

REQUEST FOR PROPOSAL

Fresh Fruit and Vegetable Program (FFVP)

Solicitation # APA-2022-FFVP

This RFP is Being Issued by:

Utah Charter Academies (UCA), Inc.
DBA American Preparatory Academy of Draper
12892 S. Pony Express Rd.
Draper, UT 84020

Issue Date: July 28, 2022 4:00 pm
Q&A Deadline: August 5, 2022 4:00 pm
Submission Deadline: August 8, 2022 4:00 pm

****All dates are subject to change****

UCA contact information:

Contact Name: Emily Peery
Title: Director over School Lunch Program
Office: Business Services Office
Address: 11894 S Pony Express Rd. #600
Draper, UT 84020
Telephone: (801) 889-5512
Email: epeery@apamail.org
Website: americanprep.org

Note: Owner will not answer any questions or provide any information directly to bidders that is not already included in the RFP documents or submitted through Sciqwest. All questions or Request for Information (RFIs) should be submitted through and will be answered on Sciqwest. Thank you for helping keep this process fair for all bidders.

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1. GENERAL

A. Purpose of Request for Proposal (RFP)

The purpose of this RFP is to enter into one contract with a qualified firm to provide fresh produce for the Fresh Fruits and Vegetables Program (FFVP) at the following locations:

West Valley 1 Campus
1255 W. Crystal Ave
West Valley City UT 84119

West Valley 2 Campus
3636 W. 3100 S.
West Valley, UT 84120

Utah Charter Academies is the recipient of a Fresh Fruit and Vegetable Grant and is requesting proposals from qualified produce vendors to supply high quality fresh produce to elementary students twice a week at the campuses listed above.

The goal of the FFVP is to expand the variety of fruit and vegetables children experience, increase their fruit and vegetable consumption, which will have a positive impact on students' present and future health.

It is estimated that the school will spend between \$100,000 and \$150,000 per year on produce for the FFVP. We are seeking a vendor that can provide the highest quality produce, a large variety of interesting fruits and vegetables, excellent customer service, and materials to educate our students. The contract will be for a 1 year term, renewable up to four times, for an estimated total value of \$500,000 to \$750,000.

This RFP is designed to provide interested offerors with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability under any agreement.

B. Issuing Office and RFP Reference Number

UCA is issuing this document and all subsequent addenda relating to it. The reference number for the transaction is **APA-2022-FFVP**. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

C. Key Dates

Issue Date: July 28, 2022 4:00 pm
Q&A Deadline: August 5, 2022 4:00 pm
Submission Deadline: August 8, 2022 4:00 pm

****All dates are subject to change****

2. BACKGROUND

Utah Charter Academies (UCA), is a non-profit 501c3 providing public education utilizing public funds and doing business as American Preparatory Academy (APA). UCA began operations in 2002 with a single K-9 charter school in Draper, UT and is currently operating 6 public charter schools in Utah. UCA was recognized as “Charter School of the Year” in 2010, has three ‘Best of State’ awards and continues to be a leader in public charter schools in Utah.

3. SERVICE REQUIREMENTS

A. Conditions

Any contract resulting from this RFP must include UCA’s standard terms and conditions which will supersede all other terms & conditions in areas of conflict. See Appendix 2.

B. Scope of Work

Vendor will be given an estimated yearly budget and a breakdown of monthly budget amount. Vendor will create a menu that includes a variety of unique fresh fruits and vegetables to be served two times per week. It is preferred that a vegetable is served at least once every two weeks. Vendor will seek to spend the monthly budget in full each month.

Vendor must provide deliveries twice each week, on Monday by 10:00 am and on Wednesday by 2 pm to West Valley 1 and West Valley 2 campuses.

Vendor must provide educational materials (descriptive literature) related to the fruit/vegetable which will be distributed to students at the time of service. This shall be provided at no additional charge.

Produce must be Grade Extra Fancy/#1 or better, unless approved by the Food Service Director.

