

FY20 MEFAP
Food Purchasing Contract

The Greater Boston Food Bank

FOOD PRODUCT PURCHASING AGREEMENT

This agreement is made and entered into this _____ day of _____ by and between _____ (herein called the “Company”) and The Greater Boston Food Bank (herein called “GBFB”) at 70 South Bay Avenue, Boston, MA 02118.

The Company agrees to provide food products meeting specifications as indicated in Attachment A - the Master Purchase Order (herein called the “MPO”) to The Greater Boston Food Bank, Merrimack Valley Food Bank, Worcester County Food Bank, and The Food Bank of Western Massachusetts (herein called “The Food Banks”). The Company will deliver to each location as identified in Attachments B, and will work in conjunction with The Food Banks to determine a convenient delivery schedule.

1. Attachment A is the purchase order for all items as to which a bid has been accepted by GBFB, including quantities, unit, pack, size and price according to the terms of the bid. Quantities listed on Attachment A are preliminary based on the total amount of funding provided through the Massachusetts Department of Agricultural Resources at the time of contract signature. Any changes to listed quantities due to a funding increase or decrease will be coordinated between The Food Banks and The Company with at least 30 days’ notice.
2. The Company agrees that it will comply with all applicable provisions of the following regulations:
 - United States Government, Department of Health and Human Services
 - United States Government, Department of Agriculture
 - Commonwealth of Massachusetts, Department of Public Health
 - Commonwealth of Massachusetts, Department of Agricultural Resources
 - Commonwealth of Massachusetts, Department of Education, Nutrition Programs and Services
 - All other applicable laws and regulations
3. This agreement shall be in conformity with and shall be governed by the applicable laws of the Federal Government and the Commonwealth of Massachusetts. Pursuant to 801 CMR 21.07(1)(c) of the Code of Massachusetts Regulations, GBFB reserves the right to negotiate with the Company on any specific item or item(s), which results in lower costs or in a more cost effective or better value than was presented in the bidder’s originally selected response. Failure to agree upon pricing, terms, and conditions which reflect market conditions may result in early termination by GBFB.

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4. All prices are delivered prices as indicated in the bid document and include any applicable taxes. Individually, the Food Banks are 501(c)(3) organizations, and are exempt from tax. Copies of tax exemptions are available upon request. As indicated in the original invitation for bid letter, the Company is awarded the contract for all products as awarded and detailed in Attachment A.

5. Unless otherwise indicated in the appropriate column of the bid sheet and agreed upon by GBFB at award of bid, all bid prices will be effective for at least 3 months ('Term Period') from the inception and activation of the contract, after which time the Company may request price modification, not less than 30 days in advance of an anticipated price increase. If no notice is given, the then prevailing price will presume to continue for the corresponding term period in the preceding effective Term Period. To increase pricing, the Company shall follow the following steps:
 - Submit a written request to Ned Armsby at The Greater Boston Food Bank, 70 South Bay Avenue, Boston, MA 02118 – narmsby@gbfb.org – supplying all supporting documentation including, but not limited to, invoices from the food supplier/manufacturer to the vendor, and:
 - a) Original cost of product from supplier;
 - b) Current contract price with The Food Banks;
 - c) New cost of product from supplier;
 - d) New contract price requested;

- The amount of a price modification, if any, shall be determined by GBFB in its sole discretion. GBFB reserves the right to adjust quantities ordered based on a modified price.

6. The Company has a duty to disclose and transfer economic benefit to the corresponding Food Banks on a timely basis of any and all manufacturer coupons, volume purchase agreements, rebates or bulk sale savings that they receive through purchases made in connection with this contract. The Company also has a duty to take the steps necessary to ensure that such coupons/rebates/savings redemption forms are delivered to The Food Banks within a timely fashion before the rebate/coupon/savings expire.

7. Attachment B lists the delivery sites and Attachment A - the MPO indicates the months during which delivery will occur. Monthly confirmation of appointments for delivery must be made with the contact person at each food bank, at least 3 *business days* in advance. The Food Banks reserve the right to refuse delivery if a dock appointment is not made prior to arrival of the truck.

8. All products must be palletized and indicate the Company's name. All cartons on the pallet must be clearly labeled to indicate the contents of the package, as well as the quantity of product in the carton. All individual retail products within the cartons must be clearly labeled with ingredients and nutrition information in compliance with prevailing labeling requirements in effect at the time of delivery.

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9. The Food Banks will take title of all products only after inspection of the food product (which inspection shall occur within 14 days of receipt thereof) and determination that the product complies with the requirements and specifications of the contract. All food products must satisfy all applicable government laws and regulations, including applicable state and local health codes. The Company shall bear all responsibility for and risk of loss of, or damage to, the goods until delivery of the goods to The Food Banks and acceptance by The Food Banks. Shipments sent C.O.D. without The Food Banks's written consent will not be accepted. The Food Banks reserve the right to return all items received that are found to be less than the quality or specifications agreed to. GBFB will not pay the Company for food which is not delivered, or which is rejected. The Food Banks shall notify the Company, in writing, as to the type and quantity of food product rejected and the reasons for rejection.
10. In instances of late delivery of ordered product or instances where the product delivered and received is found to be less than the quality agreed to, GBFB, at its option, if determined to be necessary, may purchase replacement or alternate goods elsewhere and may deduct the cost and expense thereof to GBFB, if any, from the Company invoices, and may, in its sole discretion, terminate this agreement in accordance with Section 16 hereof, as a termination "with cause". Rejected food product shall be disposed of as mutually agreed by the parties. Whenever any delay (or any threatened delay) in delivery is foreseen by the Company, the Company shall immediately notify The Food Banks in writing of such threatened or actual delay, but any such notice shall not affect the rights of GBFB hereunder, including the right to terminate this agreement.
11. The Company shall defend and fully indemnify The Food Banks and hold their employees harmless from any and all liability of every nature and description which The Food Banks or any of their employees or agents, or any person or entity to whom The Food Banks provide food products purchased by GBFB under this Agreement, may suffer through personal injury or death caused by any damage or unhealthful product delivered to The Food Banks by the Company, or any act or omission in an area falling within the scope of responsibility hereunder, of the Company, its agents or employees.
12. The Company will designate one person at its main place of business as an authorized account representative for The Food Banks. This person will be responsible for all activity relating to The Food Banks' purchase and will provide a summary of the items and services furnished and the cost thereof.
13. Neither party may change this agreement unless the change is agreed to by the other party and a written amendment is executed.
14. Shipment of all or any part of an order constitutes acceptance of all terms and conditions herein without reservations.
15. **NO PROVISION CONTAINED IN THE COMPANY'S INVOICE OR ANY OTHER COMMUNICATION OF THE COMPANY SHALL BE BINDING ON GBFB IF**

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INCONSISTENT WITH, CONTRARY TO, OR IN ADDITION TO THE TERMS AND CONDITIONS CONTAINED HEREIN, UNLESS SUCH PROVISION IS EXPRESSLY AGREED TO IN WRITING BY AN AUTHORIZED OFFICER OF GBFB.

16. GBFB specifically reserves the right to cancel this agreement or any portion thereof with cause because in the opinion of GBFB, the food product supplied by the Company is not satisfactory or consistent with the terms of the agreement, or, in GBFB's opinion, the Company will not be able to perform its obligations hereunder, or for any other material breach of this agreement, on forty-eight (48) hours' notice. It is further understood that, in the event of cancellation of this agreement, GBFB will be responsible only for the payment of food product delivered and accepted.
17. The Company should disclose standard payment terms, along with available payment discounts if applicable.
18. Terms of payment: 30 days after GBFB's receipt of product, invoice, or contracted delivery date, whichever is latest.
19. **All invoices are to be sent to GBFB, 70 South Bay Avenue, Boston, MA 02118, Attention: Accounts Payable or in electronic PDF format to ap@gbfb.org and shall be itemized. Invoices should be mailed or e-mailed and NOT sent with the deliveries. Payment can only be made from original invoices and not from statements. All invoices must state The Greater Boston Food Bank as the 'Bill to' party and must reference the associated GBFB purchase order number.** Payment for accepted food product will be made at the per case or per pound price specified in the accepted bid. Invoices for per pound items must reflect the actual net weight received, as noted on the bill of lading accompanying delivery. No payment shall be made unless the required delivery receipts have been signed by a representative of The Food Banks.
20. The Company certifies that the agreement is made in good faith, without fraud, or connection of any kind with any other company for the same work, and the Company is performing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.
21. Any individuals rendering services pursuant to this agreement on behalf of the Company shall be deemed employees or independent contractors of the Company and not of GBFB.
22. The Company shall not subcontract or assign its responsibilities under this agreement without the express prior written consent of GBFB.
23. Notices – Notices are to be sent to the Company to the authorized account representative named on the signature page at the address listed below for such account representative. Notice shall be deemed delivered and received when given

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in person or sent by fax, or when delivered by any other method evidencing actual receipt by the addressee.

(a) Form of Notice. All notices, requests, claims, demands and other communications between the parties shall be in writing.

(b) Method of Notice. All notices shall be given (i) by delivery in person (ii) by a nationally recognized next day courier service, (iii) by first class, registered or certified mail, postage prepaid, (iv) by facsimile or (v) by electronic mail to the address of the party specified in this Agreement or such other address as either party may specify in writing.

(c) Receipt of Notice. All notices shall be effective upon (i) receipt by the party to which notice is given, or (ii) on the [fifth (5th)] day following mailing, whichever occurs first.

If to The Food Banks:

Mr. Dan O'Neill
The Greater Boston Food Bank, Inc.
70 South Bay Avenue
Boston, MA 02118
617-427-5200
doneill@gbfb.org

If to Company:

Person's Name:
Company Name:
Address:
City, State, Zip:
Phone:
E-mail:

23. The Food Banks may extend the term of this contract by giving written notice to the Company within 60 days of termination date. If the Food Banks exercises this option, the extended contract shall be considered to include this option provision.

The total duration of this contract, including the exercise of any options under this clause, shall not exceed 24 months.

24. Governing Law – This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts, without reference to the conflicts of laws or choice of law provisions thereof.

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**MEFAP FISCAL YEAR 2018
THE GREATER BOSTON FOOD BANK
FOOD PRODUCT PURCHASING AGREEMENT**

FOR THE GREATER BOSTON FOOD BANK

Approved:

Catherine D'Amato
President/CEO
The Greater Boston Food Bank
70 South Bay Avenue
Boston, MA 02118

Date: _____

Approved:

Dan O'Neill
Director of Purchasing
The Greater Boston Food Bank
70 South Bay Avenue
Boston, MA 02118

Date: _____

FOR THE COMPANY

Approved:

NAME
TITLE
COMPANY
ADDRESS

Date: _____

Approved:
