a period of 36 months following the date that entity or affiliate was placed on the discriminatory vendor list unless that entity or affiliate has been removed from the list pursuant to paragraph (3)(f). A public entity that was transacting business with an entity at the time of the discrimination resulting in that entity being placed on the discriminatory vendor list may not accept any bid, proposal, or reply from, award any contract to, or transact any business with any other entity who is under the same, or substantially the same, control as the entity whose name appears on the discriminatory vendor list so long as that entity's name appears on the discriminatory vendor list.

B. By submitting a proposal, the Respondent represents and warrants that the submission of its proposal does not violate Section 287.133, Florida Statutes (2005), nor Section 287.134, Florida Statutes (2005).

C. In addition to the foregoing, the Respondent represents and warrants that Respondent, Respondent's subcontractors and Respondent's implementer, if any, is not under investigation for violation of such statutes.

D. Respondent should read carefully all provisions of 287.133 and 287.134, Florida Statutes



Attachment "E"
NON-DISCLOSURE AGREEMENT
For
CONFIDENTIAL MATERIALS
Reference #SDOC 09-P-114 LC

RETURN THIS FORM *ONLY* IF CONFIDENTIAL MATERIALS ARE BEING INCLUDED IN THE SUBMITTAL. PLEASE READ THE SECTION IN THE BID DOCUMENT TO DETERMINE IF THIS APPLIES. *THE CONFIDENTIAL MATERIALS WILL ONLY BE HANDED OUT TO THE SELECTION COMMITTEE ON THE DAY OF THE EVALUATION, THEREFORE, THE EVALUATION OF THIS MATERIAL WILL BE LIMITED TO THAT TIME ONLY.*

Respondent:

Address:

This Agreement is entered into as of the date of the last signature set forth below between the School District of Osceola County, a political subdivision of the State of Florida (the "District"), and the above named Respondent (hereinafter the "Respondent"). The School District of Osceola County and the Respondent are collectively referred to as the "Parties" and may be referred to individually as a Party.

RECITALS

WHEREAS, the Respondent possesses certain confidential trade secret materials that it wishes to disclose to the School District of Osceola County for the purpose of responding to a request for proposal or otherwise conducting business with the School District; and

WHEREAS, the School District desires to review such materials in order to evaluate the District's interest in negotiating and concluding an agreement for the purchase of certain products and services, or otherwise conducting business with the Respondent.

NOW THEREFORE, in consideration of the mutual promises and premises contained herein, the receipt and sufficiency of which are hereby acknowledged, the School District and the Respondent agree as follows:

1. Confidential Materials. The Respondent warrants and represents to the School District that the materials described in the attached Exhibit A (the "Confidential Materials") constitute trade secrets as defined by Section 812.081(1)(c), Florida

Statutes, or financial statements required by the School District for projects as defined in 119.071(1)(c), Florida Statutes. Subject to the terms and conditions of this Agreement, the School District agrees not to disclose such Confidential Materials to third parties.

2. Additional Materials. During the course of the negotiations or the business relationship with the School District, the Respondent may disclose additional confidential or trade secret information to the District in which case the restrictions and obligations on the use and disclosure of the Confidential Materials imposed by this Agreement shall also apply to such additional information to the extent permitted by Florida law. Any such additional confidential or trade secret information shall be duly marked and stamped "confidential" or "trade secret" prior to delivery to the School District, and shall be subject to this Agreement and Section 812.081(2), Florida Statutes, only if written receipt is provided by the School District acknowledging receipt of such materials.

3. Exclusions. For purposes of this Agreement, the term "Confidential Materials" does not include the following:

- (a) Information already known or independently developed by the School District;
- (b) Information in the public domain through no wrongful act of the School District;
- (c) Information received by the School District from a third party who was legally free to disclose it;
- (d) Information disclosed by the Respondent to a third party without restriction on disclosure;
- (e) Information disclosed by requirement of law or judicial order, including without limitation Chapter 119 Florida Statutes; or
- (f) Information that is disclosed with the prior written consent of the Respondent, but only to the extent permitted by such consent.

4. Non Disclosure by Respondent. In the event that the School District discloses confidential or trade secret information to Respondent, the Respondent agrees to not disclose such information to any third party or copy such information or use it for any purpose not explicitly set forth herein without the School District's prior written consent. Further, upon conclusion of discussions or business transactions between the School District and the Respondent, or at any time upon request of the School District, Respondent agrees to return such information (including any copies) to the School District.