Vendor will deliver 550-650 servings to West Valley 1, and 700-800 servings to West Valley 2. The specific number will be determined based on enrollment each August. It is preferred that produce is ready to serve whole or individually packaged, unless

preparation of an item allows for more variety or uniqueness. Preparation time must not exceed 2 hours to prepare 300 servings.

Damaged, Spoiled or Unacceptable Product - UCA will only accept produce of the highest quality. Produce that does not meet the specifications – grade, freshness, quality etc. – will be refused.

Vendor will communicate with the Food Service Director regarding deliveries, recalls, changes, and invoices.

The RFP document package is intended to provide a thorough scope of work from which to bid. It is not intended to stifle the Bidder from offering alternate solutions that add value and/or quality to the project. Specifications are for items the owner knows offer desirable benefits and/or features. When bidding alternate solutions include a narrative description for how the alternate meets or exceeds the features and/or value of the specified item.

C. The School

- UCA is providing sufficient funds for the products that will be provided by the winning bidder. It is estimated that the school will spend between \$100,000 and \$150,000 per year on produce for the FFVP.
- UCA is providing the scope of work via this RFP and will work with the winning bidder on any modifications to the scope of work over the life of the contract.
- UCA will provide clear expectations for service levels and feedback on how well those service levels are being met throughout the contract (see Appendix 7).
- UCA will provide appropriate access to our facilities.

D. Bidders (not all-inclusive)

1) Food Safety - The vendor must provide documentation of passing a third-party food safety audit with a score of 90% or higher. The inspection must consider administration and regulatory compliance, HACCP management, facilities and equipment, sanitation, housekeeping and hygiene, rodent and pest control management, receiving and inventory control, process and product evaluation, packaging and labeling, storage and shipping, and food defense in the event of a recall.

- a) The bidding supplier shall submit their recall policy with the bid and comply with all Federal, State and Local requirements regarding the identification and recall of foods. The process for recalling foods must include accurate and timely communications to UCA and assurance that unsafe products are identified and removed from District/School sites. The bidder shall maintain all paperwork required for immediate and proper notification of recalls for full and split cases. Recall policy must also include a point of contact and a backup contact to include phone number and an email address.

- 2) Experience - Minimum of three (3) years working experience with educational facilities, specifically with FFVP.
- 3) References - Five (5) references from educational institutions who participate in the FFVP. References should include:
 - a) Name of the organization
 - b) Location
 - c) Contact person
 - d) Phone and email
- 4) Proposed Menu Plan, Invoices, Educational Information
 - a) Based on a \$7,000 budget, present a menu plan to serve 600 students two (2) items a week for six (6) weeks (a total of twelve (12) items).
 - i) Please provide invoices that include
 - (1) name of each fruit/vegetable
 - (2) quantity to be provided
 - (3) current price, including all delivery fees
 - (4) serving size
 - (5) number of servings
 - (6) country of origin (as per Buy American regulations)
 - ii) This is to allow us to evaluate the variety of items offered, serving size, and the cost per serving.
 - iii) Educational Information - for each of the 12 items listed above please provide educational materials (descriptive literature) related to the fruit/vegetable which will be distributed to students at the time of service.
- 5) License - Bidders will provide proof of appropriate and current state licensure to engage in their contracted business activities and maintain such for the duration of the contract, making proof available to UCA upon request.
 - a) Bidders utilizing subcontractors will provide proof that the selected subcontractors will hold appropriate and current state licensure to engage in their contracted business activities and maintain such for the duration of the contract, making proof available to UCA upon request.
- 6) Insurance - Bidders will provide proof of comprehensive and sufficient insurance coverages so as to protect the Bidder and owner throughout the project. UCA will assume no liabilities for the Supplier including any of the Supplier's representatives, employees or properties. Any damages occurring during the completion of deliveries, incidental or otherwise, to District or adjacent properties must be repaired at the Supplier's expense, and to UCA's satisfaction.
- 7) Federal Requirements
 - a) Federal Code 7 CFR Part 220.16 (d) Buy American Agriculture Provisions require the District to purchase, to the maximum extent practicable, domestic commodity or product.

