

Food Distribution - U.S.D.A Warehousing Program
Contract #04PSX0033

This Contract (the "Contract") made as of the August 25th, 2004, by and between, SYSCO Food Services of Connecticut (the "Contractor,") with a principal place of business at 100 Inwood Road, Rocky Hill, CT 06067, acting by Allan Faneuf, its Vice President of Multi-Unit Sales and the State of Connecticut, Department of Administrative Services/Procurement (the "State"), with a principal place of business at 165 Capitol Avenue, Hartford, Connecticut, acting by Jim Gotta, its Contract Specialist, in accordance with Sections 4a-2(2), 4a-51, 4a-57 and 4a-59 of the Connecticut General Statutes.

Now therefore, in consideration of these presents, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Contractor and the State agree as follows:

1. **Term of Contract:** The Contract will be in effect from October 4th, 2004 through October 3rd, 2008. The State may extend this Contract for two (2) one-year terms or parts thereof. The warehousing and distribution of United States Department of Agriculture (U.S.D.A.) commodities portion of this contract will be for four years, commencing October 4th, 2004 until October 3rd, 2008, which conforms to Federal regulations (FSN Instruction 709-5). For the U.S.D.A., the State can add two (2), one-year extensions to the length of the U.S.D.A. warehousing and distribution portion of the contract.
2. **Description of Services:** Contractor shall provide the following to all using state agencies and political sub-divisions, ("Contract Users") including cities, towns, public schools, and qualified not-for profit organizations. While state agencies are required to use this contract for specified services, political sub-divisions use of this contract is optional.
 - a. Food Distribution to include the following sub-categories: Perishables (fresh produce), Dairy (non-milk purchases), Canned and dried food, Meats, Poultry, Seafood, and Frozen Foods.
 - b. Warehousing and Distribution of U.S.D.A commodities.

The State's current Dairy Contract (#03PSX0297) and Bakery Contract (#01PSX0209) are separate from this Contract. The Contractor will not be allowed to sell dairy and bakery products that are included in the aforementioned contracts. If the contractor sells or provides items covered by the above referenced contract, it will be deemed a breach of this contract and the State at its sole discretion may cancel this contract at no cost to the State.

Merchandising Services: SYSCO Corporation and its Affiliates, including the Baugh Supply Chain Cooperative (BSCC), perform value-added services for suppliers of SYSCO* brand and other Products over and above procurement activities typically provided. These value-added services include regional and national marketing, freight management, consolidated warehousing, distribution, quality assurance and performance based product marketing. SYSCO Corporation and its Affiliates may recover the costs of providing these services and may also be compensated for these services and consider this cost recovery and compensation to be earned income. Receipt of such cost recovery or earned income does not reduce Cost and does not

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diminish SYSCO's commitment to provide competitive prices to its customers. Such cost recovery and compensation for value added services, will be solely from the Contractor's manufacturers and will not be billed to the State of CT and it's Contract Users."

3. Food Distribution - General Service Requirements:

A) Delivery

The Contractor shall service all State Agencies and Political Sub-divisions within the State of Connecticut and will establish a delivery schedule for each Contract User Location. Contractor will use reasonable, good faith efforts to make on-time deliveries.

- There may be multiple drop points within each delivery location. As the contract progresses, we expect the number to increase and to include additional Connecticut cities, towns, school boards and not-for profit organizations.
- Delivery points shall be designated by the ordering entity, which includes placement in the specific food preparation and/or storage areas and may be by specific receiving location, storeroom or dock or food preparation/storage areas. Contractor should be aware that there might be multiple inside deliveries to multiple locations within a building as well as dock delivery for the same building. Example: The Department of Social Services (DSS) and the Department of Revenue Services (DRS) are both located at 25 Sigourney Street in Hartford. A delivery may require that two (2) cases of food items be brought to the 12th floor, one (1) case each to opposite sides of the building, five (5) cases to the 6th floor, fifteen (15) cases to the 3rd floor and ten (10) cases to the loading dock.
- All orders shall be delivered to the specified destination within 24 – 48 hours after receipt of order, with a 98% fill rate, or in accordance with the pre-scheduled delivery schedule agreed upon between Contractor and Agency (example, orders due 3 PM Tuesday for 3 PM Thursday delivery).
- In the event of an emergency, a delivery response time of 24 hour or less may be required.
- All orders/pieces shall be FOB destination, freight included (delivered to the Contract Users). There shall be no additional pallet charges or additional charges for inside delivery.
- All orders/pieces shall be labeled and packaged adequately to assure safe handling and proper delivery.
- The Contractor shall be prepared to supply a list of driver's names and any additional background information necessary, to the Department of Correction (DOC) and Department of Children and Families (DCF) – Connecticut Juvenile Training School (CJTS), and other secure facilities, through DAS, for security clearance into their state facilities. The Contractor's vehicles are

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subject to inspection upon entering and leaving all DOC, CJTS, and other secure Contract User facilities. Please refer to the section titled “Contract User Specific Clauses” on page 21 of the RFP to review procedures at secure facilities.

B) Warehousing

- The Contractor must have and maintain a Contractor-operated warehouse(s) that can provide for the delivery/storage of all items covered by this contract.
- The State reserves the right to inspect the Contractor’s facility at any time, without notice, during the contract term.
- The contract shall ensure the safe and sanitary handling of food/products contained in the warehouse in accordance with standard warehouse procedures.

C) Purchase Orders

Purchase Orders will be issued by each specific Contract User for products and services related to this contract. Contractors shall not perform services without being issued a purchase order. Questions regarding purchase orders should be directed to the issuing Contract User. The State uses an internet based E-Procurement ordering system (Peoplesoft), known as Core-CT. Supplier shall provide functional data files to the State as described in the supplier kit at the following hyperlink:
http://www.das.state.ct.us/Purchase/Info/supplier_kit.asp

Additional information for ordering products and services:

- For those users that do not have internet access, the Contractor shall also offer a solution that utilizes dial up capabilities into the Contractor’s computer system though a modem. Contractor will provide internet-based direct order entry system, called “eSYSCO” for Non-State agencies. Non-state Agencies will be responsible for any internet access fees.
- The Contractor shall be capable of accepting orders via facsimile, manually and through EDI. The Contractor shall provide, at their own expense, an order form and food commodity online catalogs, for all items subject to this contract. The catalog shall include a short description of the item and stock numbers for all contract items—both contract list and cost plus items.
- The State will meet with the Contractor to determine the exact content and format of the food commodity catalog. The food order form will include, a header portion with space provided for the Purchase Order Number, Release Number, Delivery Address, Contact Name and Phone number, signature; an ordering portion detailing stock number, quantity to be ordered column, unit of measure and description of the item.

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D) Invoicing/Monthly Statement

The Contractor shall issue a single invoice per purchase order to each Contract User at the time of delivery. Moreover, the Contractor shall provide a monthly statement to each Contract User that summarizes the Contract User's invoices for the calendar month. Invoice's are to be itemized with, but not limited to:

- Dollar amount
- Date
- Type of products and services provided the Contract User for the billing period
- Contract User name
- Product description
- Quantity purchased
- Unit price
- Extended price
- Invoice number
- Purchase order number

E) Minimum Order Quantities – Delivery Charge

State Contract Users must place an order of at least \$450.00 per delivery location (i.e. campus/facility) to the Contractor in order to avoid paying a \$75 delivery charge. Multiple invoices at the same facility shall be combined to meet the minimum order of \$450.00. Additionally, Contract Users with up to two (2) drop locations within a campus setting must meet the \$450.00 minimum order when the invoice totals are combined. Should the Contract User request more than two (2) separate drops (truck has to back up to more than two loading docks) at a facility, the Contract User will be subjected to the \$450.00 minimum order should they be unable to meet the requirement stated above.

Political sub-divisions will be able to purchase food items off of this contract. The minimum order quantity for political sub-divisions, schools, towns, municipalities, and not-for-profit organizations is \$1,500 (not including the USDA commodity products). Should a Political Subdivision fall below the \$1,500 order amount, the prime food Contractor will assess a delivery charge of \$75.00 to each order under \$1,500.

F) Discrepancies

The Contractor shall resolve all order discrepancies (i.e. shortages, overages, breakage, incorrect items) within five business days from notification. If the discrepancies cannot be resolved in that time, then the Contractor shall take all steps that the State or Contract User deems to be reasonably necessary or appropriate, to resolve the discrepancies.

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G) Returns

Products returned because of quality problems, duplicated shipments, outdated product, etc. shall be picked up by the Contractor after Contract User notification and replaced with the specified products or the Contract User shall be credited/refunded for the full purchase price. Perishables (including fresh produce), meat, poultry, seafood, and dairy items must be replaced within 24 hours or next business day.

Products ordered in error by Contract Users must be returned for credit within 48 hours from receipt. Drivers must accept product returns due to Contract User error. Products must be in re-sellable condition (original container unused). The Contractor shall not charge for such returns. There shall be no restocking fees to Contract Users.

When requested, the Contractor shall make provisions to accommodate the return of beverage containers with deposits and to provide credit and appropriate accounting to each Contract User. Contractor will arrange for a sub-contractor to recycle containers sold only by SYSCO Food Service of CT, LLC to the State Agencies.

