



# Request For Proposal (RFP)

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**ON-SITE CAFETERIA, CENTRAL CAFE & VENDING SERVICES- RFP #  
BHCFSV2023**

**BHCC**

BUNKER HILL COMMUNITY COLLEGE | CHARLESTOWN MA

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## **I. General Information and Proposal Submission Requirements**

### **Proposal Delivery**

All Proposals must be submitted electronically by visiting <https://bhcc.edu/bhcfsv2023> . Proposer must pre-register using the online registration form. Proposal submission link will be provided after registration. All submitted electronic file-names must start with the company name. All documents must have the header as FOOD & VENDING SERVICES-BHCFSV2023.

Proposals must be delivered by 5 PM on March 31, 2023. Late Proposal responses will not be accepted. Proposals that are either emailed, faxed, hand-delivered, mailed out, or sent by any medium other than the information provided above will not be accepted as a proposal delivery. Information submitted beyond the scope required in the RFP may hinder vendor evaluation. One Proposer will be awarded the single food and vending service contract. If a proposer plans to use a subcontractor for any of the services, they must list the subcontractors' names and their qualifications in the proposal. It will be the complete responsibility of the successful proposer to manage their subcontractors without any impact on the College's Master Contract for Food & Vending Services.

All proposals must include a W9, Signatory Listing, Non-Collusion, and Tax Compliance Form. All forms are needed to be completed and fully signed. Also, it must have a Sample Menu of food offerings, Staffing Pattern, Tentative Hours of Operation, Merchandising Sheet for Vending Machines, and a Specific Proposal relative to monthly sales share commissions.

### **Proposal Signature**

A proposal must be signed as follows: 1) if the proposer is an individual, by them; 2) if the proposer is a partnership, by the signature of at least one general partner; and 3) if the proposer is a corporation, by the authorized officer, whose signature must be attested to by the clerk/secretary of the corporation, and with the corporate seal affixed.

### **Time for Proposal Acceptance**

The contract will be awarded within 45 Days after the Proposal opening. The time for the award may be extended for up to 45 additional days.

### **Changes and Addenda**

If any changes are made to this RFP, an addendum will be issued to all proposers who have picked up the RFP. A proposer may not alter the RFP language, specifications, terms & conditions, or RFP component; Proposer modifications to the RFP are prohibited; any such

modifications will disqualify the proposer.

### **Questions about the RFR**

Please email [purchasedoc@bhcc.edu](mailto:purchasedoc@bhcc.edu) referencing the proposal number in the email's subject line with questions. All questions and answers are distributed to all registered proposers.

### **Modification or Withdrawal of Proposals, Mistakes, and Minor Informalities**

A proposer may correct, modify, or withdraw a proposal by written notice received by Bunker Hill Community College before the time and date set for the deadline of proposal submission.

### **Pre-Proposal walk-through**

A pre-proposal walk-through will be held at 10 AM. on Wednesday, March 08, 2023, at Bunker Hill Community College, 250 New Rutherford Ave, Boston, MA 02129. The walk-through meeting will be held at the main lobby on the 2<sup>nd</sup> floor of B-Building. Attendance to the walk-through is mandatory to qualify as a Proposer; this will be an opportunity for a Proposer to inspect the facilities and gather additional information to submit their Proposal. Contact Mukti Raut, Director of Purchasing, at 617-228-2433 with any questions.

### **Right to Cancel/Reject Proposals**

Bunker Hill Community College may cancel this RFP or reject in whole or in part any and all proposals if the College determines that cancellation or rejection serves the best interests of the College. The College will not acknowledge a proposer's Terms & Conditions throughout the award. Terms & Conditions are negotiable by mutual agreement/contract after the award; final Terms & Conditions are at the sole discretion of the College. The College makes no guarantee that any service will be purchased resulting from this RFP.

## **II. Purchase Description/Scope of Services**

### **General Description**

It shall be the Contractor's responsibility to provide a food service operation, including but not limited to the purchasing, cooking, preparation, refrigeration, and distributing of food in the Cafeteria and Central Café area of Bunker Hill Community College. The Food Contractor will prepare and serve menu entrees, sandwich making, salads, and short-order cooking preparation for Students, Faculty, Staff, and Visitors. The Food Contractor will offer a Menu that

blends the student body's needs but is not limited to providing culturally diverse and healthy choice options. A combination of standard menus offering nutritional value/healthy choices is recommended. for BHCC office meetings or general gatherings in a limited capacity with exceptions as agreed upon by the College's Culinary Arts Program and Student Activities Department. The college's Culinary Arts Program also serves foods prepared by students in their dining rooms as part of their course curriculum.

The contractor must operate the Vending Services at the Bunker Hill Community College campuses located in Charlestown and Chelsea as a part of the contract.

### **Contract Term Length**

The contract period can run for three years, from July 1, 2023, through June 30, 2026. The college, at its sole discretion, can extend the contract for two to five additional years.

### **Price Structure**

The contractor will be required to maintain a price/portion schedule that is acceptable to the College.

### **Performance Standards**

#### ***Food Services***

The quality of service & food is essential to satisfactory performance.

The quality rating of raw food shall be no less than the standards of USDA Grade A or equivalent for meat, fish, poultry, eggs, dairy products, and produce—fresh or frozen. Ground beef shall not exceed 20% fat content. All canned foods shall be USDA Choice or fancy. No dented, swollen tops, bottoms, or rusted cans are permitted.