- i) For compliance and auditing purposes, UCA requires in writing from the Supplier delivery invoices and receipts identifying the country of origin as being the United States or its territories, and in the case of a non-domestic product, a limited exception. Limited exceptions are limited exceptions to the Buy American Provision which allow for the purchase of products not meeting the "domestic" standard (nondomestic) in circumstances when use of domestic products is truly not practicable.
 - b) Federal Code 2 CFR 200.321 Buy American Provision supports local and small businesses. The Supplier must take all necessary affirmative steps to assure that Local, Small, Minority, and Women–owned business enterprises and labor surplus firms are used when possible. c) Federal Procurement Regulations 7 CFR 210.21, 215.14a, 220.16, 225.17, 226.22, and 250.4(d) direct Child Nutrition Program operators to comply with procurement requirements as outlined in those parts. In addition, all procurements shall be undertaken consistent with State and local requirements.
 - c) Federal Procurement Regulations 7 CFR 210.21, 215.14a, 220.16, 225.17, 226.22, and 250.4(d) direct Child Nutrition Program operators to comply with procurement requirements as outlined in those parts. In addition, all procurements shall be undertaken consistent with State and local requirements.
 - d) See Appendix 2 for Buy American Template.
- 8) Winning bidder will be knowledgeable of and meet all legal requirements for provision of contracted services to public schools in the State of Utah.
- 9) Winning bidder will comply with all applicable federal, state, local and public-school laws, statutes, rules and codes.
- 10) Winning Bidder will negotiate a suitable contract with UCA in good faith within 3 days of notification of selection notification. Should the winning Bidder fail to execute an agreed upon contract within 3 days, UCA may withdraw the Bid award and make an offer to the next best Bidder.

4. SUBMISSION GUIDELINES

Proposals must be received by the posted due date and time. Proposals received after the deadline will be late and ineligible for consideration.

The preferred method of submitting your proposal is electronically through the SciQuest website.

<https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfUtah>

When submitting a proposal electronically, please allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time listed in the RFP. If you are in the middle of uploading your proposal at the closing time, the system will stop the process and your proposal will not be received by the system.

All documents should be attached as separate files.

Proposals may also be delivered by mail or courier to 12894 S. Pony Express Road #600, Draper, Utah 84020.

A. Questions

All questions should be submitted through the SciQuest website. Questions that are received outside of the SciQuest website will be posted and answered through the SciQuest website.

B. Proposal Response Format

Bidders should submit their sealed proposal in the preferred format:

Letter of Introduction: Contractor name, contact person, address, telephone number, fax number and a brief introduction to the bidding company, signed by person(s) authorized to bind the company to their proposed offer (RFP response).

Executive Summary: Include a one-page executive summary briefly describing the proposal. This summary should highlight the major features of the proposal. It must indicate any requirements that cannot be met by the Bidder. The reader should be able to determine the essence of the proposal by reading the executive summary. Protected information requests should be identified in this section.

Table of Contents: Should include a list of all sections and appendices in the RFP response and indicate corresponding page numbers, if appropriate.

Proposal Content: Full details of the bidder's proposal including but not limited to:

- Letter of Introduction
- Executive Summary
 - Experience serving schools
- Table of Contents
- Food Safety Audit Results
- Food Recall Policy
- References (five contacts)
- Proposed Menu (12 items)
- Sample Invoices (12 items)
- Educational Information (12 items)
- Business License
- Proof of Insurance
- Signed Certification

- Claim of Business Confidentiality (if needed)

This should demonstrate the offeror's understanding of the desired overall performance expectations and their capability to meet or exceed them. Clearly indicate any options or alternatives proposed.

Pricing: It is estimated that the school will spend between \$100,000 and \$150,000 per year on produce for the FFVP. This RFP is to help UCA select a vendor that will provide the best value for this amount of money.

Certification: Proposals should include a signed certification similar to the following: "The statements made in this proposal are true and correct presentations. If selected, [*bidding company*] shall negotiate in good faith with the school."

Methods of Submission: Electronic SciQuest Submissions Preferred
<https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfUtah>
 Proposals may also be delivered by mail or courier to 12894 S. Pony Express Road #600, Draper, Utah 84020.

C. Protected Information

UCA is primarily funded by public funds for the purpose of providing public education and as such is subject to Utah State laws and procurement rules including the following:

The Government Records Access and Management Act (GRAMA), Utah Code Ann., Subsection 63-2-304, provides in part that:

the following records are protected if properly classified by a government entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63-2-308 (Business Confidentiality Claims);

(2) commercial information or non-individual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;

* * * * *

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this Subsection (6) does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed;

GRAMA provides that trade secrets, commercial information or non-individual financial information may be protected by submitting a Claim of Business Confidentiality.

To protect information under a Claim of Business Confidentiality, the Bidder must:

1. provide a written Claim of Business Confidentiality *at the time the information (proposal) is provided to the school*, and
2. include a concise statement of reasons supporting the claim of business confidentiality (Subsection 63-2-308(1)).
3. submit an electronic "redacted" (excluding protected information) copy of your proposal response. Copy must clearly be marked "Redacted Version."

A Claim of Business Confidentiality may be appropriate for information such as client lists and non-public financial statements. Pricing and service elements may not be protected. An entire proposal may not be protected under a Claim of Business Confidentiality. The claim of business confidentiality must be submitted with your proposal on the form which may be accessed in Appendix 3.

To ensure the information is protected, the School asks the Bidder to clearly identify in the Executive Summary and in the body of the proposal any specific information for which a Bidder claims business confidentiality protection as "PROTECTED".

D. Disclosure

All materials submitted become the property of UCA. Materials may be evaluated by members of UCA's evaluation committees and others as necessary to properly evaluate bids. Proposal information is considered proprietary and as such shall be treated as confidential subject to GRAMA requirements. Materials submitted may be returned at UCA's discretion.

Information pertaining to the school obtained by the bidder as a result of participation in this project is confidential and must not be disclosed without written authorization from the school.

E. Discussions with Bidders (Oral Presentations)

An oral presentation by a Bidder to clarify a proposal may be required at the sole discretion of UCA. However, UCA may award a contract based on the initial proposals

received without discussion with the Bidder(s). If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the Bidders expense.

5. RFP CONDITIONS

Evaluation Criteria

Points	Item	Criteria
30	Cost	Lowest bidder receives full points; Other bidders receive points proportionate to the cost compared to lowest bid
25	Customer Service	Points based on surveys sent to references 50 = 25 points, 40 = 15 points, 30 = 5 points
24	Uniqueness/Ease of Serving	Measures uniqueness of fruit/vegetable and how easy it is to serve
12	Sample menu and invoices	Shows vendor can create a cohesive plan that balances budget and variety
12	Educational Information	Professionally presented and easy to use
10	Food Safety Rating	100 = 10 points, 95 = 5 points, 90 = 0 points

Appendix 1 - Reference Rating Worksheet

If UCA has a previous relationship with the vendor, UCA will complete the table below. Otherwise, a UCA employee will contact the references and take an average of the scores.

Educational Institution Name: _____

How long have you been doing business with the vendor? _____

Do you have any unresolved concerns with the vendor? _____

Scoring will be from 1-5 with the ratings listed below:

Rate the supplier with the following:

- 1 = Very Poor or Inadequate
- 2 = Poor
- 3 = Satisfactory
- 4 = Good
- 5 = Excellent

These scores will be applied to the following criteria:

Criteria	Score
1	Timeliness of performance (delivery)
2	Customer Service (interaction between vendor & school staff, timely response to complaints)
3	Condition of Delivery (condition of goods delivered including appropriate temperature, product boxes condition, organization of pallets)
4	Replacement of Damaged or Unacceptable Goods Delivered (frequency and response from vendor in replacing goods, issuing credits)
5	Quality of Produce (freshness, grade, size, mold, ripeness)
6	Accuracy and Timeliness of Billing and/or Invoices (accuracy and timeliness of invoices, and response to corrections)
7	Financial Management (stayed within budget, used full budget amounts)
8	Variety (served a variety of produce)
9	Ease of Use (individual serving sizes or whole fruit or easy to prepare)
10	Overall Satisfaction

Appendix 2 - Terms and Conditions

ATTACHMENT A: STATE OF UTAH PUBLIC SCHOOL ENTITY STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63G-6, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the School to purchase certain specified services, and other approved purchases for the School.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** The Contractor and any and all supplies, services, equipment, and construction furnished under this contract will comply fully with all applicable Federal and State laws and regulations, including applicable licensure and certification requirements.
4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and School Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation for Bids or to the Multi-Step Process.