H) Civil Preparedness Emergency, Title 28 Section 28-9:

The Contractor's emergency plan must comply with the Department of Homeland Security guidelines. In the event of serious disaster, enemy attack, sabotage or other hostile action or in the event of the imminence thereof, the Governor may proclaim that a state of civil preparedness emergency exists, in which event the Governor may personally take direct operational control of any or all parts of the civil preparedness forces and functions in the state.

Emergency Plan: The Contractor is required to have an emergency back up plan in place in the event of power outages, work stoppages, computer failures, shortages, or any other emergency situation. The State will work with the Contractor to insure the safety of the Contractor's employees and integrity of the Contractor's equipment.

I) Food Advisory Committee

DAS will facilitate and maintain the Advisory Committee for items covered by this Contract. The Committee will generally meet on the first Thursday of every month to discuss and set standards and specifications. The Committee will also evaluate food and related items and view presentations by brokers, manufacturer's representatives, etc.

The Contractor shall designate a Key Contact Person who shall be required to attend all Advisory Committee meetings, unless otherwise notified. The Contractor's designee shall be prepared to discuss such topics as, but not limited to: new items, standards, current industry trends. The Contractor's designee shall have no voting privileges.

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J) Testing New Items

Some new product offerings may be lab tested as part of the product evaluation process. In such cases, the broker's or manufacturer's representatives shall pay the laboratory costs for any required test. The Contractor shall be responsible for laboratory costs necessitated by complaint (i.e., determination of wholesomeness, etc.). The State will choose and use an independent laboratory for all testing resulting from this contract.

K) Audit

The Contractor shall allow for the State to audit contracted items monthly or as needed. The audit will be based on a review of Cost Plus items and high-volume, Contract List Items as determined by the State. Typically, the audit shall consist of ten (10) items at a minimum; however, the State reserves the right to audit any number of contracted items. Contractor will be notified in advance, whenever possible, in order to have back up documentation ready for the audit.

The audit will be performed at 100 Inwood Road, Rocky Hill, Connecticut. In addition, all pertinent records will be made available at 100 Inwood Road, Rocky Hill, Connecticut.

The audit shall consist of, but not be limited to, a review of product cost at time of receipt by the contractor, contractually agreed upon mark-up and final delivered cost to the end user. Final end user cost shall not exceed 6.7% of product cost and shall be determined by multiplying the vendors cost by 1.067, please refer to Section O.

L) Quality Control Program

United States Department of Agriculture, Food Safety Inspection Service, Office of program Evaluation, Enforcement and Review may target federally inspected meat and poultry products for; fat content, added substances, added water, for species but not limited to (pork being labeled as veal, pork labeled as lamb), nitrates, sulfides. All products and quality control programs shall meet or exceed USDA standards.

M) Lock Out Items

The State may require that certain items contained in the Contractor's Cost Plus offering be locked out and therefore are unavailable for purchase. Lock out items will be determined by the State, and maybe amended as needed.

Items on the current Dairy Contract (#03PSX0297), Bakery Contract (#01PSX0209), and the Janitorial Supplies Contract (#04PSX0028) are considered lock out items for the food distribution contract.

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N) Not-in-Stock (NIS) Items

Unless an alternative item(s) is acceptable to the Contract User, the State or Contract User shall have the right to choose an alternate source or provider, should the Contractor have an item or product that is NIS or unacceptable. It will be at the State and Contract User's discretion whether a NIS is backordered. The Contractor shall communicate with the affected Contract User any NIS items and comparable substitutes prior to delivery/invoicing.

Contractor is expected to adhere to all Federal, State, and local statutes and regulations governing food distribution.

O) Pricing – High-Volume and Cost Plus Food Items

All food items on this contract are Cost Plus items. As part of the Contractor's monthly reporting requirements, the total price and the total quantity for the top 100 items (by purchased dollar amount) will be shown. Additionally, for the 100 highest spend items, the total price will be broken down into two components to arrive at the total price to the State: 1) delivered invoice price to the Contract User, and 2) cost-plus mark-up. This will be the basis for the monthly reporting. DAS and the Contract Users shall be able to augment the reporting requirements to better understand the overall purchases to the State through this contract.

The cost plus mark-up percentage for all food items will be 6.70%, based on the four-year agreement. The example below details how the Cost Plus percentage is calculated:

1)	Delivered invoice price to the Contractor:	\$25.00
2)	Freight to Contractor	<u>+2.00</u>
	Total Cost	\$27.00
3)	Cost Plus mark-up (6.70%): ($\$1.067 \times \27.00)	<u>\$ 1.81</u>
4)	Total delivered price to the Contract User:	\$28.81

Definition of Cost: Cost may be defined as the cost of the product to the Contractor as shown on the Last Invoice Price, plus Applicable Freight charges to the Contractor. Last Invoice Price is defined as the cost of the product as shown on the last invoice for such product issued to the Contractor by the product vendor, BSCC * or any Sysco subsidiary.

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Applicable Freight Charges may include the following:

- Common or contract carrier charges by product vendor or a third party.
- Charges billed by Alfmark. Freight for any product will not exceed the rate charged by nationally recognized carriers operating in the same market for the same type of freight service.
- Charges billed by Alfmark for shipments back hauled on trucks owned or leased by Contractor.
- Transfer charges for movement of product from any of Contractor's forward warehouses.

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- Fuel Surcharges.
- Cross-dock charges and similar charges necessary to ship and receive product to the Contractor.

* BSCC stands for Baugh Supply Chain Co-operative. It is another name for SYSCO's purchasing system and is named after the founder of the Company, John Baugh.

** 145 locations are considered Sysco subsidiaries

Freight Definition:

Freight charges are handled in one of the following manners:

1. Delivered Cost – Product manufacturer delivers product to the Contractor and invoices Contractor one price that includes the freight charge to move the product from the manufacturer's facility to the Contractor's warehouse. In some instances, the manufacturer may include a fuel adjustment which may appear as a separate line item. (Delivered Cost.)

At inception of the Contract, approximately 80% of the manufacturer invoices are handled as Delivered Cost.

2. FOB/Freight Charge Cost – In some instances, a manufacturer either does not have the ability to deliver products that they produce, or a situation might arise that requires the Contractor to make arrangements for pickup and delivery of product with an alternative freight service. Should this be the case, the Contractor will survey alternatives to determine the most competitive method of transporting the product from the manufacturer's warehouse to the Contractor's warehouse.

In above case, the Contractor would have an invoice from the product manufacturer for the cost of producing the product (FOB cost) and another invoice for the cost of delivering the product to the Contractor (Freight Charges.)

Lumping charges will not be levied in either of the above options.

There shall be no fuel adjustments/surcharges for products delivered from the Contractor's warehouse to the Contact Users.

The State reserves the right to insure reasonableness of freight charges based upon common carriers published rates charged for similar deliveries. The Contractor may be required to demonstrate the method of freight chosen, either direct or backhaul, is the best value for the state.

Less than full case quantities ordered shall incur an additional charge of 3.00%, with the exception of spices.

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All additional discounts will be applied in the form of a credit memo to the Contract User from the Contractor. Each credit memo, when entered into CORE-CT, will decrease the next payment made by the Contract User to the Contractor.

On expiration date of this contact, if no outstanding invoices are pending, credit due to the Contract Users will be refunded in the form of a check to:
Treasurer, State of Connecticut.

P) Price Adjustments and Frequency of Pricing Updates for Food Sub-Categories:

During the term of the contract, the contract pricing will be updated weekly for Perishables, Dairy, Meats, Poultry, and Seafood and monthly for Canned/Dried and Frozen Foods. The Contractor will send weekly, via e-mail, the Urner Barry Market report to the States Food Advisory Members for references only.

It will be the Contractor's responsibility to provide the State with monthly reports and to show the delivered invoice cost to the Contract User for all items that require price adjustments – both increases and decreases. The State may request additional reports as stated in Section K.

Pricing adjustments will be based on product landed cost and contractually agreed upon mark-up. Contractor must show documented proof of price adjustments for both increases and decreases. Failure to provide DAS with documentation for price variances of items could result in actions against the Contractor or grounds for contract termination. The reporting mechanism for verification of price adjustments between the State and the Contractor will be the audit clause referenced in Section K of this contract.

Q) Drop Shipment (Spot Buy) Incentives

The State may utilize drop shipment, spot buy, or trailer load incentives when a Contract User is able to benefit from either the Contractor or a third party food vendor. To qualify for the drop shipment, spot buy, or trailer load incentive, the order must be greater than \$5,000. The Contractor shall have the right of first refusal to fulfill the Contract User's request. The Contractor will have 48 hours, from when a Contract User initiates a drop shipment, spot buy, or trailer load request, to fulfill the request. Should the Contractor be unable to fulfill the request, the Contract User shall be able to initiate a drop shipment, spot buy, or trailer load order with a third party food vendor. The third party food vendor will transport the food order directly to the Contract User location, bypassing the Contractor from physically handling the food order. The Contractor will not be responsible for actually receiving the drop shipment at its warehouse or transporting it to the Contract User facility. The Contractor's responsibility is to process the administration and billing of the drop shipment order.