5. Duty of Care. Each Party agrees to treat the other Party's confidential or trade secret information with the same degree of care, but not less than reasonable care, as the receiving Party normally takes to preserve and protect its own similar confidential information and to inform its employees of the confidential nature of the disclosing Party's information and of the requirement of nondisclosure. In the event either Party has actual knowledge of a breach of the nondisclosure requirements set forth in this Agreement, the Party acquiring such knowledge shall promptly inform the other Party and assist that Party in curing the disclosure, where possible, and preventing future disclosures.

6. Limitations of Florida Law. Respondent understands and agrees that its assertion that any item is confidential or a trade secret does not, in and of itself, render such material exempt from the Florida Public Records Law, Chapter 119 of the Florida Statutes, and that the School District's ability to prevent disclosure of confidential and trade secret information may be subject to determination by a Florida court that such materials qualify for trade secret protection under Florida law. In the event a third party makes a public records request for the Confidential Materials or other materials deemed by Respondent to be confidential or a trade secret, the School District may submit the materials to the court for inspection in camera as set forth in Section 119.07(1)(e) Florida Statutes. Respondent further understands that the School District may be required to disclose such information if directed by a court of competent jurisdiction.

7. Indemnification by Respondent. In the event of any litigation instituted by a third party to compel the School District to disclose such materials, Respondent shall, at its

sole cost and expense, provide assistance to the School District in defending the denial of the records request, and shall hold the School District harmless from any claim for statutory costs and attorneys fees arising from the School District's refusal to disclose such materials.

8. No Additional Obligations. This Agreement shall not be construed in any manner to be an obligation for either Party to enter into any subsequent contract or agreement.

9. Sovereign Immunity. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the School District beyond any statutory limited waiver of immunity or limits of liability, which has been or which may be adopted by the Florida Legislature, regardless of the nature of any claim which may arise, including but not limited to a claim sounding in tort, equity or contract. In no event shall the School District be liable for any claim or claims for breach of contract, including without limitation the wrongful disclosure of confidential or trade secret information for an amount which exceeds, individually and collectively, the then current statutory limits of liability for tort claims. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the School District, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

10. Notice. Whenever either Party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the Respondent designates the address set forth above as its place for receiving notice, and the School District designates the following address for such notice:

The School District of Osceola County, Florida
Director of Purchasing and Warehouse
817 Bill Beck Blvd., Building 2000
Kissimmee, Florida 34744

11. Governing Law. This Agreement shall be governed by the laws of the State of Florida, and venue for any action arising out of or relating to the subject matter of this Agreement shall be exclusively in Osceola County, Florida, or the Federal District Court for the Middle District of Florida, Orlando Division.

12. Respondent and the School District hereby expressly waive any rights either may have to a trial by jury of any civil litigation related to this Agreement for any litigation limited solely to the parties of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers the day and year as set forth below.

School District of Osceola County, Florida

Respondent

BY: _____

BY: _____

NAME: Michael A. Grego

NAME: _____

TITLE: Superintendent

TITLE: _____

DATE: _____

DATE: _____

ATTEST:

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Exhibit "A"
DESCRIPTION OF CONFIDENTIAL MATERIALS

Attachment "F"
HOLD HARMLESS AGREEMENT

**Return this page ONLY if claiming exemption from the
Worker's Compensation Insurance Requirement**

I am the owner of _____, an incorporated/unincorporated business operating in the State of Florida. As such, I am bound by all laws of the state of Florida, including but not limited to those regarding the workers' compensation law.

I hereby affirm that the above named business employs less than four employees, including myself, and therefore, the business is exempt from the statutory requirement for workers' compensation insurance for its employees.