5.1 Status Verification System

1. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including UCA Section 63G-12-302.
2. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including UCA Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
3. The School will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.
4. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-12-302.

5.2 Indemnity Clause for Status Verification System

1. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the School and its officers, employees, agents, representatives and anyone that the School may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
2. Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the School shall only be required to indemnify the School for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the School in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the School, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.

7. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the School to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the School, except as herein expressly set forth. Both parties recognize that this Agreement does not create any actual or apparent agency, partnership, franchise, or employer/employee relationship between the parties. Compensation stated herein shall be the total amount payable to the Contractor by the School. The Contractor shall be responsible for obtaining and payment of all business and employment related taxes, fees and insurances including workers compensation, unemployment, liability, vehicle & equipment, and errors and omissions. Persons employed by

Appendix 2 - Terms and Conditions

the School and acting under the direction of the School shall not be deemed to be employees or agents of the Contractor. Contactor's equipment, tools and materials on school properties are contractor's sole responsibility and should be safely secured when not in use.

8. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the School, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the acts or negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the School's sole negligence. The parties agree that if there are any Limitations of the Contractor's Liability, including a limitation of liability for anyone for whom the Contractor is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.

9. **EMPLOYMENT PRACTICES CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

10. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.

11. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by authorized persons of the parties hereto, and attached to the original signed copy of the contract. Automatic renewals will not apply to this contract.

12. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently or have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the School. The Contractor must notify the School within 30 days if debarred by any governmental entity during the Contract period.

13. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon sixty (60) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

14. **SALES TAX EXEMPTION:** The School's sales and use tax exemption number is **12026361-STC (UCA)**, located at <http://purchasing.utah.gov/contract/documents/salestaxexemptionformsigned.pdf>. The tangible personal property or services being purchased are being paid from exempt funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this entity, unless otherwise stated in the contract.

15. **WARRANTY:** The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the School under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the School has relied on the Contractor's skill or judgment to consider when it advised the School about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the School has not been warned. Remedies available to the School include the following: The Contractor will repair or replace (at no charge to the School) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the school may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, and may be available for distribution. Contractor gives the School express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and

Appendix 2 - Terms and Conditions

Management Act (GRAMA). Except for sections identified in writing and expressly approved by the School, Contractor also agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the School except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the School. The School contract number and/or purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the School will be those prices listed in the contract. The School has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PROMPT PAYMENT DISCOUNT:** Offeror may quote a prompt payment discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. Contractor shall list Payment Discount Terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date will be the date of acceptance of the merchandise.
20. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 60 days from the date a correct invoice is received by the appropriate School official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Annotated Section 15-6-3. The IRS rate is adjusted quarterly, and is applied on a per annual basis, on the invoice amount that is overdue. All payments to the Contractor will be remitted by mail, electronic funds transfer, or the School's Purchasing Card (major credit card).
21. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the School, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
22. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the School.
23. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the School to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The School will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the School may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.
24. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The School may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
25. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the School is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the School, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6-1002, Utah Code Annotated, 1953, as amended).
26. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. Attachment A: State of Utah Public School Entity Standard Terms and Conditions; 2. School Contract Signature Page(s); 3. School Additional Terms and Conditions; 4. Contractor Terms and Conditions.

