

MEMORANDUM OF AGREEMENT  
BETWEEN  
ALABAMA STATE DEPARTMENT OF EDUCATION  
AND MERCHANTS FOODSERVICE

THIS AGREEMENT, entered into on the first day of June, 2021 by and between the ALABAMA STATE DEPARTMENT OF EDUCATION, a State Agency, hereinafter referred to as ALSDE, and MERCHANTS FOODSERVICE, (Distributor) 1100 Edwards Street, Hattiesburg, MS 39401, is in accordance with the resolution passed by the Alabama State Board of Education on September 19, 1967, authorizing the State Superintendent of Education to enter into various contracts and has the following stipulations:

- The Distributor will receive, store and deliver food products, food service supplies and United States Department of Agriculture (USDA) Donated Foods for local education authorities (LEAs) and other eligible recipient agencies (RAs) within specific geographic regions in the state. Performance of this contract must comply with RFP ALSDE 2021-03 Statewide Procurement and Distribution bid.
- This contract has been bid by ALSDE on behalf of the LEA's and RA's throughout the State of Alabama who participate in the Federal Child Nutrition Programs affiliated with the National School Lunch Program and the USDA Donated Foods. It will be the responsibility of those LEA's and RA's participating to receive the contracted goods and services and to make payment to the Distributor for the goods and services provided under contract. ALSDE agrees to use its best effort to ensure payments are made by those participating. No warrants will be issued from ALSDE.
- The Distributor has been awarded the following regions on the basis of their bid prices and ability to perform:

Region 1  
Region 5  
Region 6

1. This agreement is made upon the express condition that ALSDE shall be free from all liability and claims for damages and suits for or by reason of any injury or injuries to any person or persons or property of any kind whatsoever, whether the person or property of Distributor, its agencies, employees or third persons, from any cause or causes whatsoever arising out of Distributor's performance of this Agreement or attempts to perform this Agreement, and Distributor hereby covenants and agrees to indemnify and save harmless ALSDE from all liabilities, charges, expenses (including attorney's fees) and costs on account of or by reason of any such injuries, liabilities, claims, suits or losses however accruing or damages growing out of the same.
2. The Distributor shall designate one representative and at least one alternate who will be readily accessible for exchange of information and instructions.
3. It is understood that there is no entitlement to any state merit system or any other state benefits to anyone working under this agreement.
4. This contract is for the period beginning June 1, 2021 and ending May 31, 2022. However, **the parties shall not commence performance until all requisite signatures are attained and upon the Governor's approval.**
5. It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment 26. It is further agreed that if any provision of this contract shall contravene any statute or constitutional provision or amendment, either now in effect or which may, during the course of this contract, be enacted, then that conflicting provision in the contract shall be deemed null and void. In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustments of the State of Alabama.
6. For any and all other disputes arising under the terms of this contract which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolutions shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center for Dispute Resolution of Alabama State Bar.
7. **"In compliance with Act 2016-312, the contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade."**


- 8. This agreement is subject to termination in the event of proration of the fund from which payment under this agreement is to be made.
- 9. Neither party shall have the right to assign or transfer its rights or obligations under this contract without the consent of the other party.
- 10. Except as otherwise expressly provided herein, neither party will use the name of the other party in any form of publicity, promotion, or advertising without the prior written permission of that party's authorized representative. However, nothing herein is intended to preclude the parties from acknowledging the existence of this agreement or the relationship of the parties in reports of sponsored activity or as may be required by their governing bodies or by law.
- 11. This agreement shall not be subject to modification or amendment except by written agreement with the appropriate authorized signatures.
- 12. This agreement may be terminated by either party upon receipt of a 30-day written notification.
- 13. The State Superintendent, through his designated representative, will sponsor and approve the purposes, administration, and supervision of all phases of the services to be provided.
- 14. All provisions of this contract shall be construed according to the laws of the State of Alabama.
- 15. MERCHANTS FOODSERVICE acknowledges and understands that this contract is not effective until it has received all requisite state government approvals, and MERCHANTS FOODSERVICE shall not begin performing work under this contract until notified to do so by the contracting department. MERCHANTS FOODSERVICE is entitled to no compensation for work performed prior to the effective date of this contract.
- 16. By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of this agreement and shall be responsible for all damages resulting therefrom.

ALSDE acknowledges that the individual executing the contract on behalf of MERCHANTS FOODSERVICE is authorized to do so and is doing so in his/her official capacity only, and to the extent that any provision contained in the contract exceeds his/her authority, ALSDE agrees that it will not look to that individual in his/her capacity or otherwise seek to hold him/her individually liable for exceeding such authority.


**ALABAMA STATE DEPARTMENT OF EDUCATION**

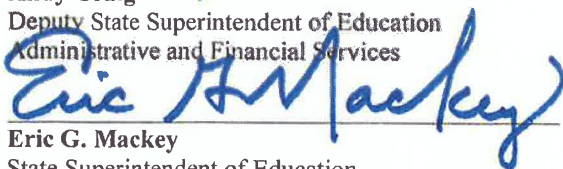
**MERCHANTS FOODSERVICE**

  
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**Brandon Payne**  
 Assistant State Superintendent of Education  
 LEA Auxiliary Support Services

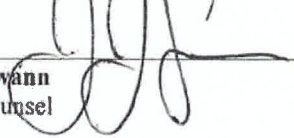
  
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**Andy Mercier, President**  
 Federal Identification Number 64-0202800

This contract has been reviewed and is approved as to content.

  
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**Andy Craig**  
 Deputy State Superintendent of Education  
 Administrative and Financial Services

  
 \_\_\_\_\_  
**Eric G. Mackey**  
 State Superintendent of Education

This contract has been reviewed for legal form and appears to comply with all applicable laws, rules, and regulations of the State of Alabama governing these matters.

  
 \_\_\_\_\_  
**J. Jason Swann**  
 General Counsel



Post Office Box 1351  
Hattiesburg, MS 39403  
(800) 844-3663 Fax: (601) 583-4353

April 13, 2021

Alabama State Department of Education  
50 N. Ripley Street  
Gordon Persons Building  
Montgomery, AL 36104

Dear Sir or Madams,

Per the Teams meeting held yesterday, Monday, April 12, 2021, Merchants Foodservice respectfully accepts the award of the Statewide Procurement and Food Distribution for regions 1, 5, and 6.

Sincerely,

Sara Martin  
Account Manager  
601-584-4022  
[smartin@merchantsfoodservice.com](mailto:smartin@merchantsfoodservice.com)

SECTION 5

Alabama State Department of Education



Request for Proposal

RFP ALSDE 2021-03

STATEWIDE PROCUREMENT & DISTRIBUTION

Child Nutrition Programs: Statewide Procurement and Food Distribution

Distributor Information Form

The following checklist is for required materials that must be submitted with your acceptable bid.

- You must submit four (4) complete bid packages that include all required documents.
  - Submit one (1) original copy
  - Submit three (3) exact copies
  - All copies require original signatures
  - Failure to comply will result in a rejected bid.
- You must complete, sign, and return the "Region Grand Total Bid Sheet" for each region you are bidding. (Original + 3)
- You must complete and return printed copies of the entire bid sheet from the USB flash drive for each region you are bidding. (Original + 3)
- You must completely fill out and return the USB flash drive. Return only the one (1) USB flash drive you received with this RFP. You may request a USB flash drive by contacting [SWP@alsde.edu](mailto:SWP@alsde.edu).
- You must return Attachment A – Appendix A (Original + 3)
- You must return the Performance Bond Letter of Commitment from your bonding company. (Orig + 3)
- You must return the Insurance Letter of Commitment from your insurance company. (Original + 3)

NAME OF DISTRIBUTOR: Merchants Foodservice

ADDRESS: 1100 Edwards Street  
Hattiesburg, MS. 39401

PHONE: 601-584-4022

EMAIL: rreed@merchantsfoodservice.com

DATE SUBMITTED: 3-26-21

PRINT NAME: Rocky REED

AUTHORIZED SIGNATURE: [Signature]

**SECTION 4**

**Alabama State Department of Education**



**Request for Proposal**

**RFP ALSDE 2021-03**

**STATEWIDE PROCUREMENT & DISTRIBUTION**

**Child Nutrition Programs: Statewide Procurement and Food Distribution**

**REGION GRAND TOTAL BID SHEET**


**REGION 1**

**NAME OF BIDDING FIRM** Merchants Foodservice

**THIS BID FORM APPLIES TO REGION 1 (a separate form must be submitted on each region)**

**Grand Total Bid for this Region:** \$ 23,656,840.83

**The figure quoted in the blank immediately above is the grand total for the Groups A, B, and C**

**Authorized Signature** 

**SECTION 4**

**Alabama State Department of Education**



**Request for Proposal**

**RFP ALSDE 2021-03**

**STATEWIDE PROCUREMENT & DISTRIBUTION**

**Child Nutrition Programs: Statewide Procurement and Food Distribution**

**REGION GRAND TOTAL BID SHEET**

**REGION 5**

**NAME OF BIDDING FIRM** Merchants Food Service

**THIS BID FORM APPLIES TO REGION 5 (a separate form must be submitted on each region)**

**Grand Total Bid for this Region:** \$ 25,149,620.21

**The figure quoted in the blank immediately above is the grand total for the Groups A, B, and C**

**Authorized Signature**

**SECTION 4**

**Alabama State Department of Education**



**Request for Proposal**

**RFP ALSDE 2021-03**

**STATEWIDE PROCUREMENT & DISTRIBUTION**

**Child Nutrition Programs: Statewide Procurement and Food Distribution**

**REGION GRAND TOTAL BID SHEET**

**REGION 6**

**NAME OF BIDDING FIRM** Merchants Foodservice

**THIS BID FORM APPLIES TO REGION 6 (a separate form must be submitted on each region)**

**Grand Total Bid for this Region:** \$ 20,595,883.41

**The figure quoted in the blank immediately above is the grand total for the Groups A, B, and C**

**Authorized Signature** 