To process the drop shipment, spot buy, or trailer load, the Contractor will add a 3.25% mark-up percentage added to the delivered invoiced price of the order, which is in reference to the third-party food vendor's delivered invoiced price. The drop shipment

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payment to the Contractor will be calculated in the same manner as the standard cost plus mark-up percentage calculation described in sub-section O. For the Contract User to benefit from the lower mark-up percentage, payment must be made to the Contractor within 21 days AFTER RECEIPT OF INVOICE TO THE CONTRACT USER (after receipt of order). Failure of the Contract User to make the payment in 21 days AFTER RECEIPT OF INVOICE TO THE CONTRACT USER will result in the drop shipment, spot buy, or trailer load mark-up percentage being 5.25%. (Note: spot buy invoices are not entitled to any additional incentives or discounts).

R) Catch Weights

Catch weight items shall be ordered by the box, which is industry standard. The total pricing will be determined by the cost per pound multiplied by the total weight of the product. Contract Users will be required to place orders by the box.

Example:

Top round roast (\$3.00/pound) x 50 pounds = \$150 (total order price per box)

S) Pricing

Pricing shall be held from Tuesday through delivery on the following Monday. Monthly items will change the first calendar day of each month.

Examples:

- Contract User orders product on Wednesday for delivery on Monday – pricing will be held.
- Contract User orders product on Wednesday for delivery on Tuesday – pricing will change according to market fluctuations – both increases and decreases.

T) Average Monthly Drop Incentives

Contractor offers Contract Users an incentive to increase the size of their deliveries and to reduce the frequency of deliveries. The following schedule applies for Contract Users that place large orders:

Contract User's Average Drop During the Month	Discount to Cost Plus, Mark-Up Percentage
\$10,000 - \$19,999.99	0.25%
\$20,000 +	0.50%

Invoices not paid net 45 days will be ineligible for this incentive. Contractor shall apply this discount to the Contract User in the form of a credit.

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Eligibility for incentive method; the total amount of receipts divided by the total deliveries – excluding deliveries made due to not in stock (NIS’s), not in truck (NIT’s) or substitutions equal dollar drop incentives. The receipts of the NIS’s, NIT’s and or replacement/substitutions shall count on the total dollar amount of receipts.

U) Small Cans

Contract Users will be able to place orders for small cans (e.g. #303 cans) from the Contractor. Contract User must agree to purchase at least 20 cases per month, or average 5 cases per week, per line item. Contract Users shall provide the Contractor with a 21-day lead time to order small cans. Contractor will have the right of first refusal to fulfill the Contract Users’ request for small cans.

V) Contractor Branded Products

Contractor shall provide the State and its Contract Users an incentive to use the Contractor’s branded products (i.e. SYSCO private label products) as a percentage of total sales volume (dollar basis) based on the following schedule:

SYSCO Branded Products as a Percentage of Total Food Purchases	Rebate Percentage Applied to SYSCO Branded Purchases
40.00 – 50.00%	0.25%
50.01 – 60.00%	0.50%
60.01+%	0.75%

Rebate incentive will be based on the using Contract User’s quarterly usage of SYSCO branded products, provided that the Contract User pays the Contractor net 45 days after receipt of invoice at the State. Rebate incentive will be paid quarterly to the qualifying Contract Users in the form of a credit. Qualifying credits will be sent out 60 days from end of each calendar quarter

W) Manufacturer’s Discounts and Rebates

Contractor shall utilize its network of brokers and manufacturers to receive any/all of the various manufacturer endorsed coupons that are offered to Contract users.

- As these coupons and rebates become available, Contractor will put together a list of the various offers and send it to the State and the Food Advisory Committee. This will enable those Contract Users to review the coupon "offers" to see if they can gain any additional savings on products they are currently purchasing before the coupon/rebate expires.
- Contractor will track all the purchases, by individual Contract User, and provide the State with a tracking report of purchases during the eligible period. This tracking report will, in most cases, be accepted as proof of purchase by the manufacturer offering the "deal." At that point, it will be the responsibility of the

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Contract User to fill out the redemption portion of the coupon, enclose the tracking report the Contractor provided and put it in the mail.

- Contractor shall be responsible to credit back dollar amount to Contract User in compliance with the State’s regulations.
- Contractor shall provide a list of rebates, discounts, and coupons and its dollar impact, to the Contract User, as part of its monthly reporting requirement and at the monthly Food Advisory meetings.

X) Payments

While the standard payment terms are net 45 days after receipt of invoice to the Contract User, the Contractor offers the State and its Contract Users a prompt payment discount based on the following schedule:

Payment Terms	Additional Discount %
Invoice Paid in 10 days	0.50%
Invoice Paid in 15 days	0.25%

The additional discount would reduce the standard cost plus mark-up percentage of 6.70% by the discount above, based on the payment term.

SYSCO must receive payment in full from Political Subs within 30 days from receipt of invoice. In the event that payment in full is not received in 30 days, SYSCO reserves the right to place the account on credit hold and suspend future deliveries. Deliveries to Political Subdivisions are to be made at the sole discretion of SYSCO (generally, within one week of the order).

Y) Payment Options

The Contract Users pay by check, electronic funds transfer, or with the State's authorized procurement (credit) card. The Contractor must be a Comptroller approved service provider entitled to be paid using the procurement card and must be able to accept the State's credit card.

Z) Product Availability

The Contractor must agree that there will be no cancellation of products without an equal and acceptable replacement of products approved by the Contract User or State during the term of the contract. A Contractor’s discontinuation of any products must be communicated to the State and Contract Users by the Contractor in writing within five (5) business days. In such instances, Contractor agrees to work with the State and Contract Users to identify and implement alternative options that maintain or reduce costs associated with the replacements.

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AA) Substitutions

The Contractor shall not make any unauthorized substitutions, unless or until the Contractor has successfully communicated with the Contract Users and has received the agency's approval for substituting the contract product for another product.

AB) Contact Information and Customer Service

The Contractor shall have a Connecticut-based customer service representative with a local Connecticut telephone number, a toll free (800) number, or agree to accept collect calls. A representative shall be available Monday through Friday from 8:00 AM to 5:00 PM EST.

All service representatives must have on-line access to information to provide immediate response to inquiries concerning the status of regularly scheduled food distribution, emergency service requests, State contract pricing, contracted services/exclusions, contract compliance requirements, and general service information. Representatives must be available by telephone, fax, or email.

The Contractor shall commit to quarterly reviews of internal customer satisfaction by the State and will make consistent efforts to improve customer satisfaction.

AC) Pest Control

Contractors and their assigns shall have an integrated pest management (IPM) program in place at their establishment, including but not limited to delivery trucks and warehouse, that is consistent with the requirements of Connecticut General Statutes Section 22a-66l, Application of pesticides by state agencies, and Regulations of Connecticut State Agencies Section 21a-101-5(h), General sanitary requirements.

Such written plan and program will be subject to review and approval on a yearly basis, on the anniversary date of the contract, by the Department of Environmental Protection Pesticide Management Program and Department of Administrative Services Procurement Services. Programs that have been implemented by the approved Contractor, their subcontractors and pest control service providers must remain in place and will be subject to periodic review throughout the term of this contract.

AD) An Act Concerning the Preservation of the Family Farm

Connecticut General Statutes Section 4a-51: The Commissioner of Administrative Services, when purchasing or contracting for the purchase of dairy products, poultry, eggs, fruit or vegetables, shall give preference to dairy products, poultry, eggs, fruit or vegetables grown or produced in this state, when such products, poultry, eggs, fruits or vegetable are comparable to cost to other dairy products, poultry, eggs, fruit or vegetables being considered for purchase by the commissioner that have not been grown or produced in this state.

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(AE) Small and Minority Owned Businesses

Under Connecticut General Statute 4a-60g the State has an established and on-going commitment to provide equal opportunity to small (SBE) and minority owned businesses enterprises (MBE) to contract as a Vendor for Connecticut's purchased goods and services.

The selected prime vendor will be responsible for determining the number of sub-contracted SBE vendors. The prime vendor will, however, be required to comply with contracted supplier diversity goals. The prime vendor will be required demonstrate its compliance of the supplier diversity goals through required, quarterly Microsoft Excel reports to allow the State and Contract Users to meet their supplier diversity goals. Failure to meet the supplier diversity goals of the State may be grounds for contract termination. Additionally, the prime vendor is required to pay SBEs within 30 days, according to CGS 4a-60j.

The file titled, ***"Food Distribution – Certified SBE-MBE Vendors.xls"*** provides a sample list of SBE/MBE vendors that have been certified by DAS. This is NOT the entire list of certified SBE/MBE vendors.

4. U.S.D.A Warehousing Program - General Service Requirements

A) Program Overview

The USDA Food Distribution Program provides commodities to certain organizations, primarily public schools. In Connecticut, this program is administered by the Food Distribution Program (FDP). This organization is responsible for overall management, customer support and supplier relations, and has operational duties including order processing.

FDP participates in the federal government's Electronic Commodity Ordering System (ECOS). ECOS will allow Recipient Agencies (RAs) to use the Department of Agriculture's electronic ordering system to shop online for food. Both FDP, and the RAs, can view the availability of commodities, place orders, check order status, and track shipments online.

Customers will be required to forecast their commodity usage for an entire year, on a monthly basis. The bulk of their orders will be placed in March, with additional commodities being offered occasionally throughout the year.

RAs will send raw commodities directly to their preferred processors, from which they can pick and choose a variety of end-products. The customer will work independently with the processor to set up deliveries and rebate processes.