Appendix 2 - Terms and Conditions

27. **ENTIRE AGREEMENT:** This Agreement, including all Attachments, and documents incorporated hereunder, and the related Solicitation constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the Contractor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the Contractor that may subsequently be used to implement, record, or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the School. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and the terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

(Revision date: 05/25/14)

Appendix 3 - Claim of Business Confidentiality

Pursuant to Utah Code Annotated, Subsections 63G-2-305(1) and (2), and in accordance with Section 63G-2-309, _____ (company name) asserts a claim of business confidentiality to protect the following information submitted as part of this solicitation. Pricing/Cost Proposals may not be classified as confidential or protected and will be considered public information. **An entire proposal cannot be identified as “PROTECTED”, “CONFIDENTIAL” or “PROPRIETARY”.**

- Non-public financial statements
- Specific employee name and contact information
- Specific customer information, client lists, or subscription lists
- Other (specify): _____

This claim is asserted because this information requires protection as it includes:

- trade secrets as defined in Utah Code Annotated Section 13-24-2 ("Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy).
- commercial information or non-individual financial information obtained from a person if: (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future; [and] (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

This statement of reasons supporting the claim of business confidentiality applies to the following information in this proposal:

Page	Paragraph	Reason

Please use additional sheets if needed.

You will be notified if a record claimed to be protected herein under Utah Code Annotated § 63G-2-305(1) or (2) is classified public or if the governmental entity determines that the record should be released after weighing interests under Utah Code Annotated § 63G-2-201(5)(b) or Utah Code Annotated § 63G-2-401(6). See Utah Code Annotated § 63G-2-309.

Signed: _____
 On behalf of (company): _____
 Date: _____

Appendix 4 - Sample Contract



AMERICAN PREPARATORY ACADEMY

American Preparatory Academy
11894 S Pony Express Rd. #600
Draper, UT 84020

Contact: Emily Peery, Director over School Lunch Program

1. **CONTRACTING PARTIES:** This contract is between the Utah Charter Academies hereafter referred to as UCA, and the following Contractor:

Contractor Name	Address	City, State and Zip Code
Contact Person	Telephone Number	Vendor Number
Federal Tax Identification Number	Fax Number	Email:
Legal Status:		

2. **GENERAL PURPOSE OF CONTRACT:** Provide fruits and vegetables for the FFVP program.
3. **PROCUREMENT:** This contract is entered into as a result of the procurement process on bid/proposal #APA-2022-FFVP.
4. **COST:** Will not exceed \$XXX average cost per serving. Each year the maximum cost may adjust to account for inflation, changes in funding, and/or participation.
5. **CONTRACT PERIOD:** Effective date XXX. The contract will be for a 1 year term, renewable for up to 4 years on July 1 of each year).
6. **ATTACHMENT A:** RFP APA 2022 FFVP
ATTACHMENT B: DEBARMENT AND SUSPENSION CERTIFICATION
ATTACHMENT C: CERTIFICATION REGARDING LOBBYING
ATTACHMENT D: PERFORMANCE RATING SYSTEM
ATTACHMENT E: BUY AMERICAN CERTIFICATION AND WAIVER
7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**
- All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
 - Utah State Procurement Code 63G-6 and Utah Charter Academy Procurement Policy.

Appendix 4 - Sample Contract

8. Scope of Work

A. At the beginning of the school year, the Food Service Director/Manager (FSD/M) will provide the vendor with an estimated budget, number of servings, and calendar of operating days for each month.

B. The vendor will select produce to serve, staying within the budget and maximizing quality and variety of produce served.

C. Vendor must provide deliveries twice each week. The anticipated schedule is Monday between 8-10 am, and Wednesday between 8-2 pm. This schedule may be adjusted by the FSD/M.

Delivery Locations:

West Valley 1 Campus
1255 W. Crystal Ave
West Valley City UT 84119

West Valley 2 Campus
3636 W. 3100 S.
West Valley, UT 84120

D. Vendor must provide educational materials (descriptive literature) related to the fruit/vegetable which will be distributed to students at the time of service. This shall be provided at no additional charge.

E. Produce must be Grade Extra Fancy/#1 or better, unless approved by the Food Service Director. Produce will be whole or individually packaged. Estimated preparation time for whole produce must not exceed 2 hours for any item. UCA will only accept produce of the highest quality. Produce that does not meet the specifications – grade, freshness, quality etc. – will be refused.