All foods shall be served wholesomely and free from spoilage and decay. All packaged items will be dated/coded for freshness. Uncooked items like fresh fruit shall be clean and free from blemish. All foods shall, when served, be attractive and correct in temperature and consistency. Preference will be for fresh food over frozen food and frozen food over canned food.

Foods that contain potentially life-threatening substances sensitive to individuals (allergies) will be identified to the consuming public: gluten-free, etc.

The Food Contractor will comply with all Health/Sanitary Codes applicable through the local, state, and the federal government regarding the preparation, distribution, cleanliness, and storage of all equipment and food. Whenever a standard conflict with another standard, the

higher standard will prevail. Employee conduct must be professional with customers and staff; employees must maintain a sanitary Dress Code for cleanliness and appearance.

Alcoholic beverages are strictly prohibited for sale or use on campus. Gambling and the use of gambling devices are not allowed.

Proposer must list any Industry or Government Associations to which it is a member that applies to the Food Service Industry.

The college is preparing a new cafeteria space, which will be completed during the term of the contract. The college expects the successful contractor to be involved in the cafeteria design and layout. Proposers should include this in the proposal by describing their expertise in this area and their proposed scope of involvement in the process.

### ***Vending Services***

The vendor shall furnish vending equipment in first-class mechanical operation and attractive appearance on the installation date. All equipment must be UL approved, conform to all federal/state and local regulatory agencies, and be in new or newly refurbished condition, which will not be a model older than three (3) years. All equipment must possess Energy Saving capability and/or Energy Star Capability. The equipment shall have electronic POS capability for purchases.

Machines must be kept sufficiently stocked and fully operational to ensure product availability, with all product dates rotated with each delivery. Healthy Choice products must be identified for consumer recognition within the vending machines.

The vendor shall maintain seven days a weekly capacity for service calls and shall respond to all such calls within four (4) hours of notification. Equipment that cannot be returned to full service within four (4) working days of notice of needed repairs shall be promptly replaced with equipment of similar kind and quality.

The vendor shall provide and maintain funds, out of which refunds shall be made to customers at the College's Student Central Office on a bi-monthly basis. The vending machine system must be easy, accessible, and secure with a cash or cashless option.

### ***Subsidy for Food Services***

The following formula will be used to calculate the subsidy for the Food Services Operations.

$(\text{Cost} + \% \text{ Cost Markup}) - \text{Gross Sales} = \text{Subsidy Paid by the College.}$

Proposers must use the included Markup proposal sheet in their proposal, as shown by

EXHIBIT I.

***Basis of Sales Share Compensation from Vending Services***

Sales Share Commissions from Vending Operations will be paid monthly on the 15th of the following month and will include a detailed backup of sales by location, machine, and by product. Commission rates must base on gross sales less applicable sales tax and container deposits; no losses can be included in this calculation.

For reference, the average pre-pandemic vending sales per year had been in and around \$320,000.00. Vending Sales since the Pandemic is as shown below:

FY2021	\$	41,739.00
FY2022	\$	48,878.00
FY2023 first six months	\$	43,082.00

Proposers must use the included commission rate sheet in their proposal, as shown by EXHIBIT-I.

**Task Descriptions for Food Services**

1. Provide cafeteria Food Services and Central Café services to the College.
2. Follow the Food Code established by the U.S. Department of Agriculture’s Food Safety and Inspection Service and the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services to prevent foodborne illness and injury and to eliminate the most important food safety hazards.
3. At least one (1) table-bussing person must be on duty when food or beverages are being served through the manual operation of the food service.
4. All table-bussing, tabletops, chairs, planter sides, and general cleaning (including walls to a reasonable height) of the Cafeteria (E-Bldg. 4’t Floor) and Central Cafe/Cafe Area (located in the B-Bldg. Lobby) and floor care up to and including preparation for buffing and/or waxing in the Dining Area spot mopping, spillage cleanup, sweeping, removal of trash, stacking of chairs (as needed) with Contractor re-setting of chairs, as required, and all floor care and general cleaning. Cleaning materials, schedules, and procedures are to be as approved by the College. Provide Material Safety Data Sheets for all purchased cleaning chemicals/solvents.
5. Removal of all trash, refuse, and garbage from the Dining Area, Central Cafe/Café area, and designated areas for which Catering is a provided service and all other food service areas at the College to set compacting or holding areas at the delivery/shipping dock area. Trash receptacles must be cleaned thoroughly at least once per week.

6. Under no circumstances will the College restrooms and janitor's closets be used for storage of cleaning equipment, utensils, etc., or as a water source.
7. Maintain and replace, as applicable, for all Contractor-provided equipment, in a manner compatible with the existing facilities, at all times, during the life of this contract, upon the event of non-renewal, cancellation, termination, or expiration of the contract, for all items, by appropriate sanitation and health codes, and by manufacturer's warranties and preventative maintenance procedures as well as emergency repairs, all at the sole cost of the Contractor. The Contractor may provide and install, at its own expense, additional equipment after first receiving the approval of the College.
8. Assume sole responsibility for securing, maintaining, and paying for any relevant licenses, permits, clearances, approvals, fees, and taxes required by any and any Federal, state, County, or City laws or statutes without recourse to the College as needed for its performance under the contract; and shall post or display in a prominent place such permits and notices as required by law.
9. Provide all required and necessary related personnel and labor with appropriate and distinctive clothing and name tags to be worn during all working hours; all personnel shall present a clean and hygienic appearance at all times. The Contractor agrees to full compliance with applicable federal and state law regarding Equal Employment Opportunity and Affirmative Action.
10. Provide all customary insurance coverage throughout the life of this agreement without recourse to the College and hold the College harmless. For all insurance required herein, a certified copy of each policy or certificate of such insurance shall be delivered to the College within fifteen (15) calendar days after signing the contract by both parties. Each certificate or instrument shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed, or modified without giving thirty (30) calendar days written advance notice thereof to the College. If determined necessary by the College, the Contractor shall deliver to the College, upon demand, the original of any policy herein for review. The policy shall be returned to the Contractor upon completion of said review. The Contractor Shall include a provision that there will be no right of subrogation against the College in case of a workers' compensation or liability insurance payment.