On behalf of the business, and its employees, I hereby agree to indemnify, keep and hold harmless the School Board of Osceola County, Florida (the "School Board"), its agents, officials and employees, against all injuries, deaths, losses, damages, claims, liabilities, judgments, costs and expenses, direct, indirect or consequential (including, but not limited to, fees and charges of attorneys and other professionals) arising out of our contract with School Board, whether or not it shall be alleged or determined that the act was caused by intention or through negligence or omission of School Board or their employees, or of their subcontractors or their employees. The named business shall pay all charges of attorneys and all costs and other expenses incurred in connection with the indemnity provided herein, and if any judgment shall be rendered against the School Board in any action indemnified hereby, the named business shall, at its own expense, satisfy and discharge the same. The foregoing is not intended nor should it be construed as, a waiver of sovereign immunity of the SCHOOL BOARD under Section 768.28, Florida Statutes.

STATE OF _____
COUNTY OF _____

Sworn to and subscribed before me this _____ day of _____,
20____, by _____, who is personally
known to me or who has produced _____ as identification.

NOTARY PUBLIC – STATE OF _____
Type or print name: _____
Commission No.: _____
Commission Expires _____

(Seal)

Attachment "G"
STATEMENT OF NO BID

The School District of Osceola County, Florida
Purchasing Department
817 Bill Beck Boulevard, Building 2000
Kissimmee, Florida 34744-4495

Attn: Linda L. Ciraldo, Senior Buyer

RFP # SDOC 09-P-114 LC

We, the undersigned, have decided not to bid for the following reasons.

- _____ We do not handle products/services in this classification
 - _____ Opening date does not allow sufficient time to complete bid
 - _____ Cannot supply at this time
 - _____ Suitable but engaged in other work
 - _____ Quantity too small
 - _____ Cannot meet required delivery
 - _____ Equivalent not presently available
 - _____ Unable to meet specifications
 - _____ Unable to meet insurance/bond requirements
 - _____ Please remove our name from the vendor file for the commodity listed above
 - _____ Please remove our name from the School Board's entire vendor files
 - _____ Other reasons or remarks
-
-

We understand that if the "No Bid" letter is not returned by the bid due date, our name may be deleted from the School District of Osceola County's vendor list for this commodity.

Company Name _____

Authorized Signature _____

Print Name of Authorized Person _____

Email Address for Authorized Person _____

Telephone Number _____

Fax Number _____

Attachment "H"

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2009, by and between

THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA

(hereinafter referred to as "School Board"), a body corporate and political subdivision of the State of Florida, whose principal place of business is 817 Bill Beck Boulevard, Kissimmee, FL 34744

and

_____ [*name of vending machine operator*] (the "Operator").

Recitals

WHEREAS, the Operator is a _____ [sole proprietorship or partnership or corporation] with a principal office and place of business at _____ [address], City of _____, State of _____, and is engaged in the business of supplying beverages and installing and operating automatic vending machines and other equipment for the purpose of selling beverages to the public.

WHEREAS, the School District of Osceola County, Florida ("SDOC") has school campuses and other facilities located throughout Osceola County, Florida.

WHEREAS, the Operator desires to install vending machines and other equipment for the purpose of selling and dispensing beverages, and the School Board desires to grant to the Operator an exclusive license for this purpose on the terms and conditions contained in this Agreement.

THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, it is agreed as follows:

1. The recitals in the WHEREAS clauses above are true and correct and incorporated in this Agreement.

Grant

2. The School Board hereby grants to the Operator the exclusive right and privilege to operate vending services for dispensing beverage products on the premises of the schools and facilities identified on Exhibit A to this Agreement, and to sell at such locations the beverages identified in Exhibit B to this Agreement. Additional schools or facilities may be added by the School Board to Exhibit A during the term of this Agreement.

Installation of Machines

3. The Operator shall install on the premises of the facilities at locations specified by the site administrator machines for the sale of products as set forth in Exhibit B attached to this Agreement and incorporated herein by reference. The Operator shall have the right to remove any of the machines installed and to replace the machine with a machine of like quality and appearance.

Changes in Machines

4. The Operator shall have the right, with the approval of the site administrator, to furnish additional machines.

Ownership of Machines

5. All machines placed on SDOC premises by the Operator are and shall remain the property of the Operator. SDOC shall not permit anyone other than a duly authorized agent of the Operator to remove or in any way tamper with or change any of the machines. The Operator assumes the full risk and responsibility for any loss, destruction, or damage occurring to the vending machines.