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To support FDP in the USDA commodity program, the Contractor must be able to electronically receive, process, and transmit data files. Since references to various files will be made throughout the document, a brief description of each follows:

Shipping file - Receivers (Inbound Shipments), Shipments (of customer orders), Credits & Adjustments

- **Change Order file** – changes to transmitted orders prior to shipping
- **Storage** – customer/FDP storage charges

On an operational basis the requesting, ordering, and delivery of food products will work as follows:

Responsible	Process Step Details
FDP	<ul style="list-style-type: none"> • Enters customer orders into ECOS (school year 2005-2006 customers will enter their own orders) • Rolls up individual orders and submits food requisitions for the State
ECOS	<ul style="list-style-type: none"> • Submits orders to Kansas City
Trucker	<ul style="list-style-type: none"> • Sends Forwarding Notice to FDP and Contractor • Sets up appointment with Contractor • Sends truck
Contractor	<ul style="list-style-type: none"> • Receives truck • Electronically sends car arrival to FDP via Shipping file
FDP	<ul style="list-style-type: none"> • Processes warehouse Shipping file • Updates internal tracking system with Contractor car arrival data • Compares quantity shipped on truck with quantity ordered • Adjusts selected customer quantities in ECOS as needed • Sends e-mail notification to warehouse stating that ECOS orders have been confirmed and are ready to be downloaded
Contractor	<ul style="list-style-type: none"> • Sends general e-mail notification to customers • Notifies customers who have ordered the commodity • Imports customer orders from ECOS to make available for on line ordering
Customer (Recipient Agency)	<ul style="list-style-type: none"> • Electronically submits USDA orders for their individual schools to the contractor. • With the Contractor, coordinate distribution of commodities to their drop sites
Contractor	<ul style="list-style-type: none"> • Ships commodities to RA • Transmits shipping file to FDP
FDP	<ul style="list-style-type: none"> • Processes shipping file

Food Distribution - U.S.D.A Warehousing Program
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Much of the process and warehousing is controlled and regulated by the USDA. Contractors are advised that the receipt, storage and delivery of commodities must be in accordance with all Federal laws and USDA rules, policies and regulations.

Contractor shall comply with the requirements of (1) USDA/FNS Instructions 709-5, regarding the shipment and receipt of foods.
http://www.fns.usda.gov/fdd/instructions/709-5_ShipmentsReceipts.pdf; (2) Title 7 Code of Federal Regulations, 7 CFR Part 250
http://www.fns.usda.gov/fdd/regs/final/7cfr250_03-fdp.pdf, and 7 CFR Parts 210 and 250
<http://www.fns.usda.gov/cnd/Governance/regulations/7cfrpart210.pdf>, (3) Receipting for USDA Commodities (**Appendix 1**), (4) Connecticut Food Distribution Program Business Rules to be written with the Contractor after contract is in place. (5) USDA Forwarding Notice (**Appendix 2**), (6) FDP Car Arrival Report (**Appendix 3**), (7) Report of Shipment Received Over, Short and Damaged, (OS&D Report) USDA FNS-57
<http://www.fns.usda.gov/fdd/forms/fns-57.pdf>

Warehouse facilities and warehousing practices must be in compliance with the United States Food, Drug and Cosmetic Act and any applicable Connecticut Statutes.

B) Types of Commodities

There are two types of items to be warehoused:

- **Basic Commodities:** All basic commodities purchased and/or made available by the USDA are for shipment directly to the Contractor's warehouse. The FDP anticipates ordering up to approximately 80 different commodities. The USDA distinguishes between two types of commodities:
Group A: Fruits, meats, poultry and vegetables.
Group B: Grains and dairy, peanut and oil products.
- **Further Processed Commodities:** Items that are "manufactured" from basic commodities. Some basic commodities are shipped directly from USDA sources to processors and others are transferred to processors (back-haul process) after arrival at the Contractor's warehouse. In either instance, processors may ship finished products to the Contractor for distribution to RAs.

C) Anticipated Annual Volumes

It is anticipated that up to 240,000 cases of USDA donated food will be available to RAs for distribution to schools and institutions during the 2003/2004 school year. It is further anticipated that this volume will be divided as follows:

▪ Dry Groceries:	66,000
▪ Frozen Foods	134,000
▪ Refrigerated Foods:	<u>40,000</u>
▪ Total:	240,000

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These volumes are an estimated quantity based on 2003/04 actual shipment data. This quantity could change. Raw commodities may be shipped directly to processors, allowing the RAs to purchase end-products, from the processor, using a rebate form. THE TIMING OF AND THE NUMBER OF DONATED FOOD SHIPMENTS ARE CONTINGENT UPON MARKET CONDITIONS AND USDA'S ABILITY TO PURCHASE.

D) Delivery Volume to RA's

The Contractor must have adequate delivery vehicles to satisfy the terms of the contract. Frequency and volume of incoming shipments of donated food may vary from one month to another. Usually, the greatest number of deliveries are made from October 1st to March 31st.

E) Inventory Turns

Commodities received from the USDA may be offered and distributed to the RAs within sixty (60) days from delivery to the Contractor. Should the RA's opt for a longer period of time than (60) days, they are subject to storage fees as stated in section P (pg. 22).

F) Warehouse Requirements - Standards for Storage Facilities

Distributing agencies, sub-distributing agencies and recipient agencies shall provide facilities for the handling, storage and distribution of donated foods which:

- Are sanitary and free from rodent, bird, insect and other animal infestations.
- Safeguard against theft, spillage and other loss.
- Maintain foods at proper storage temperatures.
- Stock and space foods in a manner so that USDA-donated foods are readily identified.
- Store donated food off the floor in a manner to allow for adequate ventilation.
- Take other protective measures as may be necessary.

The Contractor must be a licensed public warehouse or commercial facility providing warehouse services following Connecticut State Statutes and/or regulations. The Contractor may sub-lease, if needed, within the State of Connecticut.

The Contractor's warehouse facilities utilized to service RAs must be of adequate size to store the foods indicated in this document.

G) Storage

The warehouse facility must be able to store up to 80,000 cases in total of the following at any particular time:

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- **Dry Commodities** in an area with forced ventilation and temperatures should be between 50 degrees and 70 degrees Fahrenheit.
- **Frozen Commodities** at temperatures of 0 degrees Fahrenheit or below.
- **Refrigerated Commodities:** Normally 36⁰ F (35⁰ F to 41⁰ F, depending on the item).
- Food and chemicals must be stored in separate areas.
- The USDA recommends that all USDA commodities must be stored in a designated area and separate from the Contractor's commercial inventory.

H) Sanitation

Federal, state and local health regulatory agencies may routinely inspect warehouses. It is required that the Contractor participates in a voluntary sanitation program. The Contractor must provide a copy of its most recent health inspection certificate and sanitation policy to the State upon request.

I) Pest Control

Refer to section 3 - AC.

J) Inbound Shipments

The USDA requires that Shipments and Receipts of Foods be in accordance with the provisions contained in **“FNS Instruction 709-5, Shipment and Receipt of Foods.”** http://www.fns.usda.gov/fdd/instructions/709-5_ShipmentsReceipts.pdf. The USDA has specific rules governing the Contractor's responsibilities when merchandise is damaged. These may be found in FNS Instruction 709-5 http://www.fns.usda.gov/fdd/instructions/709-5_ShipmentsReceipts.pdf.

Upon receipt of an inbound shipment, the Contractor must complete and fax a Car Arrival Report to FDP, and Report of Shipment Received Over, Short, and Damaged (OS&D Report) <http://www.fns.usda.gov/fdd/forms/fns-57.pdf> must also be completed and returned with the FDP Car Arrival Report when discrepancies occur in quantities or condition. The Contractor must also send a shipping record to FDP .

The Contractor shall adhere to the following:

- Each Car Arrival (inbound shipment) received into the Contractor's warehouse has been given an assigned disposition number, e.g. B032109F001 (A061-commodity code, 109 – USDA's designated number for the State of Connecticut, F – USDA's federal fiscal year letter designation, 001 – Truck sequence number. Each RA unit of a shipment is linked to a particular disposition number. Although customary warehouse practices support a first in, first out (FIFO) distribution process, FDP tracks shipments by disposition number. Since these two methods are difficult to reconcile, the tracking of these commodities can be

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discussed with the Contractor and an agreed upon method of tracking will be determined. FDP and the Contractor must be able to locate shipped commodities for reasons of emergency (e.g. a recall).