#### **Task Descriptions for Vending Services**

1. Provide and install food and beverage vending machines in the college.
2. All vending machines must be stocked at least three (3) times per week, with adjustments made during peak school periods. The awarded vendor will provide all consumable vending products. Vending machines must be equipped with technology for Inventory



Control.

3. It must focus on quality and flavor and provide healthy meals around the clock. The machine must be stocked with a curated selection of meals and snacks, promoting better health within the college community. The system must be easy, accessible, and secure with cash or cashless option.
4. Specialty machines must be provided if requested by the College. If the provider is unable to offer such machines, the College reserves right to offer this opportunity to other vendors or providers.
5. All vending machines must either be bolted to the floor or secured to each adjacent machine for security & safety purposes.
6. All vending machines must be cleaned of visible dirt and debris per service visit; removing gum, tar, paper, and similar substances are required. Inclusive of cleanliness is the ceiling of the vending machines. All vending areas must be clean, sanitary, and aesthetically pleasing.
7. Proposer must dispose of any vendor-generated trash only at the compactor area located at the College Receiving Dock; vendor-generated trash will not be disposed of in surrounding College trash receptacles. If the Vendor is found violating this condition, then the College reserves the right to issue a charge-back to the vendor for labor cost to remove the vendor's trash. Such rate will be the applicable rate for the Facility Staff at the time of the infraction. The Proposer must use the recyclable area at the College's Receiving Dock for all cardboard/plastic content.
8. Assume sole responsibility for securing, maintaining, and paying for any relevant licenses, permits, clearances, approvals, fees, and taxes required by any Federal, State, County, or City laws or statutes without recourse to the College as needed for its performance under the contract; and shall post or display in a prominent place such permits and/or notices as required by law.
9. Provide all required and necessary related personnel and labor; personnel must be provided with appropriate and distinctive clothing, and name tags must be worn during all working hours; all personnel shall present a clean and hygienic appearance at all times. CORI checks are required to work within the College community; all vending personnel must have a background investigation, including a Cori check, before assigning to the college. Proposers must show their hiring personnel practices as an element of the RFP.

## Insurance

The Contractor shall have and maintain Contractor's Public Liability and Property Insurance and Contractor's Protective Public Liability without a deductible. Protective Property Damage Liability Insurance and Comprehensive Automobile Liability in not less than the following amounts:

i) Worker's Compensation

**Worker's compensation must include and cover working executives and owners/operators.**

1) State	Statutory
2) Applicable Federal	Statutory
3) Employer's Liability Each Accident	\$1,000,000.00
Disease policy limit	\$500,000.00
Disease per employee	\$100,000.00

ii) Comprehensive General Liability

(Including Premises-Operations: Independent Contractor's Protective: Products and Completed Operation Broad Form Property)

1) Bodily Injury	
a) Each Person	\$1,000,000.00
b) Annual Aggregate	\$1,000,000.00
2) Property Damage	
a) Each Occurrence	\$1,000,000.00
b) Annual Aggregate	\$1,000,000.00

iii) Contractual Liability

1) Bodily Injury	
a) Each Occurrence	\$1,000,000.00
2) Property Damage	
a) Each Occurrence	\$1,000,000.00
b) Annual Aggregate	\$1,000,000.00

iv) Personal Injury with Employment Exclusion deleted

1) Annual Aggregate		\$1,000,000.00
v) Comprehensive Automobile Liability		
1) Bodily Injury		
a) Each Person		\$1,000,000.00
b) Each Occurrence	of	\$1,000,000.00
1) Property Damage		
a) Each Occurrence		\$1,000,000.00
vi) Umbrella Policy		\$5,000,000.00

### **General Terms and Conditions of Services**

1. The Contractor indemnifies the Awarding Authority, the Board of Higher Education, the Commonwealth of Massachusetts, and Bunker Hill Community College, their employees, and agents from any liability during the receipt, service, and sale of food items or from any act of the food Contractor, or any of its employees, agents, or authorized subcontractors in the performance of its obligations under the agreement.
2. Maintenance of accurate and complete financial and narrative records for sales, expenses, and commissions; a report shall be provided monthly to the College by the 15th day of the following month with the submission of the applicable commission payment. Maintain Electronic Point-Of-Sales (POS) capability system with the cafeteria area and/or Central Cafe area at no cost to the College. The contractor shall maintain books, records, and other compilations of data about the performance of its obligations. The College shall have the right, at reasonable times and upon reasonable notice, to examine and copy the books, records, and other data compilations that are required to be maintained hereunder.
3. Price changes upward from those listed in the Contractor's proposal will be permitted to become effective only at periods of breaks between semesters or sessions (typically mid-January & late August) with no less than fifteen (15) calendar days prior notice to the College in writing. Price changes downward are permitted at any time.
4. Business Continuity Plan: to be submitted as an element of the Proposer's proposal. In case of an emergency, the awarded Proposer may be asked the following:
  - A written Business Continuity Plan on how the company will continue to do business in case of an emergency: such as a natural disaster, fire, etc., to the awarded Proposer's physical business structures.