Schedule of Commissions, Sponsorship Fee and Additional Consideration

6. (a) The Operator shall pay to the School a monthly commission computed on the gross receipts of all classes of goods sold each month, at the rate or percentage on each class of goods specified in Exhibit ____.
- (b) In consideration of the grant of exclusive rights in this Agreement, operator shall pay sponsorship fees as set forth in Exhibit ____.
- (c) Operator shall pay additional consideration as set forth in Exhibit ____.
- (d) If additional schools or facilities are added to Exhibit A, Operator shall pay the commission rates referenced in paragraph 6(a) above plus an additional __% for each additional school or facility.

Adjustments to Commission Schedule

7. Commissions shall not be adjusted unless otherwise agreed by the parties.

Records and Statements

8. The Operator shall at all times keep an accurate and true record of all inventories supplied to the vending machines on the premises of the School and of all sales and collections made in connection with the Operator's vending machine operation on the premises. The Operator shall permit the inspection of these records during normal business hours by the School or the School's authorized representative for the purpose of verifying the correctness of the accounts and of the amounts due to the School as commissions. The Operator shall submit to the School within 15 days following the end of each month a complete statement of all sales made during the month and of the commissions due to the School under Paragraph 5 of this Agreement. The Operator shall remit payment in full for commissions due along with the monthly statement.

Location of Machines

9. The School shall provide a suitable area on its premises for the placement of the vending machines provided under this Agreement and for use by patrons of the vending machines for eating or for rest and relaxation.

Maintenance and Service

10. (a) The Operator shall regularly inspect and service the vending machines covered by this Agreement and shall keep them operating and in good working order at all times. The Operator shall also maintain the machines in a clean and sanitary condition in accordance with all applicable federal, state, and local laws.

(b) The Operator shall refill the machines as often as is necessary to reasonably meet the demands of the patrons of the vending machines. The Operator shall supply the machines with fresh products and shall rotate the products so that older products will be purchased first. Stale or spoiled products shall be removed from the machines promptly upon discovery. In no case shall a product be left in a machine beyond the manufacturer's recommended last date for sale.

(c) The School shall furnish and bear the expense of regular janitorial service for the area in which the vending machines covered by this Agreement are located.

(d) The School shall supply suitable waste disposal containers for the convenience of users of the vending machines and of the adjacent eating areas, and shall provide and bear the expense of garbage removal and disposal services.

Utility and Service Connections

11. The School shall furnish and bear the expense of all necessary heat, lighting, hot and cold water, and electricity that may be required for the operation of the vending machines. The School shall provide continuous service to the machines and machine areas and shall not cause or permit the interruption of service except in the event of an emergency.

Electrically Operated Machines

12. All electrically operated vending machines furnished under this Agreement shall be equipped so as to provide thermal overload protection, and shall comply with any and all specifications, rules or regulations promulgated by the federal, state or local governments. In addition, all machines furnished under this Agreement shall bear the seal of approval of the Underwriters' Laboratories, Inc. All electrical equipment and wiring required to be installed to provide for the operation of the machines shall be installed in strict accordance with the applicable ordinances and regulations applicable to the School at its location.

Selection and Pricing

13. The School Board and the Operator shall agree upon the selection and pricing of products and merchandise offered for sale in the vending machines placed on SDOC premises. Selection of products must comply with the Wellness Policies of the School Board and the Memorandum of Understanding among The Alliance for a Healthier Generation, The American Heart Association, The William J. Clinton Foundation, The American Beverage Association, Cadbury Schweppes Beverages, a subsidiary of Cadbury Schweppes plc, The Coca Cola Company and PepsiCo, Inc., and in case of conflict or ambiguity, the stricter requirements shall apply. Operators shall also comply with all School Board and facility rules relating to the operating hours of the machines. The site administrator or his designee may, from time to time, make suggestions to the Operator relating to the selection, stocking, or pricing of goods offered or to be offered in its machines.