F. Vendor will communicate with the FSD/M regarding deliveries, recalls, changes, and invoices.

G. Other minimum requirements as outlined in attached RFP bid outline.

9. Evaluation

FSD will evaluate vendor as needed using Performance Rating Worksheet. A total score lower than thirty (30) or an individual score less than three (3) will result in an email from Food Service Director/Manager. The performance issue will be documented in the file, accompanied by notes for the stakeholder. If the vendor has a total of three (3) project scores below thirty (30) in a three (3) month period, it may result in a ten (10) day notice to cure or contract cancellation.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR		Utah Charter Academy	
Contractor's Signature	Date	Department	Date
Contractor's Name		Purchasing/Business	Date
Title			

Appendix 5 - Sample Buy American Certification and Waiver



American Preparatory Academy participates in the National School Lunch Program, School Breakfast Program, Fresh Fruits and Vegetable Program, and After School Snack Program, and is required to use the nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals (Buy American Provision - 7 CFR Part 210.21(d)).

A “domestic commodity or product” is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR Part 210.21(d).

The Buy American provision allows for an exception when the recipient agency determines that the following instances apply to non-domestic produced products:

- a. Recipients have unusual or ethnic food preferences which can only be met through purchases of products not produced or manufactured in the U.S.;
- b. The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of satisfactory quality;
- c. The cost of the U.S. produced food products is significantly higher than foreign products.

I certify that the following item(s) are produced and processed in the U.S. and contains over 51% of its agricultural food components, by weight or volume, from the U.S.

For item(s) with components 50% or less, I am documenting the reason for the exception.

Item		Reason(s)		
Product	%	Growing Region	Cost	Explanation/Details (Cost - Include pricing)

Company _____ Signature _____

Printed Name _____ Date _____

Appendix 6 - Sample Debarment And Suspension Certification

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number

Printed Name of authorized representative

Title

Signature

Date

Appendix 6 - Sample Debarment And Suspension Certification

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the prospective lower tier participant (one whose contract for goods or services exceeds the Federal procurement small purchase threshold fixed at \$100,000) is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Appendix 7 - Sample Vendor Performance Evaluation



The Food Service Director or Manager will complete a performance review up to once per week.

Scoring will be from 1-5 with the ratings listed below:

1 = Very Poor or Inadequate 2 = Poor 3 = Satisfactory 4 = Good 5 = Excellent

1	Timeliness of performance (delivery)	
2	Customer Service (interaction between vendor & school staff, timely response to complaints)	
3	Condition of Delivery (condition of goods delivered including appropriate temperature, product boxes condition, organization of pallets)	
4	Replacement of Damaged or Unacceptable Goods Delivered (frequency and response from vendor in replacing goods, issuing credits)	
5	Quality of Produce (freshness, grade, size, mold, ripeness)	
6	Accuracy and Timeliness of Billing and/or Invoices (accuracy and timeliness of invoices, and response to corrections)	
7	Financial Management (stayed within budget, used full budget amounts)	
8	Variety (served a variety of produce)	
9	Ease of Use (individual serving sizes or whole fruit or easy to prepare)	
10	Overall Satisfaction	

MINIMUM PERFORMANCE RATING THRESHOLD

If the supplier scores a three (3) for each of the criteria, the total would be thirty (30). Any total score of thirty (30) or higher with no individual score less than three (3) will be considered satisfactory.

PERFORMANCE RATING THRESHOLD PENALTY

A total score lower than thirty (30) or an individual score less than three (3) will result in an email from Food Service Director/Manager. The performance issue will be documented in the file, accompanied by notes for the stakeholder. If the vendor has a total of three (3) project scores below thirty (30) in a three (3) month period, it may result in a ten (10) day notice to cure or contract cancellation.

PERFORMANCE RATING FREQUENCY

The Performance Rating system will be used during the first year of the contract. The timing of the evaluations will be at the discretion of the FSD/M. Frequency for subsequent years will be negotiated by the supplier's scores at the completion of the first year.

RENEWAL OF CONTRACT

If the supplier scores forty (45) or below the FSD/M will evaluate non-renewal of contract.

Vendor Name _____

Date _____

Evaluator Signature _____

Notes: