

## **Addendum #1**

### **To the Request for Proposals (“RFP”) For Janitorial Services Provider**

**Issued by:**

#### **Advantage Arts Academy**

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This Addendum modifies the RFP for Janitorial Services Provider issued by Advantage Arts Academy (the “School”) as follows:

1. The attached Standard Terms and Conditions for Child Nutrition Program Contracts must be part of the written janitorial agreement to be entered into by AAA and the winning offeror. This is required because some of the janitorial products and/or services to be provided by the winning offeror will be paid for by AAA with federal Child Nutrition Program funds, and federal regulations require such terms and conditions.

## Standard Terms and Conditions for Child Nutrition Program Contracts

The School and the Vendor are parties to an agreement pursuant to which the Vendor will provide products and/or services to the School, some of which will be products and/or services related to the School's child nutrition program (the "Agreement"). The School requires these terms and conditions to be part of any agreement related to its child nutrition program. The parties therefore agree to add these terms and conditions to the Agreement and to make these terms and conditions applicable to any part of the Agreement for which products and/or services provided under the Agreement are paid for with federal child nutrition program funds. In the event of any conflict between the terms of the Agreement and these terms and conditions, the provisions of these terms and conditions will govern.

1. **Terms and Conditions.** The Vendor must be fully acquainted with the terms and conditions relating to the performance of the Agreement. Failure of the Vendor to be familiar with existing conditions shall in no way relieve the Vendor of its obligation with respect to these terms and conditions of the Agreement.
2. **Mutual Termination of the Agreement.** The parties may mutually agree to terminate the Agreement on an agreed-upon date before the end of the term of the Agreement without penalty to either party.
3. **Non-Performance of Agreement and Termination.**
  - a. The Agreement may be terminated in whole or in part by either party in the event of failure by the other party to fulfill its obligations under the Agreement through no fault of the terminating party.
  - b. The School may terminate the Agreement immediately upon written notice to the Vendor if the Vendor becomes the subject of a proceeding under state or federal law for the relief of debtors or if an assignment is made for the benefit of creditors, or if the Vendor loses its license or other ability to provide the required products and/or services, or if the Vendor takes any action that violates any applicable laws (including, but not limited to, state and federal law governing the NSLP/SBP).
  - c. Any termination of the Agreement resulting from any cause other than a Force Majeure event will be deemed a valid reason for not considering any future proposal or bid from the defaulting Vendor.
4. **Termination for Convenience.** The School may terminate the Agreement prior to the expiration of the term without cause and without penalty upon thirty (30) days written notice to the Vendor.
5. **Final Payments.** Upon any termination of the Agreement, the School will pay for all acceptable products and/or services received from the Vendor up to the effective date of the termination. The Vendor shall submit all required reports and other information to the School.
6. **Breach of the Agreement and Remedies.** If the Vendor fails to comply with any of the terms and conditions of the Agreement, the School may send the Vendor a ten (10) business day

Notice to Cure the defect or breach. During the ten-day period, the parties may meet and confer to discuss the resolution of the defect or breach.

If there is not a satisfactory resolution at the end of the ten-day period, the School may immediately cancel all or any part of an order. Such cancellation shall not be deemed a waiver by the School of any rights or remedies for any breach of the Agreement by the Vendor. The School reserves all rights and remedies provided by statute or common law in the event of such breach. Without limiting the foregoing, the School may, at its option, require the Vendor to repair or replace, at the Vendor's expense, any products that caused the breach.

In the event of nonconformity, the School may cancel the Agreement or place any products on the open market after due notice and recover from the Vendor the anticipated difference between the market price at the time of replacement and the agreement price.

The School's remedies are cumulative and additional to any other remedies provided by law. No waiver of any breach shall constitute a waiver of any other breach.

7. **Debarment.** The Vendor certifies that it is not presently nor has it ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. The Vendor must notify the School within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during the Agreement.

8. **State and Federally Required Contractual Provisions.** The Vendor must have obtained, and will continue to maintain during the entire term of the Agreement, all permits, approvals or licenses necessary for lawful performance of its obligations under the Agreement. In addition, the Vendor is responsible to abide by all applicable federal and state laws and policies, as applicable, when providing products and/or services under the Agreement.

9. **Equal Employment Opportunity.** The Vendor shall comply with E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulations at 41 CFR Part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

10. **Labor and Civil Rights Laws.** The Vendor shall comply with applicable federal, state, and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with the Vendor's performance of work under the Agreement, the Vendor agrees not to discriminate against any employee(s) or applicant(s) for employment because of sex, age, race, color, religion, creed, sexual orientation, gender identity, national origin, citizenship status, or disability. The Vendor shall also comply with applicable Civil Rights laws as amended, including but not limited to Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-6, Civil Rights Compliance and Enforcement in School Nutrition Programs.

11. **Clean Air Act and Federal Water Pollution Control Act.** The Vendor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 USC 7401-7671q, and the Federal Water Pollution Control Act as amended, 33 USC 1251-1387. The Vendor must report violations to the School and to the relevant federal or state agency as appropriate.

12. **Buy American.**

a. The Vendor will comply with the Buy American requirement, which dictates that school food authorities participating in the federal school meal programs are required to purchase domestic commodities and products for meals to the maximum extent practicable. Domestic commodity or product means an agricultural commodity that is produced in the U.S. and a food product that is processed in the U.S. substantially (at least 51 percent) using agricultural commodities that are produced in the U.S., 7 CFR 210.21, 220.16, and 250.23.

b. Exceptions to the Buy American requirement should only be used as a last resort. An alternative or exception may be approved by the School upon the Vendor's request. To be considered for the alternative or exception, the request must be submitted in writing to the School's designated official a minimum of seven (7) days in advance of delivery. The request must include:

- (1) For an alternative, a description of the alternative substitutes that are domestic and meet the required specifications:
  - (i) Price of the domestic food alternative substitutes; and
  - (ii) Availability of the domestic alternative substitutes in relation to the quantity ordered; and
- (2) For an exception to the Buy American requirement, the reason for the exception, including limited availability, lack of availability, or price (include price):
  - (i) Price of the domestic food product; and
  - (ii) Price of the non-domestic product that meets the required specification of the domestic product.

13. **Food Laws.** The Vendor shall operate in accordance with all applicable laws, ordinances, regulations and rules of federal, state, and local authorities, including but not necessarily restricted to a Hazard Analysis and Critical Control Point (HACCP) plan.

14. **Lobbying Certification.** The Vendor certifies that it has not and will not use 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 USC 1352.

15. **Records.** The Vendor and the School will retain all required records for a period of at least three (3) years after the School makes final payment and all other pending matters are closed, including any ongoing audits or the end of the fiscal year to which they pertain, whichever is greater. Upon request, the Vendor will make all accounts and records pertaining to the Agreement available to the certified public accountant hired by the School, representatives of the USBE, USDA, and the Office of Inspector General (OIG) for audits or administrative reviews at a reasonable time and place.

16. **Small and Minority Business.** The Vendor will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible in fulfilling the Agreement.

17. **Force Majeure.** Neither party shall be liable in damages or have the right to terminate the Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

18. **Waiver.** No claims or rights arising out of a breach of the Agreement can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing and signed by the aggrieved party.