Service Personnel

14. (a) The Operator's service personnel shall at all times be dressed in clean uniforms and shall observe all regulations in effect on the School's premises.
- (b) The Operator acknowledges that its employees and agents will behave in an appropriate manner while on the premises of any school facility and shall at all times conduct themselves in a manner consistent with School Board policies and within the discretion of the premises administrator (or designee). It is a breach of the Contract for any agent or employee of the Operator to behave in a manner which is inconsistent with good conduct or decorum or to behave in any manner that will disrupt the educational program or constitute any level of threat to safety, health, and well being of any student or employee of the School Board. The Operator agrees to immediately remove any agent or employee if directed to do so by the premises administrator or designee. School shall have complete discretion as to the persons permitted to enter on to its campus.
- (c) The Operator agrees to comply with all requirements of sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, shall successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by the School Board in advance of the Operator or its personnel providing any services under the conditions described in the previous sentence. The Operator shall bear the cost of acquiring the background screening required by section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to the Operator and its personnel. The parties agree that the failure of the Operator to perform any of the duties described in this section shall constitute a material breach of this agreement entitling the School Board to terminate immediately with no further responsibilities or duties to perform under this agreement. The Operator agrees to indemnify and hold harmless the School Board, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from Operator's failure to comply with requirements of this section or with sections 1012.32 and 1012.465, Florida Statutes.

Compliance With Laws

15. (a) Both the Operator and the School Board shall comply with all applicable federal, state, or local laws relating to the sale of food and beverages through vending machines. In particular, the Operator shall obtain any permits or licenses post or display any stickers or notices, maintain any records, submit any reports, and pay any taxes required by law for the operation of vending machines.
- (b) The Agreement shall be governed by and construed under the laws of the state of Florida and the United States of America. Osceola County, Florida shall be the proper place of venue for all suits brought under the Agreement. Any legal proceedings arising out of or in connection with the Agreement shall be brought in the state courts of Osceola County, Florida with subject matter jurisdiction.
- (c) The School Board does not agree to arbitrate in any manner whatsoever any issue arising out of the Agreement. The School Board does not agree to pay attorneys' fees to the prevailing party in connection with any dispute arising out of this Agreement.

Fees and Taxes

16. The Operator shall be responsible for and shall pay all state, county, and city license fees and sales or other taxes that may be imposed on the sales of articles through its vending machines. The Operator shall also be responsible for maintaining any records and submitting any returns or receipts required in connection with any fees or taxes.

Insurance and Indemnity

17. (a) The Operator shall procure and maintain in full force and effect during the term of this Agreement the following policies of insurance:

- (1) Comprehensive Bodily Injury, Property Damage, and Liability Insurance covering losses caused by the operation of automobiles, trucks, or other vehicles with limits of \$1,000,000.00 for injury or death of one person and \$2,000,000.00 for injury or death of two or more persons in any one accident, and \$ 1,000,000.00 for property damage in any one accident, and also including bodily injury and property damage or loss caused by independent contractors or by agents of the Operator.

- (2) Product Liability Insurance with minimum limits of \$1,000,000.00 for injury or death of one person and \$1,000,000.00 for each accident or occurrence to cover the liability of both the Operator and the School and the agents and employees of each in connection with the operation of the vending machines or the sale of beverages.

- (3) Workers' Compensation Insurance as prescribed by the laws of the State of Florida and Employers Liability Insurance for limits of not less than \$1,000,000.

- (b) In addition, the Operator agrees to indemnify and hold the School harmless from any claims arising out of the actions of the Operator or its agents or employees in installing, removing, or servicing any of the vending machines covered by the Agreement or in carrying on any other activities on the premises of the School.

Term

18. This Agreement shall be for a term of five years to begin on the date this Agreement is approved by School unless earlier terminated in accordance with the terms of this Agreement.

Termination

19. Termination for Convenience. The School Board, by written notice to the Vendor, may terminate the Contract in whole or in part when the School Board determines in its sole discretion that it is in the School Board's interest to do so. The Vendor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Vendor shall not be entitled to recover any cancellation charges or lost profits.
20. Termination for Cause. The School Board may terminate the Contract if the Vendor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. The Vendor shall continue work on any work not terminated. Except for

defaults of subcontractors at any tier, the Vendor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Vendor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Vendor and the subcontractor, and without the fault or negligence of either, the Vendor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Vendor to meet the required delivery schedule. If, after termination, it is determined that the Vendor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the School Board. The rights and remedies of the School Board in this clause are in addition to any other rights and remedies provided by law or under the Contract.

Removal of Machines

21. Upon termination of this Agreement the Operator shall vacate schools and facilities of School Board and shall remove all vending machines and vending machine products that have been placed by it on the premises. The Operator shall, however, to the extent possible, restore the premises to their condition prior to the installation of the vending machines. In the event that the Operator fails to remove its machines and products within ten days after termination of the Agreement, the School Board may have them removed and stored at the expense of the Operator.

