# Attachment B, SNP Memo #2020-2021-51

# March 15, 2021

# **Virginia Department of Education, Office of School Nutrition Programs logo**

## Sample Forward Contract Template for Agricultural Products, [2020-2021]

***INSTRUCTIONS: This document is a sample and is not intended to be all inclusive. The school food authority (SFA) is ultimately responsible to ensure that the contract complies with all federal regulations, state procurement regulations, and local procurement policies. The content formatted in bold and italics throughout this document is instructional and should not be included in the SFA’s contract. All content within [brackets] should be modified as needed. This template forward contract can be used by school divisions, child nutrition programs, food service management companies, or purchasing cooperatives, and is intended to follow a vendor’s submission of a request for information and subsequent bid on a request for proposals.***

[Farm/Vendor business name]

[Name of farmer/vendor representative]

[Address]

[Phone number]

[Email address]

[Buyer name—school division, child nutrition program, or purchasing cooperative]

[Contact person name]

[Address]

[Phone number]

[Email address]

### Purpose

Upon performing a cost/price analysis and evaluating responses to a request for proposals with price and other factors considered with price as the primary factor, it is the intention of [School Division, Department of Nutrition Services/Child Nutrition Program/Purchasing Cooperative] to purchase the products listed in the table below. This document describes the contract terms between the farmer, herein known as the Contractor, and the [School Division/Child Nutrition Program/Purchasing Cooperative], herein known as the Buyer. Retain this signed document and follow the instructions below to fulfill orders. The quoted prices are firm throughout this purchase period [July 20XX until June 20XX].

### Background

This nutrition program feeds an average of [number of students] daily in grades [indicate grade levels] at [number] of schools. ***Include free and reduced percentages and number of schools qualified for Community Eligibility Provision, if applicable.*** [School division/program] participates in the [indicate federal nutrition programs, i.e., National School Lunch Program, School Breakfast Program, etc.]. This nutrition program ensures that all students have equitable access to fresh, healthy foods that are locally grown when feasible.

### values statement

***Adapt as applicable.*** [School Division, Department of Nutrition Services/Child Nutrition Program/Purchasing Cooperative] aligns its purchasing practices to reflect the following values:

* Access to nutritious, safe, healthy, and delicious food is paramount for the success of all students.
* The work of farmers and ranchers is important in our community and throughout Virginia.
* Providing health, nutrition, and agriculture education opportunities for students enhances their educational experience.
* Supporting local and regional producers benefits growers, students, customers, and the community. Supporting local growers creates job opportunities in agriculture.

### geographic preference

***Adapt as applicable.***[School Division, Department of Nutrition Services/Child Nutrition Program/Purchasing Cooperative] desires to serve Virginia-grown products to its students. The Buyer recognizes the value of serving fresh foods from local sources when possible to enhance learning opportunities, ensure freshness, and create local economic opportunities.

1. Under federal law, this [School Division/Child Nutrition Program/Purchasing Cooperative], as the purchasing institution, has the authority to apply a geographic preference to minimally processed foods and to determine the definition of “local” for the purposes of the United States Department of Agriculture (USDA) programs such as the National School Lunch Program, the School Breakfast Program, the Fresh Fruit and Vegetable Program, the Fruit and Vegetable Pilot Program, the Special Milk Program, the Child and Adult Care Food Program, the Summer Food Service Program, and the Department of Defense Fresh Program.
2. This [Division/Program/Cooperative] defines “locally grown” produce, meat, poultry, fish, seafood, and grains as [insert definition of local]*.* The definition of fluid milk is broader to encompass the regional nature of the fluid milk industry and is defined as [insert definition of local fluid milk]. This [Division/Program/Cooperative] will apply applicable federal procurement procedures.
3. As provisioned under federal law, the Buyer provided a price percentage preference of [XX] percent [or insert other point calculation system] during evaluation of bids to “locally grown products” as defined under this geographic preference. The Buyer will pay the Contractor the quoted price, not the discounted price for evaluation purposes.
4. Pursuant to USDA regulations, the geographic preference in this section is applied only to “minimally processed” agricultural products which retain their inherent character.

### Terms and Termination

***Adapt as applicable.***The quoted prices are firm throughout this purchase period [July 1, 20XX until June 30, 20XX]. This agreement may be extended or amended upon the written mutual agreement of both the Contractor and the Buyer.

The Buyer has the option to renew this agreement. The renewal shall be contingent, at a minimum, on the Contractor’s satisfactory performance of this contract as determined by the Buyer and subject to the availability of funds.

Notwithstanding the foregoing, either party may terminate this agreement for cause or convenience, at any time without penalty, by providing 30 days advanced written notice to the other party.

The Contractor is expected to update the Buyer to confirm product availability approximately four to six weeks prior to estimated product delivery so [School Division/Child Nutrition Program] can develop menus, tastings, and promotions. [School Division/Child Nutrition Program] will place orders at least one week prior to serving.

The [School Division/Child Nutrition Program] reserves the right to additional competition, including purchase from other sources if the vendor is unable to deliver items within the designated time.

### Product, Price, and Order Timeline

***Include all products the Buyer will purchase from the Contractor. Add a column for summer purchases if they will be on the same contract.***

| **Product** | **Product Description and Specifications** | **Wholesale Price per Pack Size** | **August-September 2020** | **October-November 2020** | **December 2020-January 2021** | **February-May 2021** |
| --- | --- | --- | --- | --- | --- | --- |
| ***Example:***  ***Sweet Potato*** | *Use baked or mashed. Firm and good internal quality; mature but not overly large; wiped free of dirt and no decay; cosmetic or shape imperfections okay; large and medium size preferred.* | *$19.00 per 40# carton, including delivery;* | *2 cartons per week delivered to 8 sites (16 cartons/wk, 6 weeks)*  *Total:96 cartons*  *approx. 3,840#* | *2 cartons per week delivered to 8 sites (16 cartons/wk, 7 weeks)*  *Total:112 cartons*  *approx. 4,480#* | *2 cartons per week delivered to 8 sites for (16 cartons/wk, 5 weeks)*  *Total:80 cartons,*  *approx. 3,240#* | *2 cartons per week delivered to 8 sites (16 cartons/wk, 14 weeks)*  *Total:224 cartons*  *approx. 8,960#* |
| [Enter product name**]** | [Enter product description] | [Enter price per pack size] | [Enter order estimate] | [Enter order estimate] | [Enter order estimate] | [Enter order estimate] |

*\**Volumes listed are based upon historic consumption and represent conservative minimum purchase estimates for this contract. Additional volumes may be purchased if price, quantity, and quality are acceptable. [School Division/Child Nutrition Program/Purchasing Cooperative] may obtain additional similar items through other channels (contracted vendors, seasonal quotes, DOD Fresh entitlement funds) during the year outside of this award.

### Contractor’s Obligations

1. All deliveries shall be to designated sites listed in “Delivery Locations”.
2. ***Select applicable obligation:*** Contractor shall maintain *Good Agricultural Practices (GAP)* certificationverifying production and handling practices in accordance with recommended safety guidelines.

***AND/OR***

Contractor shall complete, sign, and return *Attachment A, Virginia Cooperative Extension Assessing On-Farm Produce Safety Risk* with the executed contract.

1. [School Division/Child Nutrition Program/Purchasing Cooperative] [requires OR prefers] a vendor with capacity to deliver to each school kitchen. The “Delivery Locations” list indicates sites where products will be delivered. The Contractor agrees to deliver products at the contract price to locations as indicated during the contract period.
2. Products shall be transported in vehicles capable of maintaining the quality and food safety of all products up to the time of delivery and acceptance at the Buyer’s specified delivery locations. **Note:** Children are a high-risk population, and food safety is critical. The Contractor must follow all USDA, Virginia Department of Health, and Virginia Department of Agriculture and Consumer Services food safety guidelines for product handling and transport. See USDA-ARS Handbook Number 66, Commercial Storage of Fruits, Vegetables, and Florist and Nursery Stocks for more information on proper storage temperatures and optimal humidity rates. See also the University of Kansas resource entitled “Enhancing the Safety of Locally Grown Produce: Storage of Fresh Produce” for a chart of optimal storage temperatures and relative humidity.
3. Delivery should be on the agreed upon date and time discussed when order is placed. Should delivery be delayed for any reason, Contractor will contact the appropriate personnel. Contact personnel for [School Division/Child Nutrition Program] can be found in the “Contact Information” below.
4. Deliveries shall not be left outside the building. All deliveries will be placed inside the kitchen area in the location designated by the food service site contact. Any losses resulting from the Contractor’s failure to deliver within specified timeframes shall be borne exclusively by the Contractor.
5. When an agreed-upon amount of produce becomes unavailable, the Contractor must notify the Buyer with seven days’ notice, excluding weekends and holidays, before scheduled delivery so other arrangements can be made. **Any changes in product availability or delivery scheduling must be immediately communicated with the division contact.**
6. The [School Division/Child Nutrition Program] has the right to refuse produce upon delivery if it does not meet the agreed-upon quality and pricing requirements. Damaged or unacceptable product shall be credited to the Buyer. All products shall be free from spoilage and/or damage.
7. The quote is a unit price and includes delivery cost. The [School Division/Child Nutrition Program] shall not be charged for any additional cost [except tax should it incur]. Participating sites will honor the minimum delivery requirements as set forth in the vendor proposal. **Note:** some school divisions require a single delivery location, while others require multiple drop sites during the school year and a single delivery location during the summer months. See “Delivery Locations” for details.
   1. Minimum delivery requirement:
8. Contractor shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority.
9. Contractor shall carry a minimum of [$1,000,000 to $5,000,000] in product liability insurance during the contract period.

### Invoicing

A detailed invoice must be provided with each delivery of product. The invoice should be separate for each [Site/Division/Child Nutrition Program] and contain the following information:

1. Name, address and phone number of Contractor selling products.
2. Date of delivery.
3. Itemized list of quantity, item description, origin of the item (farm, location), unit of sale (ea., cu., lb., etc.), price per unit and extended total price for each item listed on invoice.
4. Grand total amount each district has to pay for the total purchase [including sales tax if applicable].
5. Signature of school personnel authorizing receipt of products.

### Billing and Payment

Contractor will prepare a separate statement for each school monthly. Statements will be forwarded no later than five days after the billing period to [address and contact of accounts payable].

Payment shall be made after satisfactory performance of the contract, in accordance with the provisions thereof, and upon receipt of a properly completed delivery ticket.

Payment by the division or child nutrition program is net 30 [unless other terms have been discussed and agreed upon].

### Liability

Contractor will hold [School Division/Child Nutrition Program] harmless for any damages resulting from consumption of products delivered under this contract, when such damages are attributed to foreign materials or other defects in products delivered by the Contractor.

### General Terms and Conditions

1. **Applicable Law and Choice of Forum**: This agreement shall be construed, governed, and interpreted pursuant to the laws of the Commonwealth of Virginia. All disputes arising under this agreement shall be brought before a proper court in [name of county/city], Virginia.
2. **Status of the Parties**: The relationship of the parties to each other is solely that of independent parties. No party shall be considered an employee, agent, partner or fiduciary of the other except for such purposes as may be specifically enumerated herein. Nothing contained in this agreement shall be construed to create any partnership or joint venture between the parties. The Contractor shall provide services as an independent contractor. Under no circumstances will the Contractor be considered an employee of [name of School Division/Child Nutrition Program].
3. **Conflict of Interest**: No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by federal, state, or local awards if he or she has a real or apparent conflict of interest as detailed in the [Division/Program]’s Code of Conduct.
4. **Nondiscrimination/Equal Opportunity Statement**: In accordance with federal civil rights law and USDA civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits.  Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339.  Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](https://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf), (AD-3027) found online at: [How to File a Complaint](https://www.ascr.usda.gov/filing-program-discrimination-complaint-usda-customer), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

1. mail: U.S. Department of Agriculture   
   Office of the Assistant Secretary for Civil Rights   
   1400 Independence Avenue, SW   
   Washington, D.C. 20250-9410;
2. fax: (202) 690-7442; or
3. email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

This institution is an equal opportunity provider.

1. **Debarment and Suspension**: No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from federal procurement or non-procurement programs in accordance with E.O.s 12549 and 12689, “Debarment and Suspension.” This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors shall provide the required certification regarding its exclusion status and that of its principal employees.
2. **Byrd Anti-Lobbying Amendment**: Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient.
3. **Buy American**: In this paragraph, the term “domestic commodity or product” means
   1. an agricultural commodity that is produced in the United States; and
   2. a food product that is processed in the United States comprised of over 51% agricultural commodities produced in the United States.

(2) Requirement. (i) *In general.* Subject to paragraph (d)(2)(ii) of this section, the department shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.

(ii) *Limitations.* Paragraph (d)(2)(i) of this section shall apply only to—

1. A school food authority located in the contiguous United States; and

(B) A purchase of domestic commodity or product for the school lunch program under this part.

### Contact Information

Please send the signed contract ***and if applicable*** [and signed copy of the Virginia Cooperative Extension Food Safety Risk Assessment] to:

***[Enter the name of the School division, Child Nutrition Program, Purchasing Cooperative managing the contract.]***

School Division Name:

School Point of Contact Name:

Mailing Address:

Address Line 2:

City, State, Zip:

Email Address:

Contact Phone:

#### **School Nutrition Program/Child Nutrition Program Contacts:**

***Delete this section if this contract is for only one school division.*** The contacts below will order product from you. Invoice each [Division/Program] separately. Do not send signed contract forms to the contact(s) listed below.

***Instructions for purchasing cooperatives: Enter the point of contact for the participating school divisions and child nutrition program sponsors (i.e., local CACFP or SFSP sponsors). Maintain documentation of participating divisions for procurement review records. Attach additional sheets as necessary.***

1. School Division/Child Nutrition Point of Contact Name:

School Division Name:

Mailing Address:

Address Line 2:

City, State, Zip:

Email Address:

Contact Phone:

1. School Division/Child Nutrition Point of Contact Name:

School Division Name:

Mailing Address:

Address Line 2:

City, State, Zip:

Email Address:

Contact Phone:

1. School Division/Child Nutrition Point of Contact Name:

School Division Name:

Mailing Address:

Address Line 2:

City, State, Zip:

Email Address:

Contact Phone:

### Delivery Locations

***Instructions for each school division/sponsor: Enter specific points of contact and information for each delivery site. Include loading dock information, anticipated months of delivery, and other important information (i.e., ID and sign-in required). Divisions may instead attach a spreadsheet of each site with the necessary information for delivery. Attach additional sheets as necessary.***

Each of the below sites will receive deliveries. A receipt is required at time of delivery.

**School Division/Child Nutrition Program 1:**

School Name:

School Point of Contact Name:

Delivery Address:

Address Line 2:

City, State, Zip:

Email Address:

Contact Phone:

Delivery Time Window:

Delivery Location Details:

Anticipated months for delivery:

Additional information:

School Name:

School Point of Contact Name:

Delivery Address:

Address Line 2:

City, State, Zip:

Email Address:

Contact Phone:

Delivery Time Window:

Delivery Location Details:

Anticipated months for delivery:

Additional information:

**School Division/Child Nutrition Program 2:**

School Name:

School Point of Contact Name:

Delivery Address:

Address Line 2:

City, State, Zip:

Email Address:

Contact Phone:

Delivery Time Window:

Delivery Location Details:

Anticipated months for delivery:

Additional information:

School Name:

School Point of Contact Name:

Delivery Address:

Address Line 2:

City, State, Zip:

Email Address:

Contact Phone:

Delivery Time Window:

Delivery Location Details:

Anticipated months for delivery:

Additional information:

**School Division/Child Nutrition Program 3:**

School Name:

School Point of Contact Name:

Delivery Address:

Address Line 2:

City, State, Zip:

Email Address:

Contact Phone:

Delivery Time Window:

Delivery Location Details:

Anticipated months for delivery:

Additional information:

School Name:

School Point of Contact Name:

Delivery Address:

Address Line 2:

City, State, Zip:

Email Address:

Contact Phone:

Delivery Time Window:

Delivery Location Details:

Anticipated months for delivery:

Additional information:

### Attachment A: Virginia Cooperative Extension, Assessing On-Farm Produce Safety Risks