- Receiving shipments Monday through Friday during normal business hours of at least 8 hours per day.
- Approximately 90% or more of all incoming shipments will be palletized. However, Contractors must provide all labor and equipment for unloading including the few non-palletized loads. Over-the-road truck drivers (not drivers delivering piggyback trailers) may be requested to assist with unloading non-palletized loads by palletizing or placing units on the tailgate. Drivers are not required to re-palletize loads to meet Contractor's individual storage requirements which include but are not limited to: pallet size, height, type of tie.
- Contractors shall unload trucks on the day of arrival when the shipper or trucker makes an appointment at least 24 hours in advance (709-5, XIII (appointments) #1). When no advance appointment is made, Contractor must attempt to unload trucks within 24 hours of arrival. In all cases, trucks must be unloaded within 48 hours of arrival unless specifically exempted by FDP.
- Contractors must positively identify incoming shipments using the Notice to Deliver matched against the Consignee Report and only unload loads or portions of loads so identified. Contractors must call FDP for assistance before unloading if positive identification is not possible.
- Clean and repackage, as required, any damaged merchandise so that all foods suitable for human consumption are salvaged for program use.
- Pay for all freight storage, demurrage and detention charges, which occur due to unloading delays, unless specifically exempted by FDP. Brace or level stop-off shipments for further movement to other destinations.
- Contractor shall be liable for claims levied by USDA against Contractor or FDP as a result of Contractor's failure to properly secure, handle, or account for shipments.
- **NOTIFICATION OF SHIPMENT ARRIVALS:**

Notify schools and institutions of shipments received during each week by e-mail and if possible, make available on the internet. Each RA's notice must include the Trucker's name, the agency name, and the data shown below for each shipment in which the agency is included:

- Commodity Code
 - Disposition Number
 - Quantity
 - Date Received
 - Pack Date
- Transmit Shipping record on Shipping file

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K) Recipient Agency Deliveries

Deliveries must be made between 6 AM and 2 PM, Monday through Friday, to accommodate the school schedule, except on RA holidays or at other times when the RAs are closed, such as for inclement weather. Special arrangements are to be made for schools that have security issues and cannot open until 6:30 AM. This arrangement must be in writing from the school to the Contractor. Should the delivery be after normal business hours, the Contractor must receive approval from the RA. Food shall not be delivered to the school if the school is not open, unless the school provides the Contractor with written authorization to do so. The Contractor will be responsible for contacting customers 48 hours in advance with delivery confirmation and a target delivery time frame of either AM or PM when scheduling the delivery. The Contractor must call the RA if the delivery will not arrive before the targeted time frame. Deliveries missed due to inclement weather, breakdowns or other unforeseen conditions shall be rescheduled within five (5) working days, unless the RA and FDP agree to a later delivery date. The FDP reserves the right to add or delete RAs during the term of this contract. The Contractor also agrees to service any new agencies that have been approved to receive donated foods.

Drivers are not required to stow commodities on shelves or to assist in rotating stock at drop sites, but must deliver the food to the RAs designated area for frozen, refrigerated and dry commodities. Special deliveries are only required if the Contractor fails to deliver an ordered product that is in stock. The Contractor is expected to make deliveries to complete an order or correct delivery errors on make up days within a reasonable time frame agreed upon by the Contractor, FDP, and RA. The Contractor must utilize adequate delivery vehicles to accommodate the delivery of dry, refrigerated or frozen commodities. The Contractor's delivery vehicles must be able to accommodate unloading at school sites and small institutions.

Contractor is expected to instruct drivers not to deliver any greater quantities than allotted to a customer.

Contractor must deliver donated foods in straight loads containing donated foods only, or in mixed loads with commercially purchased foods, as long as other terms of the contract are satisfied. Foods must not be stored or delivered with chemicals or other products, which may be harmful to the quality or safety of the foods.

RA should inspect load/delivery for condition on arrival and immediately notify FDP by telephone at (860) 713-5147 of any problems with condition, quality, or quantity. Verify accuracy of count. Notify carrier's agent of any overages, shortages, or damages before releasing the delivery vehicle.

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L) Reporting and Physical Inventory Requirements

Because the food in the Contractor's warehouse is the property of the United States Government, the USDA has mandatory rules concerning the inventory. The Contractor must submit certain inventory reports monthly to the FDP. Daily Shipping files will provide data that FDP will use to maintain its own perpetual balance which will be reconciled with the Contractor's perpetual balance on an as needed basis.

A physical inventory must be performed twice annually - July and December. The Contractor as well as representatives of FDP and the USDA will jointly conduct this scheduled inventory. FDP and USDA representatives may also periodically check/count the inventory, with 48-hour prior notice, to verify the inventory and the quality of the facilities. (250.14 D8). In addition, FDP reserves the right to make unannounced visits without prior notice.

Inventory Reports shall be available for RAs either through an electronic file or on the World Wide Web. The reports shall contain the following information.

- Quantity on hand at the end of the monthly period, by commodity, and by delivery order number.
- Product and quantity stored over sixty (60) days.

Any losses of USDA donated food including but not limited to damages, infestation/mold, spoilage, over-shipment, or other factors must be reported to FDP. An inventory report listing the quantities of each commodity, by RA, must accompany the monthly loss report. The Contractor may settle these losses in the form of cash payments or by replacements with an equal quantity of an equal quality product, at the option of FDP officials. The settlement will be made to the appropriate agency and will be executed within sixty (60) days of the initiation of the claim.

Should overages and shortage discrepancies between physical inventory and book inventory exist, such discrepancies shall be reconciled by like-kind commodity. No offsets against unlike commodities will be acceptable. Irreconcilable overages and shortages (unlike commodities) will be settled as follows: The Contractor will be required to pay the value of shortages and if an inventory overage exists, the inventory remains the property of DAS/FDP.

M) Recall of USDA Commodities

In the event that the USDA recalls any commodity, the Contractor will follow its standard operating procedure for recall of commodities and shall assist the FDP with notifying affected RAs as soon as possible. The Contractor shall track and pick up the recalled commodity and notify the FDP after the commodities have been retrieved. The FDP shall then inform the Contractor of any additional required actions that must be taken. RAs are responsible for tracking and consolidating commodities that have been

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delivered to other facilities subsequent to the Contractor's original delivery of the product. RAs shall provide this information to the Contractor as soon as it is available.

N) Records and Reviews

The Contractor shall maintain records fully accounting for receipt and disposition of all USDA donated foods. Such records must be maintained for a period of five (5) years following the close of the federal fiscal year to which they pertain and must be available for review at any reasonable time upon request of either the USDA or State officials, provided forty-eight (48) hours notice is given to the Contractor. The Contractor's facilities, equipment and procedures shall be subject to review by State and Federal authorities at any reasonable time and place. Representatives of DAS, the State Auditors of Public Accounts, the State Department of Consumer Protection, USDA and the General Accounting Office (GAO) shall have the right to inspect the USDA foods in storage at the Contractor's facility and any other facilities used in handling, storing and transporting of the USDA commodities. Said parties shall also have the right to inspect the methods and procedures, records and substantiating documentation used by the Contractor in meeting the requirements of this contract.

O) Computer System Requirements

The Contractor must have the capability to maintain computer information systems to interface with ECOS and current FDP systems and to provide inventory tracking, report generation and upload/download capabilities. The Contractor must be capable of exchanging all data electronically. The Contractor will be expected to receive and send daily electronic files that contain RA orders, confirmation, and delivery information to FDP in a format agreed upon by FDP and the Contractor.

The Contractor must be the sole owner of the software product it uses, and if not the owner, must have received all proper authorizations from the owner to license the software product, and the full right and power to grant the rights contained in any Agreement entered into with the FDP. The Contractor must further warrant that the software product is of original development and that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person or company.

P) Pricing Criteria

Prices for the USDA Food Distribution Program are on a per case basis. The minimum delivery order at each drop site is twelve (12) cases. RAs may, however, order less than twelve (12) cases at any time by paying the full charge for the minimum drop at the per case rate. The per case charge shall include any charges for receipt, handling, distribution, and sixty (60) days of storage. A separate per case fee for storage beyond sixty (60) days is listed separately for dry, refrigerated, and frozen, the expense for storage over sixty (60) days is the responsibility of the RA who owns the commodities. Another per case fee is listed for pickup by RAs, or RAs designee, at the Contractor's warehouse.

Food Distribution - U.S.D.A Warehousing Program

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The agreed upon price per case for delivery and pick-up (at the Contractor's warehouse) are for the term of this contract, including the potential two (2), one year extensions, and are as follows:

- Delivered: \$3.10 per case
- Pick-up: \$2.10 per case

There shall be no additional delivery charge for short shipments.

Contractor may assess a charge, per unit, per month, for each unit of food remaining in storage starting on the 61st day. The 61st day is the date of receipt into the warehouse. The invoice must include the date the commodity was received and the date the commodity was shipped, and unit storage price per case. Such charges may be assessed for a full month on the 61st day of storage and for each succeeding month's storage period. The storage charges for U.S.D.A. commodities for the life of the U.S.D.A. contract, including the potential two (2), one-year extensions, are as follows:

- Frozen: \$0.95 per case
- Refrigerated \$0.85 per case
- Dry \$0.75 per case

<u>Annual Case Volume</u>	<u>Cost Per Case</u>	
	<u>Pick-Up</u>	<u>Delivery</u>
<u><50,000</u>	<u>\$2.50</u>	<u>\$3.50</u>
<u>50,001 – 100,000</u>	<u>\$2.50</u>	<u>\$3.50</u>
<u>100,001 – 150,000</u>	<u>\$2.30</u>	<u>\$3.30</u>
<u>151,000 – 200,000</u>	<u>\$2.20</u>	<u>\$3.20</u>
<u>200,001 – 300,000</u>	<u>\$2.10</u>	<u>\$3.10</u>
<u>300,000 – 400,000</u>	<u>\$2.05</u>	<u>\$3.05</u>
<u>400,000+</u>	<u>\$1.95</u>	<u>\$2.95</u>

Pricing for USDA delivery charges:

The State of Connecticut estimated the total number of cases for July 1, 2004 - June 30, 2005 to be 240,000. That number of cases should be used to calculate the 1st year of the warehousing/food contract, which would mean delivery charge would be \$3.10 per case delivered, and \$2.10 per case pick up. Each May 31st after shall be the date that the State and the Contractor review the number of cases brought into the warehouse using shipping

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and inventory reports for the prior July 1 - June 30 to determine the next SY's delivery and pickup charges.

Q) Method of Payment

The Contractor shall submit invoices to the RAs monthly, or at other intervals, on mutually agreed upon dates. Each invoice shall include a summary of delivery or pickup tickets for the period. Each referenced ticket shall be listed in numerical sequence and show the total number of cases, bags or other such items delivered. Charges for pickup by RAs shall be listed separately on invoices.

5. **Change of Address** - In the event either party moves or updates contact information, the moving party shall inform the other of such changes in writing within 10 days. No governmental entity will be held responsible for payments or purchase orders delayed due to Contractor's failure to provide such notice.

To the Department of Administrative Services:

Connecticut Department of Administrative Services
165 Capitol Avenue, Hartford, CT 06115-0414
Attention: J. Gotta, Contract Specialist

6. **Insurance**

Contractor shall not commence work under this contract until it has obtained all insurance required under this Section, nor shall the Contractor allow any sub-contractor to commence work on its sub-contract until all similar insurance required of the sub-contractor has been obtained. Certificates of Insurance shall be forwarded to Gregg Nome of the State upon request. Updates on the insurance coverage are the responsibility of the Contractors. Insurance requirements will be strictly enforced.

Contractor shall assume any and all deductibles in the described insurance policies. The Contractor's insurers shall have no right of recovery or subrogation against the State and the described insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the State. Each required insurance policy shall not be suspended, voided, cancelled or reduced except after 30 days prior written notice by certified mail has been given to the State. "Claims Made" coverage is unacceptable, with the exception of Professional Liability. Contractor agrees that he/she will not use the defense of sovereign immunity the adjustment of claims or in the defense of any suit, unless requested by the State.

- A) **Commercial General Liability**
\$1,000,000 Combined Single Limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Board

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Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply either separately to the project or the general aggregate limit shall be twice the occurrence amount.

B) Workers' Compensation and Employers Liability

Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with minimum limits of \$100,000 each accident, \$500,000 disease-policy limit, \$100,000 each employee.

With respect to all operations the Contractor performs and all those performed for the Contractor by sub-contractor(s), the Contractor, and sub-contractor(s) if used, shall carry Workers Compensation Insurance at statutory coverage limits and/or, as applicable, insurance required in accordance with the U. S. Longshoremen's and Harbor Workers Compensation Act, the Federal Employers Liability Act, all in accordance with the requirements of the laws of the State of Connecticut, and the laws of the United States respectively.

C) Automobile Liability

\$1,000,000 Combined Single Limit Automobile Liability insurance shall be maintained against claims for damages resulting from bodily injury, including wrongful death, and property damage which may arise from the operations of any owned, hired or non-owned automobiles used by or for the Contractor in any capacity in connection with carrying out this contract.

If a general aggregate is used, the general aggregate limit shall apply either separately to the project or the general aggregate limit shall be twice the occurrence amount. Contractor's operations on airports that use vehicles on the air side require five million dollars (\$5,000,000) automotive coverage unless specifically modified by the State, and may require additional special vehicle coverage depending on the types of vehicles employed.

D) Minimum Scope of Insurance

All Liability insurance policies shall be written on an "occurrence" basis only. All insurance coverage is to be placed with insurers authorized to do business in the State of Connecticut and must be placed with an insurer that has an A.M. Best's Rating of no less and A-, VII. All certificates of insurance shall be filed with DAS on the standard Accord Certificate of Insurance form showing the specified insurance and limits. The State of Connecticut shall be named as an Additional Insured. The Contractor's insurer shall have no right of recovery of subrogation against the State and the Contractor's insurance shall be primary coverage.

E) Hold Harmless/Insurance

Suppliers of Proprietary Products, Contracted Products and Special Order Products must provide Contractor with an indemnity agreement and insurance coverage satisfactory to Contractor.

Food Distribution - U.S.D.A Warehousing Program
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7. **Contract Prices and Billing:** Contract Prices for services performed under this Contract are shown in Exhibit A, Contract Award Schedule, which is attached to and made a part of this Contract. DAS and Contract Users agree to pay invoices on a net 45 days basis after receipt of invoice. The Contractor shall bill the State for the services provided. Billing notices shall include detailed spend information and services performed. A late payment charge shall be calculated in accordance with the Connecticut General Statutes.

8. **Audit:** The Vendor shall allow for the State to audit contracted items monthly or as needed. The audit will be based on a review of Cost Plus items and Contract list Items as determined by DAS. Typically, the audit shall consist of ten (10) items at a minimum; however, the State reserves the right to audit any number of contracted items.

9. **Reporting:** The Contractor shall provide detailed reports to the State on a monthly basis. The State may reasonably request additional reports if needed and the Contractor shall use every effort to provide such reports. The Contractor will be required to submit activity reports in Microsoft Excel to DAS and each Contract User, on a monthly, quarterly and annual basis. The reports shall contain the following information:
 - Sales by each account number (for each line item, the Contractor shall provide the delivered invoice price to the Contract User and the cost plus mark-up percentage); Reports shall list each item sold, including manufacturer and stock number, description, unit of issue, unit price, quantity sold for the current quarterly report and year to date.
 - Quarterly consolidated sales reports summarizing the sales to all State agencies and separate quarterly consolidated sales reports summarizing the sales to all CT political subdivisions and not-for-profit organizations with the same information as listed in the point above.
 - Rolling, six-month trend analysis for both the top 50 Department of Correction (DOC) line items and the top 50 non-DOC items. The State and Contract Users will be able to review pricing trends, both upwards and downwards, for high-volume and high-spend purchases. The pricing for the 100 items will include the delivered invoice to the Contract User and the cost plus mark-up for each line item.
 - Manufacturers rebates and discounts will also be listed on a line item basis for each Contract User as part of the required monthly reporting.
 - Quarterly reports detailing the use of small and minority businesses certified by DAS Business Connections.
 - Fill Rate Reports.
 - Other Reports, as requested by the State.

These reports shall be on the forms approved in advanced in writing by the State contact responsible for this contract, and shall itemize separately the purchase order with the following information: Contract User location, item description, item number, manufacturer name, manufacturer number/ ID, quantity, unit price, extended price, and monthly amount invoice pursuant to this contract. Failure to comply can result in the termination of this contract.

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The Contractor will be required to include in its regular Microsoft Excel reporting, the SBE/MBE component of sales to the State and by each Contract User. This information will allow the State and each Contract User to track their Supplier Diversity goals.

Electronic copies of reports shall be provided monthly to DAS Procurement Services at jim.gotta@po.state.ct.us no later than 10 days following the end of each specified time period. Late delivery or non-delivery of required reports may result in cancellation of the award and rejection of the Contractor's bids or proposals in future procurements.

- 10. Independent Contractor:** Contractor agrees to act as an independent Contractor in performing all services under this Contract and, except as otherwise outlined in this Contract, agrees to maintain complete control over its employees and sub-Contractors (such control over the repairers being limited to the context of this Contract).

- 11. Entire Contract** - The parties agree that this Contract embodies the entire agreement between the State and Contractor on the matters specified herein, whether expressed or implied, written or oral. No changes, amendments or modifications of any of the terms or conditions of this Contract are valid unless reduced to writing and signed by both parties. The following exhibits are attached and incorporated into this Contract as if they had been set forth in their entirety. In the event conflicts or disputes arise over issues not specifically addressed in this Contract, the exhibits will be used to resolve such conflicts or disputes in the following order of precedence:
 - i. Exhibit A – Contract Award Schedule (pricing)
 - ii. Exhibit B - The State's Request for Proposal dated February 6, 2004
 - iii. Exhibit C - Contractor's Proposal Response dated March 2, 2004

- 12. Severability:** If any provision of this Contract is found by a proper authority to be invalid or unenforceable, the remainder of the Contract shall remain valid and the invalid provision shall be replaced by a valid provision, which comes closest in intent to the invalid provision. The rest of the provisions shall remain in full force and effect.

- 13. State Access to Records, Record Keeping, and Record Transfer:** The Contractor shall establish and maintain complete and accurate working papers and other evidence, including but not be limited to, documents, plans, books, computations, drawings, notes, reports, records and correspondence directly pertinent to performance under the contract, kept or stored in any form (collectively, the "Records"). During the term of the Contract, the Contractor shall afford the officers, attorneys, accountants, auditors, and other authorized representatives of the State free and full access to the Records during normal business hours. The Records are deemed to be the property of the State and shall be delivered to the State in a non-proprietary format, such as, but not limited to, ASCII or .TXT, no later than thirty (30) days after the expiration or cancellation of the Contract or 10 days after the Contractor receives a written request from the State for the Records.

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- 14. State Fiscal and Product Performance Requirements:** Any product or service acquisition resulting from this Contract shall be contingent upon contractual provisions for cancellation of such acquisition, without liability attaching to the State, if the applicable funds are not available for required payment or if the products or services fail to meet minimum State criteria for acceptance and performance reliability.
- 15. Offer of Gratuities:** The Contractor warrants, represents, and certifies that no elected or appointed official or employee of the State of Connecticut has, or agrees to, benefit financially or materially from this procurement. This Contract may be terminated by State without liability attaching to the State if it is determined that gratuities of any kind were either offered to, or received by, any of the aforementioned officials or employees from the Contractor, the Contractor's agent(s), representatives(s) or employees(s).
- 16. Subletting or Assigning of Contract:** The Contract or any portion thereof, or the work provided for therein, or the right, title, or interest of the Contractor therein or thereto may not be sublet, sold, transferred, assigned or otherwise disposed of to any person, firm, or corporation, or other entity without the prior written consent of the State. No person, firm or corporation, or other entity, other than the Contractor to whom the project was awarded is permitted to commence work on the project unless such consent has been granted.
- 17. Executive Orders:** The Contractor shall comply with the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, the provisions of Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973 and the provisions of Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999. The executive orders are incorporated by reference as if they had been fully set forth in this Contract.
- 18. Americans with Disabilities Act:** The Contractor shall comply with the Americans with Disabilities Act in accordance with Public Law 101-336 and any other applicable federal laws and regulations.
- 19. Confidentiality and Care of Data:** The Contractor shall protect the confidentiality of any files, data or other material pertaining to this Contract and to restrict their use solely for the purpose of performing this Contract. The Contractor shall take all steps necessary to safeguard data, files, reports or other information from loss, destruction or erasure. Any costs or expenses of replacing or damages resulting from the loss of such data will be borne by the Contractor when such loss or damage occurred through their negligence.
- 20. Termination:**
- Notwithstanding any provision or language in the Contract, the State, after discussion with Contractor, may suspend, postpone, abandon or terminate this Contract by written notice to the Contractor whenever the State determines in the State's sole discretion that such termination is in the best interests of the State. Any such written notice of termination shall specify the effective date of termination and the extent to which performance under the Contract is to be completed prior to such date. Termination in the best interests of the State shall in no event be deemed to be a breach of contract. Upon receipt of written notification

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from the State that this Contract is to be terminated, Contractor shall immediately cease operations on work being performed under this Contract and shall assemble all Records. The State shall review the Records and determine the amount of acceptable work performed under the terms of this Contract. The State shall pay Contractor for such work on an equitable basis, after discussions with Contractor, with the final determination to be made by the State. In determining the basis for such equitable payments, the State shall consider the amount of:

- (1) work performed by Contractor, less any payments previously made, and
- (2) allowable reimbursement expenses incurred by Contractor, less any payments previously made.

If either party breaches this Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. The notice may include an effective termination date if the breach is not cured by that date and, unless otherwise modified by the non-breaching party in writing prior to the termination date, no further action shall be required of any party to effect the termination as of the stated date. If the notice does not set forth an effective termination date, then the non-breaching party may terminate this Contract by giving the breaching party no less than twenty four (24) hours' written notice.

Upon termination of this Contract, all rights, duties and obligations hereunder shall be null and void, so that no party shall have any further rights, duties or obligations to any other, except with respect to Sections 13, 19, 24, 25, 26, 28, 29 and 35, which shall survive termination of this Contract.

The quantities are estimated only and in no way represent a commitment and/or intent to purchase. Actual quantities may vary and will be identified on individual purchase orders issued by the requesting State Agency. In the invent, the State of Connecticut requires vendor(s) to store and/or stock propriety items in specified quantities, the State will, in a good faith effort to purchase only those propriety items and/or quantities specified at the contractually agreed upon cost-plus mark-up vendor(s).

- 21. Payments Against a Contract Award:** In no case will the Contractor bill the user agencies for amounts in excess of the amount(s) indicated in the final Contract Award Schedule agreed to and accepted by both parties through this Contract. Any authorized or agreed additional charges can only be approved for payment by means of an amendment to this Contract in writing.
- 22. Day:** The word "day" as used in this Contract shall mean a business day, unless otherwise specifically noted, with business days being all calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.

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- 23. Headings:** The headings given to the paragraphs in this Contract are inserted only for convenience and are in no way to be construed as part of this Contract or as a limitation of the scope of the particular paragraph to which the heading refers.
- 24. Indemnification (Proposer):** The Contractor shall indemnify, defend and hold harmless the State and its successors and assigns from and against any and all (1) actions, suits, claims, demands, investigations and legal, administrative or arbitration proceedings pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum (collectively, "Claims") arising, directly or indirectly, in connection with this Agreement and including the acts of commission or omission (collectively, the "Acts") by the Contractor or any of its members, directors, officers, shareholders, representatives, agents, servants, consultants, employees or any other person or entity with whom the Contractor is in privity of oral or written contract (collectively, "Contractor Parties"); (2) liabilities arising, directly or indirectly, in connection with this Agreement, out of the Contractor's or Contractor Parties' Acts concerning its or their duties and obligations as set forth in this Agreement; and (3) all damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, that may arise out of such Claims and/or liabilities for bodily injury, death and/or property damages. The Contractor shall reimburse the State, for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give to the Contractor reasonable notice of any such Claim. The Contractor shall also use counsel reasonably acceptable to the State in carrying out its obligations under this section. This Section shall survive the expiration or early termination of this Agreement, and shall not be limited by reason of any insurance coverage.
- 25. Interpretation:** This Contract shall be interpreted without regard to any presumption or other rule requiring construction against the party who drafted it.
- 26. Liquidated Damages:** The parties acknowledge and agree that the damages that are to be expected as a result of a material breach of contract by Contractor may be uncertain in amount or very difficult to prove. In that event, the parties do intend and in fact now agree, if necessary, to liquidate damages in advance and stipulate that the amount set forth in this section is reasonable and an appropriate remedy as liquidated damages and not as a penalty. The contractor shall be bound to continue servicing contract users for a minimum of sixty days regardless of contract continuity. If Contractor materially breaches this Contract, then Contractor shall pay the State liquidated damages pursuant to the following schedule:
- a. If the breach occurs during the first 12-month period that the Contract is in effect, 250,000.
 - b. If the breach occurs during the second 12-month period that the Contract is in effect, \$275,000.
 - c. If the breach occurs during the third 12-month period that the Contract is in effect, \$282,500.
 - d. If the breach occurs during the fourth 12-month period that the Contract is in effect, \$310,750.

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27. Promotion: Unless specifically authorized in writing by the State, Contractor shall have no right to use, and shall not use, the name of the State of Connecticut, its officials or employees, or the seal of the State:

- (a) in any advertising, publicity, promotion;
- (b) To express or imply any endorsement by the State of Contractor's product or services; or
- (c) In any manner (whether or not similar to uses prohibited by (a) and (b) above) except only to produce and deliver in accordance with this Contract

28. Representations and Warranties: Contractor represents and warrants to the State that:

A. it is a duly and validly existing corporation under the laws of the Connecticut and authorized to conduct its business in the State of Connecticut in the manner contemplated by this Contract. Further, Contractor has taken all necessary action to authorize the execution, delivery and performance of this Contract and has the power and authority to execute, deliver and perform its obligations under this Contract;

B. it will comply with all applicable State and Federal laws and municipal ordinances in satisfying its obligations to the State under and pursuant to this Contract;

C. the execution, delivery and performance of this Contract by Contractor will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (i) any provision of law; (ii) any order of any court or any governmental department, commission, board, bureau, agency, office, council, institution or instrumentality (collectively, "Agencies"); or (iii) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;

D. it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;

E. neither it nor any of its members, directors, officers, shareholders, partners, managers, principal officers, or employees have, within the three years preceding this Contract, in their current or former job, been convicted of, or had a civil judgment rendered against them or any of their current partners, managers, principal officers or any person who would perform any Food Distribution services, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract. This includes, but is not limited to, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

F. neither it nor any of its members, directors, officers, shareholders, partners, managers, principal officers, or employees nor any person who would perform any services under this Contract, is presently indicted for or otherwise criminally or civilly charged by a

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governmental entity (Federal, State or local) with commission of any of the offenses enumerated above;

G. it has not within the three years preceding this Contract had one or more public transactions (Federal, State or local) terminated for cause or default;

H. it shall include the following provision in each sub-contract to which it is or may be a party in connection with this Contract and to require that provision to be included in any lower tier sub-contracts and purchase orders:

SYSCO Food Services of Connecticut 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 or State department or agency;

I. is in compliance with all of the requirements necessary to the obtaining of a current Certificate of Good Standing or Legal Existence issued by the Connecticut Secretary of State;

J. it has paid all workers' compensation second injury fund assessments concerning all previous work done in Connecticut;

K. it has a record of compliance with OSHA regulations without any unabated, willful or serious violations;

L. it owes no unemployment compensation contributions;

M. it is not delinquent in the payment of any taxes owed, or that it has filed a sales tax security bond, and it has, if and as applicable, filed for motor carrier road tax stickers and has paid all outstanding road taxes; and

N. all of its vehicles have current registrations and, unless such vehicles are no longer in service, it shall not allow any such registrations to lapse

29. Sovereign Immunity: The parties acknowledge and agree that nothing in this Contract shall be construed as a waiver by the State of any rights or defenses of sovereign immunity, which it may have had, now has or will have with respect to all matters arising out of this Contract. To the extent that this provision conflicts with any other provision, this provision shall govern.

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- 30. Notice.** All notices, demands, requests, consents, approvals or other communications (collectively, "Notices") required or permitted to be given or which are given with respect to this Contract shall be in writing and shall be sent by first class U.S. Mail, postage prepaid, by hand delivery or by recognized, overnight express delivery service, addressed as follows:

To the Department of Administrative Services:

Connecticut Department of Administrative Services
165 Capitol Avenue, Hartford, CT 06115-0414
Attention: J. Gotta, Contract Specialist

To the Contractor:

SYSCO Food Services of Connecticut
100 Inwood Road
Rocky Hill, CT 06067
Attention: Jay Kelleher, Manager of National Accounts

E-mail: Kelleher.jay@ct.SYSCO.com

- 31. Whistleblowing.** This contract is subject to the provisions of §4-61dd of the Connecticut General Statutes. In accordance with this section any person having knowledge of any matter involving corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, may transmit all facts and information in his possession concerning such matter to the Auditors of Public Accounts. In accordance with subsection (e) if an officer, employee or appointing authority of a large state Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to the Auditors of Public Accounts or the Attorney General under the provisions of this section, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of the contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The executive head of the state or quasi- public agency may request the Attorney General to bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) each large state Contractor shall post a notice of the provisions of this section relating to large state Contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

- 32. Public Records.** This contract is subject to the provisions of §1-218 of the Connecticut General Statutes. In accordance with this section, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (1) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (2) indicate that such records and files are subject to the Freedom of Information Act and may be disclosed by the public agency pursuant to the Freedom of Information Act. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with the Freedom of

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Information Act. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

- 33. Further Assurances.** The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other parties which are not inconsistent with the provision of this Contract and which do not involve the assumption of obligations other than those provided for in this Contract, in order to give full effect to this Contract and to carry out the intent of this Contract.
- 34. Non-discrimination.** References in this section to "contract" shall mean this Contract. This section is inserted in this Contract in connection with subsection (a) of Section 4a-60a of the Connecticut General Statutes.

(1) The Contractor agrees and warrants that in the performance of the contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each Contractor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under the this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Section 46a-56; (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts concerning the employment practices and procedures of the Contractor which relate to this provisions of this section and Section 46a-56. The Contractor shall include the provisions of subsection (a) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a sub-Contractor, Contractor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance in accordance with Section 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a sub-Contractor or Contractor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

(2) The Contractor agrees to comply with the regulations referred to in this section as they exist on the date of this contract and as they may be adopted or amended from time to time during the terms of this contract and any amendments thereto.

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The following section is inserted in this contract in connection with subsection (a) of Section 4a-60 of the Connecticut General Statutes.

(1) The Contractor agrees and warrants that in the performance of the contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut. The Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each Contractor with which such Contractor has a contract or understanding, a notice to be provided by the Commission advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this section and Sections 46-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Sections 46a-56, 46a-68e and 46a-68f; (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this section and Section 46a-56.

If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as sub-Contractors and suppliers of materials on such public works project.

For purposes of this section, "minority business enterprise" means any small Contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Section 32-9n; and "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts

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when it is determined that such initial efforts will not be sufficient to comply with such requirements.

Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

The Contractor shall include the provisions of subsection (a) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a sub-Contractor, Contractor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance in accordance with Section 46a-56; provided, if such a Contractor becomes involved in, or is threatened with, litigation with a sub-Contractor or Contractor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

The Contractor agrees to comply with the regulations referred to in this section as they exist on the date of this contract and as they may be adopted or amended from time to time during the term of this contract and any amendments thereto.

35. Applicable Law, Venue and Agent for Service of Process; Non-Binding Arbitration of Disputes, Controversies and Claims: This Contract shall be deemed to have been made in Hartford, Connecticut. Both Parties agree that it is fair and reasonable for the validity and construction of this Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. Any dispute, controversy or claim arising out of or relating to this Contract shall be subject to the jurisdiction of the courts of the State of Connecticut and the U.S. District Court for the District of Connecticut, as appropriate, and with respect to venue in the Judicial District of Hartford at Hartford or the U.S. District Court for the District of Connecticut in Hartford, as appropriate. Contractor waives any objection which it may now have or will have to the laying of venue of any dispute, controversy or claim in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

If any dispute, controversy or claim arising out of or relating to this Contract cannot be settled by agreement of the Parties, the Parties shall first attempt to settle such dispute, controversy or claim by non-binding arbitration, in accordance with the following procedures:

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1. The dispute, controversy or claim shall be arbitrated by an arbitrator of the American Arbitration Association.
2. The arbitrator shall fully decide, resolve and determine the dispute, controversy or claim. The decision of the arbitrator shall be imparted in writing to the Parties, and shall take the form of a recommendation to the Parties as to how they should settle the dispute, controversy or claim between them. The arbitrator's decision shall not be either final, or conclusive, or binding on the Parties, and no judgment on the decision may be entered in any court in any jurisdiction.
3. The arbitrator shall conduct the arbitration in accordance with the rules of the American Arbitration Association, as they are then in effect, insofar as such rules are not inconsistent with this Contract.
4. Any arbitration under this provision shall be conducted in a location in the State of Connecticut as mutually agreed upon by the Parties.

In the event that either Party rejects the decision and recommendation of the arbiter, the Contractor agrees that the sole and exclusive means for the presentation of any dispute, controversy or claim with or against the State shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims Against the State) and the Contractor further agrees not to initiate legal proceedings in any State or Federal Court in addition to, or in lieu of, said Chapter 53 proceedings.

The Contractor shall appoint an agent in the State to receive service of process. If the Contractor fails to appoint said agent, the Secretary of the State of Connecticut is hereby appointed by the Contractor as its agent for service of process for any dispute, controversy or claim. Such appointment shall be in effect throughout the term of this Contract, including its supplements, amendments or renewals, if any, and six (6) years thereafter except as otherwise provided by law.

- 36. Patented Devices, Material And Processes:** The Contractor shall provide for the use of any patented design, device, material, or process to be used or furnished under this Contract by suitable legal agreement with the patentee or owner, and shall file a copy of that agreement with the State. The Contractor and the surety shall hold and save harmless the State, their officers or agents from any and all claims because of the use of such patented design, device, material, or process in connection with the work agreed to be performed under this Contract.
- 37. Sub-Contractor:** DAS must approve any and all sub-contractors utilized by the successful Contractor prior to any such sub-contractor commencing any work. A "sub-contractor" is any supplier, distributor, vendor or firm that furnishes supplies or services to the Contractor specifically for performance of this Contract. A regular supplier, distributor, vendor or firm that routinely furnishes supplies to the Contractor for re-sale to the customers of the Contractor, including the State, is not a "sub-contractor" for purposes of this clause. Contractors acknowledge by the act of submitting a proposal that any work provided under the contract is work conducted on behalf of the State and that the Commissioner of DAS or

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her designee may communicate directly with any sub-contractor as the State deems to be necessary or appropriate. It is also understood that the successful Contractor shall be responsible for all payment of fees charged by the sub-contractor(s). A performance evaluation of any sub-contractor shall be provided promptly by the successful Contractor to the State upon request.

38. Conformance with Federal, State and Other Requirements: By executing the contract, the Contractor represents and warrants that, at all pertinent and relevant times to the contract, it has been, is and will continue to be in full compliance with all Federal, State, municipal or other governmental department, commission, board, bureau, agency, institution, office council, instrumentality, municipalities or not for profits codes, statutes, acts, ordinances, guidelines, resolutions, orders, judgments, decrees, injunctions, rules, regulations and the like.

39. Packaging Components Requirements: In accordance with Connecticut General Statutes (“CGS”) § 22a-255g through 22a-255m, the Toxics in Packaging Statutes, the Contractor shall not sell or distribute any package or packaging component to which Cadmium, Lead, Hexavalent Chromium, or Mercury has been intentionally introduced. The law further requires that the sum of the total of the incidental presence of the aforementioned metals be under 100 parts per million (ppm). The Contractor should obtain a copy of the manufacturers Certificate of Compliance to insure compliance.

40. Security

Contractor must adhere to established security and/or property entrance policies and procedures established for each requesting State Entity. It is the responsibility of each Contractor to understand and adhere to those policies and procedures prior to any attempt to enter the Contract User premises.

Some Agencies that have facilities to be serviced are secure facilities. An example of this include the Department of Correction (DOC). All of the Contractor’s employees who work at these locations will, therefore, be subject to a background check. Prior to commencing work, the Contractor must provide the necessary information required for this purpose, including but not limited to driver’s license numbers and DMV license numbers. Only Contractor’s employees whose names are on the approved list will be allowed on the sites. Any Contractor employee who is not on the Contract User-approved list will be escorted off the grounds. The Contractor must replace the removed employee with approved personnel within one hour of being notified. Additional Contractor employees can be added with no less than 72 hours of advance notice. The Contractor must notify the Contract User in writing within 24 hours when any approved employee is no longer employed by the Contractor. The Contractor is also required to provide emergency telephone numbers and contact personnel that are available 24 hours, 7 days per week, including holidays.

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41. Property Damage

The Contractor shall make prompt restitution to the Contract User by certified check or replacement, or repairs (subject to the Contract User's approval), in settlement of any damage(s) to the Agency's or tenants' property caused by the Contractor's employee(s).

42. Force Majeure

Events that materially affect the cost of the Work or the Contract Time Schedule and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war. The parties shall not be deemed to have defaulted in their performance under the contract by reason of one or more events of Force Majeure.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Contract with full knowledge of and agreement with the terms and conditions of this Contract.

SYSCO Food Services of Connecticut

STATE OF CONNECTICUT
DEPARTMENT OF
ADMINISTRATIVE SERVICES

By: _____

By: _____

Allan Faneuf

J. Gotta

Title: Vice President of Multi-Unit Sales

Title: Contract Specialist

Date: August 25, 2004

Date: August 25, 2004