Damages for Breach

22. In the event that this Agreement is terminated due to a breach or default by the Operator, the School Board shall be entitled to receive an amount for lost commissions. The amount shall be calculated by multiplying the average monthly commissions earned up to the time of breach by the number of months remaining under the Agreement at the time of termination, prorated to account for any partial monthly period.

Public Records Law

23. The Contract and Addendum are subject to and governed by the laws of the state of Florida which generally make public all records or other writings made or received by the parties. The parties agree to comply with the Public Records and Sunshine Laws.

Independent Operator Status

24. It is the intention and understanding of the parties that the Operator is an independent Operator under this Agreement and that no agency or employment relationship is created between the parties by this Agreement. It is understood and agreed that nothing contained in the Contract shall be deemed or construed as creating a partnership or joint venture between the parties or any third party, or because either party to be responsible in any way for the debts and obligations of the other party.

Notices

25. Unless otherwise provided, all notices shall be in writing, and may be served by (a) depositing the same in the United States mail addressed to the party to be notified, postpaid, and registered or certified with return receipt requested, (b) by delivering the same in person to such party, by (i) personal delivery, or (ii) overnight courier, or (c) telecopy or facsimile transmission provided that a copy is sent on the same day, by 5 p.m., by either of the methods described in (a) or (b). All notices shall be given to the addresses set forth below. Notices delivered personally, by overnight courier or delivered

by facsimile, or telecopy shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

School Board: Superintendent
School District of Osceola County
817 Bill Beck Boulevard
Kissimmee, FL 34744
Telecopy:

Operator:

Telecopy:

Either party may change its address for the purpose of receiving notice by giving the other party written notice of the change.

Alterations in Facilities

- 26. The School Board agrees to notify the Operator of any alterations in the premises that may affect the operation of the vending machine service or that will affect any of the areas covered by this Agreement.

Assignment

- 27. This Agreement shall not be assignable by the Operator without the prior written consent of the School Board. Subject to the foregoing limitation, this Agreement shall inure to the benefit of and be binding on the successors and assigns of the respective parties.

Entire Agreement

- 28. This Agreement constitutes the entire agreement of the parties with respect to the subject matter, and supersedes any and all other agreements, understandings, statements, or representations, either oral or in writing.

INTENDING TO BE BOUND, the parties have executed this agreement on the date first written above.

THE SCHOOL BOARD OF OSCEOLA COUNTY, FLORIDA

By: _____
John McKay, Chairman

Date Approved: _____

Attest: _____
Michael A. Grego, Ed. D, Superintendent

OPERATOR

_____ [name of operator]

By: _____ [signature]

[typed name and title]

Attachment "I"

THE NATIONAL SCHOOL BEVERAGE GUIDELINES PROVIDE THE FOLLOWING BEVERAGES:

Elementary Schools

- Bottled water
 - Up to 8 ounce servings of milk and 100% juice
 - Fat-free or low-fat regular and flavored milk and nutritionally equivalent (per USDA) milk alternatives with up to 150 calories / 8 ounces
 - 100% juice with no added sweeteners, up to 120 calories / 8 ounces, and with at least 10% of the recommended daily value for three or more vitamins and minerals
-

Middle School

- Same as elementary school, except juice and milk may be sold in 10 ounce servings
 - As a practical matter, if middle school and high school students have shared access to areas on a common campus or in common buildings, then the school community has the option to adopt the high school standard
-

High School

- Bottled water
- No- or low-calorie beverages with up to 10 calories / 8 ounces
- Up to 12 ounce servings of milk, 100% juice and certain other drinks
 - Fat-free or low-fat regular and flavored milk and nutritionally equivalent (per USDA) milk alternatives with up to 150 calories / 8 ounces
 - 100% juice with no added sweeteners, up to 120 calories / 8 ounces, and with at least 10% of the recommended daily value for three or more vitamins and minerals
 - Other drinks with no more than 66 calories / 8 ounces
- At least 50% of non-milk beverages must be water and no- or low-calorie options

EXHABIT "B"

RESPONDENT'S PROPOSAL AND AMENDMENTS

(TO BE ADDED)