- Specify work recovery measures and the means to re-establish physical records while maintaining Food Service at the College
5. The College is to be under no obligation to purchase or otherwise assume ownership of or responsibility for any equipment, furnishings, china, flatware, or other materials owned or otherwise held by the Contractor more than those items specified as being on hand on July 1, 2023.
  6. Contractor agrees that no polystyrene foam products containing CFCs will be used on that campus and that, wherever possible, foam and plastics will not be used but replaced by recycled paper products. The Contractor agrees to use Environmentally Preferable Products (EPP) during the awarded contract and contract renewal years.
  7. The Contractor may provide catering. If requested, all requests by the College will require a valid Purchase Order issued by the College's Business Office.
  8. Assignment: The Contractor shall not assign or subcontract, in whole or part, its rights or obligations under the contract without the prior written consent of the College; any attempted assignments without permission shall be void. Subcontractors must meet the same state, federal, and local standards and reporting requirements as listed in this RFR. It will be the contractor's sole responsibility to manage the performance of their subcontractors.
  9. The Contractor shall pay their vendors promptly according to the agreement with the vendors avoiding disruption of the delivery of goods and/or services to the College Cafeteria and Central Cafe.
  10. The Contractor must also accept the college's AP Credit Card for the college's outstanding bills payment as a payment method.
  11. The Contractor shall keep itself fully informed of all Federal, State, and Local laws, municipal ordinances, building, and health codes which pertain to those engaged or employed in the work or the materials and equipment used in the work of food service.
  12. The Food Service Contractor must apply to accept Electronic Benefits Transfer (EBT) Payment for all eligible Food Purchases in Cafeteria and Central Café within 90 days of the start of the contract.
  13. As a food Contractor to an institution receiving Federal funds, the Contractor shall accept full responsibility for disabled persons as provided in the American Disability Act (ADA of 1993) in situations where the College is otherwise in compliance.

14. Provide and Publish the current menu on the College's website while identifying healthy choice entrees.
15. Prompt response to all food service complaints by the on-site Food Service Manager for any issues with the Food Service Contract; the College's Contract Manager will be notified of all food service complaints.
16. As part of its programmatic activity, the college's Culinary Arts Program reserves the right to serve food to the college community through the culinary arts dining room.

### **Facilities & Services Provided at the College**

1. A/C, heat, light, power, and water. Additional pipeline extensions, hookups, and other utility-related modifications are at the Contractor's sole expense and must be submitted to the College for prior approval.
2. All tables, chairs, floor planters, and waste receptacles in the Cafeteria and Central Cafe area.
3. Rubbish removal from designated compacting or holding areas on the receiving/shipping dock area.
4. Window treatments, plants in planters, ceiling light fixtures, and painted walls as existing on July 1, 2023, throughout the appropriate food service areas.
5. Equipment (installed permanent and portable) as existing in the areas on July 1, 2023.
6. Parking facilities as provided for regular College support personnel.
7. Original supply of china, flatware, etc., as existing in the area on July 1, 2023.
8. One telephone connecting to the College's system.
9. Buffing and/or waxing, as needed and determined by the College, of floor surfaces in the dining area & café area.

### **III. Quality Requirements**

1. The Contractor agrees that the quality and nutrition of food is to be equal to or to exceed that to be found in the immediate area and as recommended by the Commonwealth of Massachusetts Department of Public Health
2. The Contractor must have been in the business of providing Food and Vending Services

for a minimum of (3) three years. The Proposer's primary business must be in the Food and Vending industry, with consideration given to past and /or current experience in Higher Education.

3. The assigned Food Service Manager must have at least (3) three years of Food Service and supervisory experience. Please include a resume.
4. All proposers must provide the detailed brand name, portion size, and pricing information for all products offered by Cafeteria. Must include a merchandising sheet for Vending Machines. Proposers must provide prices for all of the merchandise items.
5. The assigned Vending Service Area Manager must have at least three (3) years of vending service experience and supervisory experience. Please include the resume.
6. Proposers must provide information about their company in the following areas as evidence of Proposer Qualifications for the proposed service and contract.
  - Experience & Management Philosophy about Service & Quality and a summary of the company's historical background in the Food and Vending Service Industry.
  - Practices and Compliance
  - Past and/or current contractual agreements for Food and Vending Business. List all contractual agreements up to the last six years.
  - Professional Affiliations and Trade Associations & Insurance Coverage.
  - The Proposer must list past Bankruptcies, Litigation History, and Service Contract Defaults if there are any.
  - Last two (2) years of audited Financial Statements.
  - Must be registered as a legal entity to conduct business in the US. Must provide the company's EIN# via [W-9 Tax ID Form](#)
  - Must supply a current Massachusetts Department of Revenue (DOR) "[Certificate of Good Standing](#)."
  - Provide Environmental Plan and Business Continuity Plan

#### **IV. References**

Proposers must provide three companies or organizations' names, their active contact

with working email, and a phone number to supply references. The proposer must have had a business relationship of two years or greater duration with the organizations. The contact must be a senior official who was in charge of overseeing the food services contract in their company or organization.

Form, as shown below, will be directly sent to obtain references of the shortlisted proposers close to the contract award. Values are averaged from those three references obtained. Answers are from zero to ten; ten (10) is the highest, and zero (0) is the lowest. It is the responsibility of the proposer to ensure the reference contact completes the reference form promptly.

Question 1. Bidder's willingness and ability to provide contracted services - likeliness of your future use:

Excellent	Good	Fair	Poor
(10)	(8)	(6)	(0)

Question 2. Bidder's ethical approach, integrity, responsiveness, and effectiveness in resolving problems

Excellent	Good	Fair	Poor
(10)	(8)	(6)	(0)

Question 3. Bidder's communication, leadership, thoroughness, and the availability of key personnel:

Excellent	Good	Fair	Poor
(10)	(8)	(6)	(0)

Question 4. Bidder's organizational approach to reporting, internal controls, & meeting emergency needs:

Excellent	Good	Fair	Poor
(10)	(8)	(6)	(0)

Question 5. Your overall ranking for bidder's service performance with your organization

Excellent	Good	Fair	Poor
(10)	(8)	(6)	(0)

## V. RFP Terms and Conditions

Bunker Hill Community College will not be liable for any costs incurred by respondents

in the preparation and production of the Proposal or the costs of any services performed before receiving approval of the agreement from the College. All Proposals and materials submitted in conjunction with the Proposals shall become the property of Bunker Hill Community College for use as deemed appropriate, respecting all copyrights. These documents are automatically recorded as public records removing confidential financial information.

1. Bunker Hill Community College reserves the right to modify the requirements of this Proposal after its release. All Proposers will be notified of any modifications to the requirements of this proposal. Wherever the College is referred to herein, such reference will be to the President or their specific designee, as stated periodically in writing during the contract term.
2. Proposers, close to the selection, may be required to give an oral presentation to Bunker Hill Community College. This shall provide an opportunity for a Proposer to clarify or elaborate on the Proposal but shall in no way change the original Proposal. The College shall schedule the time and location if needed.
3. By submitting a Proposal, the Proposer agrees that it will not make any claims or have any right to damages because of any misinterpretation, misunderstanding of the specifications, misinformation, or lack of information.
4. The successful Proposer will be notified by email and confirmation by letter.
5. Omissions, inaccuracies, or misstatements may be sufficient cause for the proposal's rejection.
6. The Agreement, if awarded, shall be governed and construed by the laws of Massachusetts. The attached forms shall be completed and signed/sealed by the Proposer.
7. All Proposers and their employees must be aware of and comply with the requirements of the Commonwealth of Massachusetts Conflict of Interest Laws and all other appropriate provisions of the Commonwealth of Massachusetts Law and resultant codes, rules, and regulations from Commonwealth laws establishing the standards for business with the Commonwealth. In signing the Proposal, each Proposer guarantees knowledge and full compliance with those provisions for any dealings, transactions, sales contracts, services, offers, relationships, etc., involving the Commonwealth and/or Commonwealth employees. Failure to comply with those provisions may result in disqualification from the Proposal process and other civil or criminal proceedings as required by law.
8. The successful Contractor must honor the college's Pouring Right agreement to sell beverages. Currently, the College has its Pouring Right contract with Coca-Cola Company which provides them exclusive right to sell their beverage and product in the College.



9. The College reserves the right, through its Academic Food Service program to provide a daily laboratory-based luncheon service in any College facility but not utilizing the regular Cafeteria service.
10. Subject to reasonable advance notice and daily operational considerations, any food service equipment on-site at the College shall be made available by the Contractor for use as an educational aid by the College's Academic Food Service Program.
11. The College reserves the right to conduct regular inspections and examinations of all Food Service Areas to check equipment and verify compliance with the appropriate sanitation and health codes. Such review will not relieve the Contractor of the legal responsibility regarding other terms of this agreement or of the direct responsibility to observe codes without recourse to the College and to hold the College harmless. The College reserves the right to apply standard, acceptable measures and criteria in performing such inspections as applied by the Health Codes of the City of Boston, the Commonwealth of Massachusetts, and other appropriate local state agencies and to demand immediate corrective action on the part of the Contractor. Failing such action, the College reserves the right to arrange for immediate corrective action to meet sanitation and health codes through the use of its employees or by the employment of outside services and to pass on the direct and indirect costs for such work to the Contractor.
12. The terms, offers, inducements, and other statements made by and included in the Contractor's proposal---including, but not limited to, those dealing with staffing levels, staff hours, pricing, commissions, and hours of operation---will be incorporated as part of the contract as they are superseded, amplified or amended by a specific portion of this document.
13. FORCE MAJEURE: If, because of a strike or other labor disputes, civil disorders, inclement weather, acts of God, or other unavoidable cause, either party is unable to perform its obligations, such nonperformance entirely shall not be considered a breach of contract.
14. Survival: the terms, conditions, representations, and warranties contained in the contract shall survive the termination or expiration of the contract.
15. The College have the right to install any additional equipment and make any alterations to the facilities compatible with the existing facilities.
16. The College reserves right to select other food service vendors to provide catering service. This is not an exclusive right contract for catering.
17. Successor Ship, Assignment & Sub-Contracting: No part of the Contract shall either be

assigned or sublet with the prior written approval of the College. If the Contractor becomes insolvent or bankrupt, or a declaration occurs that it cannot complete its food service contract, then the College reserves the right to assign the balance of the existing food service contract timeframe to another food Contractor for the food service function.

18. Contractor's Signature: The Proposer's ink signature on the Proposal form shall be held as evidence that the Proposer has examined the site and satisfied itself as to all the requirements, works, conditions, and constraints for the proper execution of the proposed service. Such signature acknowledges that the Proposer fully understands the Scope of Service for Food Service to the College. The Proposer must sign and date their Signatory Listing sheet and submit it with the Proposal documents. Failure to provide that information may be considered a significant omission, and a Proposer's submission may be rejected.
19. The College's Right to Terminate the Contract: The Contract shall terminate on the date specified in the Contract, unless this date is amended correctly in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The College may terminate the Contract without cause and without penalty, or may terminate or suspend the Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by the Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate the college's action. Upon immediate notification to the other party, neither the College nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

If the Proposer should be adjudged bankrupt, or if the Contractor should make a general assignment for the benefit of Proposer's creditors, or if a receiver should be appointed on account of Proposer's insolvency, or if the Proposer should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough correctly skilled personnel or proper materials, or if Proposer should fail to make prompt payment to its vendors or for material or labor, or persistently disregard laws, ordinances or the instructions of the College, or otherwise be guilty of a substantial violation of any provision of the Contract, then the College, upon the certification of the College that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the Proposer, and the surety if any, seven (7) calendar days' written notice, terminate the employment of the Proposer and take possession of the Food Service premises and of all materials. In such case, the Proposer shall not be entitled to receive any on-site Food Service functions until the

Work is finished. The expense incurred by the College as herein provided, and the College shall certify the damage incurred through the Proposer's default and require payment from the Proposer to make-whole the Food Service contract.

20. The proposal will contain some or all of the following components as part of the Supplier Diversity Program Plan submitted by Proposers:

Sub-contracting with certified M/WBE firms as defined within the scope of the RFR and/or ancillary use of certified M/WBE firms and/or growth and development activities to increase M/WBE capacity. All certified businesses included in the Proposer's SDP proposal must submit an up-to-date copy of their certification letter.

## **VI. Price Schedule**

Proposer must supply a tentative pricing schedule for all food and beverage items to be sold from Cafeteria and Vending Machines. The price change can only be done after approval from the college.

## **VII. Financial Proposal**

Please use the proposal sheet included in EXHIBIT I.

## **VIII. Rule for Award**

One contract is awarded to a responsive and responsible proposer offering **the best value** to the college, evaluated through specifications and requirements included in this RFP. Only the procurement committee can decide the best value for the college and recommend the most advantageous proposal for the contract.

## **IX. Best and Final Offers**

The COLLEGE reserve the right to request the Best and Final Offers ("BAFOs") after the Oral Presentations have been conducted. Should the COLLEGE exercise this right, the COLLEGE will request a BAFO from a proposer or proposers, close to the selection.

## **X. Basic College Data and Cafeteria Schedule**

Built in 1973, Bunker Hill Community College's Charlestown Campus is situated on approximately 32+ acres in the historic Charlestown neighborhood of Boston. The campus

consists of six buildings (A, B, C, D, E, and G) in Charlestown, Chelsea Campus in Chelsea, and other Satellite Campuses in nearby cities.

The college runs classes in various schedules. For more information, please visit the college's website: <https://www.bhcc.edu/about/>

The cafeteria schedule can vary during the academic year. Suitable schedules will be decided through mutual agreement between the college and the successful contractor. The contractor cannot change or alter the Cafeteria and Central Café's schedule anytime, during the academic year, without prior approval from the college.

**EXHIBIT I**

**Financial Proposal:**

**Please Complete for Food Services**

<b>Term</b>	<b>% Cost Markup</b>
<b>Three (3)- Years</b>	
<b>Five (5)-Years</b>	
<b>Eight(8)-Years</b>	

**Please Complete for Vending Services**

<b>Term</b>	<b>One -Time Signing Bonus (Separate from % sales share)</b>	<b>Minimum Guaranteed Annual Payment</b>	<b>Commissions % Based on Gross Sales</b>
<b>Three (3)- Years</b>			
<b>Five (5)-Years</b>			
<b>Eight(8)-Years</b>			

**EXHIBIT II**

**FOOD & VENDING SERVICES-BUNKER HILL COMMUNITY COLLEGE-2023  
BHCFS2023 RFP REFERENCE FORM**

Bidder Name: \_\_\_\_\_

Question 1. Bidder's willingness and ability to provide contracted services - likeliness of your future use:

Excellent                  Good                  Fair                  Poor

Question 2. Bidder's ethical approach, integrity, responsiveness, and effectiveness in resolving problems

Excellent                  Good                  Fair                  Poor

Question 3. Bidder's communication, leadership, thoroughness, and the availability of key personnel:

Excellent                  Good                  Fair                  Poor

Question 4. Bidder's organizational approach to reporting, internal controls, & meeting emergency needs:

Excellent                  Good                  Fair                  Poor

Question 5. Your overall ranking for bidder's service performance with your organization

Excellent                  Good                  Fair                  Poor

Customer's Organization: \_\_\_\_\_

Authorized Signature and Date: \_\_\_\_\_

### EXHIBIT III

**FOOD & VENDING SERVICES-BUNKER HILL COMMUNITY COLLEGE-2023  
BHCFSV2023 RFP EVALUATION WORKSHEET**

Name of Bidder \_\_\_\_\_

Name of Reviewer (Procurement Committee Member) \_\_\_\_\_

Date \_\_\_\_\_

Final Score \_\_\_\_\_

**Instructions:** The Procurement Committee Member will score the evaluation through a point (100) value system. There are extra 10 points allocated for Oral Presentations. All Bidders will receive an average of all the reviews done by PMT members. The contract award will be given to the best candidate that offers the Best Value to the College.

Mandatory Requirements	Total Points Available	Comments by Reviewer and/or Team	Score
Business Experience	10 Points		
Business Capacity & Quality	20 Points		
Environmental and Business Continuity Plan	10 Points		
Financial Stability	25 Points		
Professional References	5 Points		
Sales Share paid to the college: Food Services % Markup (15 pts) Vending Commission (15pts)	30 Points		
Oral Presentation	10 Points (Extra)		
	<b>100 Points</b>	<b>Final Score</b>	

## EXHIBIT IV

### PROCUREMENT CALENDAR

EVENT	DATE
Solicitation: Announcement of Intent to Procure (Local Newspaper & Goods/Services Bulletin)	February 06, 2023
Solicitation: Release Date	February 20, 2023
Pre-bid walkthrough	March 08, 2023
Solicitation: Close Date / Submission Deadline	March 31, 2023, 5 PM
Presentation of finalist	April 12, 2023
Proposal Award: Notification in writing	April 28, 2023
Signatures are to be on file by:	Before June 30, 2023
Contract: Estimated Contract Start Date	July 01, 2023



## **EXHIBIT V**

### **Tax Compliance Certification**

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

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Authorized Signature

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Name of business

## **EXHIBIT VI**

### **Certificate of Non-Collusion**

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

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Authorized Signature

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Name of business

## EXHIBIT VII

### **Proposal Submission Terms and Conditions Form: Sign and Submit with the Proposal**

Bunker Hill Community College will not be liable for any costs incurred by respondents in the preparation and production of the Proposal or the costs of any services performed before receiving approval of the agreement from the College. All Proposals and materials submitted in conjunction with the Proposals shall become the property of Bunker Hill Community College for use as deemed appropriate, respecting all copyrights. These documents are automatically recorded as public records removing confidential financial information.

1. Bunker Hill Community College reserves the right to modify the requirements of this proposal after its release. All Proposers in contact will be notified of any modifications to the requirements of this proposal. Wherever the College is referred to herein, such reference will be to the President or their designee, as stated periodically in writing during the contract term.
2. Proposers who submit a response may be required to give an oral presentation to Bunker Hill Community College. This shall provide an opportunity for a Proposer to clarify or elaborate on the Proposal but shall in no way change the original Proposal.
3. By submitting a Proposal, the Proposer agrees that it will not make any claims or have any right to damages because of any misinterpretation, misunderstanding of the specifications, misinformation, or lack of information.
4. The successful Proposer will be notified via email.
5. Omissions, inaccuracies, or misstatements are sufficient to cause the rejection of the Proposal.
6. The Agreement, if awarded, shall be governed and construed by the laws of Massachusetts. The contractor must agree to sign Massachusetts Standard Contract Form accepting the relevant Terms and Conditions.
7. The College reserves the right to conduct regular inspections and examinations of all Service Areas to check equipment and verify compliance with the appropriate sanitation and health codes.
8. The Contractor agrees that the College's invoice payment can be made using an Accounts Payable Credit Card.

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Authorized Signature, Name & Title

## CONTRACTOR AUTHORIZED SIGNATORY LISTING

### CONTRACTOR LEGAL NAME:

**INSTRUCTIONS:** Any Contractor (other than a sole-proprietor or an individual contractor) must provide a listing of individuals who are authorized as legal representatives of the Contractor who can sign contracts and other legally binding documents related to the contract on the Contractor's behalf. In addition to this listing, any state department may require additional proof of authority to sign contracts on behalf of the Contractor, or proof of authenticity of signature (a notarized signature that the Department can use to verify that the signature and date that appear on the Contract or other legal document was actually made by the Contractor's authorized signatory, and not by a representative, designee or other individual.)

**NOTICE:** *Acceptance of any payment under a Contract or Grant shall operate as a waiver of any defense by the Contractor challenging the existence of a valid Contract due to an alleged lack of actual authority to execute the document by the signatory.*

For privacy purposes **DO NOT ATTACH** any documentation containing personal information, such as bank account numbers, social security numbers, driver's licenses, home addresses, social security cards or any other personally identifiable information that you do not want released as part of a public record. The Commonwealth of Massachusetts reserves the right to publish the names and titles of authorized signatories of contractors.

AUTHORIZED SIGNATORY NAME	TITLE

I certify that I am the President, Chief Executive Officer, Chief Fiscal Officer, Corporate Clerk or Legal Counsel for the Contractor and as an authorized officer of the Contractor I certify that the names of the individuals identified on this listing are current as of the date of execution below and that these individuals are authorized to sign contracts and other legally binding documents related to contracts with the Commonwealth of Massachusetts on behalf of the Contractor. I understand and agree that the Contractor has a duty to ensure that this listing is immediately updated and communicated to any state department with which the Contractor does business whenever the authorized signatories above retire, are otherwise terminated from the Contractor's employ, have their responsibilities changed resulting in their no longer being authorized to sign contracts with the Commonwealth or whenever new signatories are designated.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Fax

\_\_\_\_\_  
e-mail

[Listing cannot be accepted without all of this information completed.]  
A copy of this listing must be attached to the "record copy" of a contract filed with the department

EXHIBIT VIII

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice terms) to the terms in this published form or to the [Standard Contract Form Instructions and Contractor Certifications](#), the [Commonwealth Terms and Conditions for Human and Social Services](#) or the [Commonwealth IT Terms and Conditions](#), which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: <https://www.mass.comptroller.org/forms>. Forms are also posted at OSD Forms: <https://www.mass.gov/lists/osd-forms>.

<b>CONTRACTOR LEGAL NAME:</b> (and d/b/a):		<b>COMMONWEALTH DEPARTMENT NAME:</b> MMARS Department Code:	
Legal Address: (W-9, W-4):		Business Mailing Address:	
Contract Manager:	Phone:	Billing Address (if different):	
E-Mail:	Fax:	Contract Manager:	Phone:
Contractor Vendor Code: VC		E-Mail:	Fax:
Vendor Code Address ID (e.g. "AD001"): AD____ (Note: The Address ID must be set up for EFT payments.)		MMARS Doc ID(s):	
<input type="checkbox"/> <b>NEW CONTRACT</b> PROCUREMENT OR EXCEPTION TYPE: (Check one option only) <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input type="checkbox"/> Department Procurement (includes all Grants - <a href="#">815 CMR 2.00</a> ) (Solicitation Notice or RFR, and Response or other procurement supporting documentation) <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach Employment Status Form, scope, budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language, legislation with specific exemption or remark, and exception justification, scope and budget)		<input type="checkbox"/> <b>CONTRACT AMENDMENT</b> Enter Current Contract End Date <u>Prior</u> to Amendment: ____/____/20____ Enter Amendment Amount: \$ _____ (or "no change") AMENDMENT TYPE: (Check one option only. Attach details of amendment changes.) <input type="checkbox"/> Amendment to Date, Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> Contract Employee (Attach any updates to scope or budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language/justification and updated scope and budget)	
The Standard Contract Form Instructions and Contractor Certifications and the following Commonwealth Terms and Conditions document are incorporated by reference into this Contract and are legally binding: (Check ONE option): <input type="checkbox"/> <a href="#">Commonwealth Terms and Conditions</a> <input type="checkbox"/> <a href="#">Commonwealth Terms and Conditions For Human and Social Services</a> <input type="checkbox"/> <a href="#">Commonwealth IT Terms and Conditions</a>			
<b>COMPENSATION:</b> (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under <a href="#">815 CMR 9.00</a> . <input type="checkbox"/> Rate Contract. (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input type="checkbox"/> Maximum Obligation Contract. Enter total maximum obligation for total duration of this contract (or new total if Contract is being amended). \$ _____			
<b>PROMPT PAYMENT DISCOUNTS (PPD):</b> Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days ____ % PPD; Payment issued within 15 days ____ % PPD; Payment issued within 20 days ____ % PPD; Payment issued within 30 days ____ % PPD. If PPD percentages are left blank, identify reason: ____ agree to standard 45 day cycle ____ statutory/legal or Ready Payments (M.G.L. c. 29, § 23A); ____ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.) <b>BHCC PAYS THROUGH EFT PAYMENT ONLY</b>			
<b>BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT:</b> (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.)			
<b>ANTICIPATED START DATE:</b> (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <ol style="list-style-type: none"> <li>1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date.</li> <li>2. may be incurred as of ____/____/20____, a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date.</li> <li>3. were incurred as of ____/____/20____, a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.</li> </ol>			
<b>CONTRACT END DATE:</b> Contract performance shall terminate as of ____/____/20____ with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
<b>CERTIFICATIONS:</b> Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in <a href="#">801 CMR 21.07</a> , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.			
<b>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</b> X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature) Print Name: _____ Print Title: _____		<b>AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:</b> X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature) Print Name: _____ Print Title: _____	



## COMMONWEALTH TERMS AND CONDITIONS

This Commonwealth Terms and Conditions form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of Massachusetts ("State") Departments and Contractors. *Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.* Upon execution of the Standard Contract Form these Commonwealth Terms and Conditions will be incorporated by reference. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

1. **Contract Effective Start Date.** Notwithstanding verbal or other representations by the parties, the effective start date of performance under a Contract shall be the later of the date the Contract was executed by an authorized signatory of the Contractor, the date the Contract was executed by an authorized signatory of the Department, the date specified in the Contract, or the date of any approvals required by law or regulation.

2. **Payments And Compensation.** The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. c. 29, § 26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. c. 7A, § 3 and 815 CMR 9.00. Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.

3. **Contractor Payment Mechanism.** All Contractors will be paid using the Comptroller's payment system unless a different payment mechanism is required. The Contractor shall timely submit invoices and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System shall be used only for Individual Contractors who have been determined to be Contract Employees as a result of the Department's completion of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.

4. **Contract Termination Or Suspension.** A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen

public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

5. **Written Notice.** Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

6. **Confidentiality.** The Contractor shall comply with M.G.L. c. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to, the Department's public records, documents, files, software, equipment or systems.

7. **Record Keeping And Retention, Inspection Of Records.** The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of six (6) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under Executive Order 193, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

8. **Assignment.** The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. c. 106, § 2-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

9. **Subcontracting By Contractor.** Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

10. **Affirmative Action, Non-Discrimination In Hiring And Employment.** The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability,



## COMMONWEALTH TERMS AND CONDITIONS

handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

11. **Indemnification.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.

12. **Waivers.** Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

13. **Risk Of Loss.** The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, Department personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract, until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Department.

14. **Forum, Choice of Law And Mediation.** Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a state or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The Department, with the approval of the Attorney General's Office, and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

15. **Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration.** Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law; provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 1 of these Commonwealth Terms and Conditions and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

IN WITNESS WHEREOF, the Contractor certifies under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory signing the Standard Contract Form.

**FINAL PAGE**