

**Agenda Item Details**

Meeting Jun 27, 2022 - Regular Meeting

Category 8. Consent Agenda

Subject 8.12 Renewal of RFP 17-05 Beverage Vending Services, presented by Vince Windham, Program Director, Purchasing, and recommended by the Superintendent for approval.

Access Public

Type Action (Consent)

Fiscal Impact No

Budgeted No

Recommended Action Motion to renew the contract for RFP 17-05 Beverage Vending Services Inc. with Coca-Cola Bottling Company United, Inc., effective July 1, 2022, through June 30, 2027.

**Public Content**

Request approval to renew the contract for RFP 17-05 Beverage Vending Services with Coca-Cola Bottling Company United, Inc., adhering to original terms and conditions. The five (5) year contract is effective July 1, 2022, through June 30, 2027, and copies of the renewal documents and original contract are attached.

For additional information, please contact Steve Horton, Deputy Superintendent, at (850) 833-4208.

RENEWAL DOCUMENTS FOR RFP 17-05 BEVERAGE VENDING SERVICES.pdf (512 KB)



**Administrative Content**

*Our adopted rules of Parliamentary Procedure, Robert's Rules, provide for a consent agenda listing several items for approval of the Board by a single motion. Documentation concerning these items have been provided to all Board members and the public in advance to assure an extensive and thorough review. Items may be removed from the consent agenda at the request of any board member.*

**Motion & Voting**

Motion to approve the Consent Agenda and all of the Consent Agenda items as recommended by the Superintendent

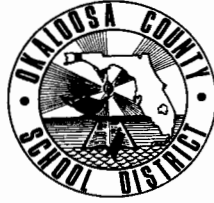
Motion by Linda Evanchyk, second by Diane Kelley.  
Final Resolution: Motion Carries  
Yes: Tim Bryant, Linda Evanchyk, Marti Gardner, Diane Kelley, Lamar White

**SCHOOL DISTRICT OF OKALOOSA COUNTY**  
**Purchasing Department**

SUPERINTENDENT OF SCHOOLS  
MARCUS D. CHAMBERS

ATTORNEY TO THE BOARD  
C. JEFFREY McINNIS, ESQ.

PGM. DIRECTOR - PURCHASING  
VINCE WINDHAM, CPPB



BOARD MEMBERS  
TIM BRYANT  
MARTI GARDNER  
LINDA EVANCHYK  
DIANE KELLEY  
LAMAR WHITE

June 10, 2022

Coca-Cola Bottling Company United, Inc.  
Attn: Amy Dean, On Premise Sales Manager  
7330 North Davis Hwy  
Pensacola, FL 32504

Ms. Dean,

On August 14, 2017 the School Board of Okaloosa County, Florida approved the contract with Coca-Cola Bottling Company United for RFP 17-05 Beverage Vending Services. The original contract term was for the period of five (5) years, effective July 1, 2017, through June 30, 2022.

Contract terms state that the term of this bid, upon mutual agreement of the parties, may be extended for an additional term. We would like to request that this contract be extended, adhering to the original terms and conditions, including the vendor's request for a vend price increase, for an additional five (5) year period, effective July 1, 2022, through June 30, 2027, and with the addition of new language, Force Majeure and E-Verify, added to the General Terms and Conditions section of the original Request for Proposal (RFP).

Please check one of the responses below indicating your decision regarding this request. Please sign and return this letter, along with a completed copy of the enclosed Federal Debarment Certification and Scrutinized Company Certification to the attention of Becky Perrin at [perrinb@okaloosaschools.com](mailto:perrinb@okaloosaschools.com) no later than Monday, June 13, 2022.

Thank you for your consideration. We look forward to doing business with you for another term.

A handwritten signature in black ink, appearing to read "Vince Windham".

Vince Windham  
Program Director of Purchasing

I agree to renew the contract adhering to the original terms and conditions, including the vendor's request for a vend price increase as noted on page 2 of this document, effective 7/1/2022, for an additional five (5) year period, effective July 1, 2022, through June 30, 2027.  
 I decline to renew the contract for an additional term.

Signature\*: Bo Taylor Title: Vice President, Central Region

Print Name: Austin "Bo" Taylor Date: 06.10.22

\*Note: Must be signed by an officer or employee having the authority to bind the company or firm.

PURCHASING DEPARTMENT - ADMINISTRATIVE COMPLEX - 120 LOWERY PLACE S.E.  
FORT WALTON BEACH, FLORIDA 32548  
TELEPHONE (850) 833-7668 FAX (850) 833-6327

Section 6(a)(iv) of the Agreement is hereby deleted and replaced with the following:

- (iv) In addition to the payments to be made in (i) above, Contractor shall pay commissions on full-service vending sales based on the following rates and initial vend prices:

<u>PACKAGE</u>	<u>COMMISSION</u>	<u>INITIAL VEND PRICE (effective 7/1/2022)</u>
20oz Sparkling Zero	31%	\$1.50
12oz cans Sparkling, including AHA	31%	\$0.75
20oz PowerAde Zero	31%	\$1.50
20oz Dasani	31%	\$1.50
20oz smartwater	31%	\$1.75
20oz Vitaminwater Zero	31%	\$1.75
18.5oz Diet Gold Peak Tea	31%	\$1.75
12oz Bodyarmor Lyte	31%	\$1.75
12oz Coke with Coffee Zero Sugar	31%	\$1.75
12oz True North Sparkling Water	31%	\$1.75

Discounts for cash shall be implemented on all machines with credit card readers.

### Additional Language for General Terms and Conditions of RFP 17-05 Beverage Vending Services

E-Verify System: Under Executive Order 11-116, issued by the Governor of the State of Florida and §448.095, Florida Statutes, effective July 1, 2020, Provider shall use the United States Department of Homeland Security's E-Verify System, <https://e-verify.uscis.gov/emp>, to verify the employment eligibility of all employees hired during the term of this Agreement. Provider shall also require all subcontractors performing work under this Agreement to use the E-Verify System for any employees they may hire during the term of this Agreement. Provider must provide evidence of registration as required by Florida Statute, by January 1, 2021. Failure to comply with this provision is a material breach of the Agreement, and the District may choose to terminate the Agreement at its sole discretion.

Force Majeure Event: Neither Party to this Agreement shall be liable for delays or failures in performance under this Agreement (other than obligations relating to confidentiality and protection of ownership and intellectual property rights) resulting from acts or events beyond the reasonable control of such party (a "Force Majeure Event"), including acts of war, terrorism, acts of God, epidemics, pandemic, earthquake, fire, flood, hurricanes, embargo, riot, sabotage, labor dispute, governmental act, failure of the internet, power failure, or energy, utility or telecommunications interruptions, or the issuance or extension of existing government orders of the United States, the State of Florida, or local county and municipal governing bodies, which prevents performance of the contract for all or any part of the term of the Agreement, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. In the event that a Force Majeure Event lasts for more than 90 days, and the delayed party cannot correct its failure or delay in performance during that period of time, despite using its reasonable commercial efforts to do so, the other party may terminate the affected portions of this Agreement.

## **AGREEMENT**

This agreement (the "**Agreement**") is made by and between, Coca-Cola Bottling Company United-Central, LLC d/b/a Valparaiso Coca-Cola Bottling Company, (the "**Contractor**"), and The School Board of Okaloosa County, FL having its principal place of business at 120 Lowery Place S.E. Fort Walton Beach, Fl. 32548 (the "**Board**").

### **WITNESSETH:**

WHEREAS, the Board issued RFP 17-05 Beverage Vending Services dated April 11, 2017(attached hereto and incorporated herein by this reference as Exhibit A);

WHEREAS, after free and open advertised solicitation, Contractor submitted a proposal (attached hereto and incorporated herein by reference as Exhibit B), and was selected as the best responsive and responsible contractor by the Board (the "Proposal"); and

WHEREAS, the Contractor desires to obtain the exclusive rights (i) to offer Beverages Vending services (the "Services") for sale or sampling at Board facilities as described under the agreement (the "Campus"), and (ii) to market Beverages and to promote their consumption and sale generally and on the Campus and the Board desires to have the Contractor perform the Services; and

WHEREAS, the Board is vested with the authority to grant to Contractor the exclusive promotional advertising and beverage vending availability rights described herein with respect to all schools operated by the Board (the "Schools") and with respect to all other facilities owned or operated by the Board; and

WHEREAS, the parties have negotiated Contractor's Proposal as permitted by the RFP, and reached an agreement on the Services to be performed and therefore wish to set forth this understanding in writing in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto agree as follows:

#### **1. Scope of Services.**

The parties agree that the purpose of this Agreement is that the Contractor shall fully, timely, and continuously provide the Board the Services in a manner in accordance with the Board's objective set forth in the RFP and this Agreement. The contract documents consist of this Agreement, the RFP, and the Proposal. In the event of any conflict or ambiguity among these documents, the following priority shall be assigned: first to this Agreement, next to the RFP, and lastly to the Proposal.

## 2. Definitions.

- "Agreement Term" means the Term of the Agreement as stated in RFP.
- "Beverage" or "Beverages" means all carbonated and non-carbonated cold beverages that comply with the requirements of the RFP. All products must be in compliance with the Healthy Hunger-Free Kids Act of 2010 in accordance with State Board of Education Rule 5P-1.003; Code of Federal Regulations 7 CFR 210.11; and Food Labeling; Calorie Labeling of Articles of Food in Vending Machines. The product line(s) to be sold at each location will be by mutual decision and agreement between the school Principal/site administrator and the Contractor.
- "Campus" means the entire premises of each and every School and facility owned or operated by either now or in the future including, without limitation, all elementary, middle, and high schools, athletic facilities, offices, maintenance facilities, and including for each such location, the grounds, parking lots, all buildings which are a part of the location, all cafeterias, faculty and staff lounges, press rooms, sky boxes, stadium suites, and locker rooms. The defined terms "Schools" and "Stadium" are included within the collective term "Campus." Campus locations shall not include any type of concessions stands.
- "Competitive Products" mean any and all Beverages other than Products (as defined herein).
- "Products" shall mean Beverage products of Contractor.
- "Stadium" shall mean all Athletic Facilities located within the Campus including, but not limited to, the grounds, parking lots, all buildings which are part of each Athletic Facility, press rooms, sky boxes, stadium suites, and locker rooms. "Stadium" shall not include concession stands or mobile vendors.
- "Team" or "Team(s)" means all interscholastic athletic teams associated with Board.
- "Athletic Facilities" and "Athletic Teams" shall include all men's and women's athletic programs.

3. Term.

Contractor shall have the rights provided herein for a term of five (5) years effective July 1, 2017 through June 30, 2022. This Agreement may be renewed by mutual written agreement between the parties for an additional term of five (5) years under the same terms and conditions of the initial contract.

4. Grant of Exclusive Beverage Availability and Beverage Merchandising Right.

Board hereby grants to Contractor the following exclusive Beverage availability and merchandising rights as defined in RFP, subject to the Permitted Exceptions set forth in Section 8:

(a) Exclusive Beverage Vending Availability on Campus. Contractor shall have the exclusive right to make Beverages available for sale and distribution on Campus. In accordance with the terms of the RFP the Board agrees that Products shall be the exclusive Vending Beverages sold, served or sampled at all locations. Board agrees that Board and all other persons serving Beverages on Campus shall purchase all (100%) of their required Products for Vending from Contractor.

(b) Board shall cause each and every local school administration to do the following:

- (i) Obtain Beverage vending services from Contractor, which shall have the Exclusive right to provide Beverage vending on Campus, except as otherwise provided herein;
- (ii) Offer juice Products, juice-containing Products and other Products including, without limitation bottled water products, if such Products meet local, state, and federal nutrition procurement regulations and the terms of the RFP;
- (iii) Exclusive Beverage Merchandising Rights. Contractor shall have the exclusive right to merchandise Beverages on Campus including the following specific rights;

(c) Point-of-Sale Advertising. Materials promoting Products at the point of sale on Campus shall be clearly visible to the purchasing public and shall be displayed in a manner and location acceptable to Contractor and subject to the approval of the Board. Board shall be given the right to preview all materials and to reject any materials reasonably deemed by the Board to be offensive, disruptive or contrary to sound education practice. Also, Contractor shall have the right to place vending machines and other dispensing equipment with full trademark panels on all sides, subject to mutual agreement as to location by the school Principal/site administrator and the Contractor.

- (d) **On-Campus Promotions.** Contractor has the right to undertake on-Campus Product promotions, designed to increase the sale of Products on Campus. Such right shall include the right to offer Beverages in promotional vessels bearing trademarks for Products. (No promotion will be carried out without the approval of the school Principal/site administrator or their designee.)

5. **Exclusive Beverage Advertising.**

Subject to the Permitted Exceptions set forth in Section 8, Board hereby grants to Contractor the exclusive right to advertise and promote Beverages on and with respect to the Campus, Stadium, and Schools, events on the Campus, including the following specific advertising and promotional rights:

- (a) **Signage for Products.**
- (i) **No Obstruction of Signage.** Without the express written consent of Contractor, Contractor's signage on the Campus shall not be altered, obscured in any way or draped at any time or for any reason by any person or entity, including any broadcaster.
  - (ii) **Access to Signage.** Contractor shall have the right of access to its permanent signage at all reasonable times for the purpose of replacement or removal of the same or to modify, change or alter the promotional messages appearing thereon at Contractor's cost and discretion, subject to approval of content by school Principal/site administrator.

6. **Consideration.**

- (a) **Sponsorship Fees.** For the exclusive promotional rights, exclusive Beverage Vending availability rights and other rights described herein:
- (i) **For the rights described herein, Sponsor agrees to provide 31% commission and a rebate of \$2.00 per physical case.**
  - (ii) **Contractor agrees to provide In-Kind Product funding in the amount of \$15,000 per year to be used at the Board's Discretion.**
  - (iii) **Contractor agrees to commit, up to, Fifty Thousand Dollars (\$50,000) over the first five (5) years in scoreboard enhancements.**
  - (iv) **In addition to the payments to be made in (i) above, Contractor shall pay commissions on full-service vending sales based on the following rates and initial vend prices:**

**Vend Rate and Commissions:**

<b>PACKAGE</b>	<b>COMMISSION</b>	<b>INITIAL VEND PRICE</b>
*20oz bottles- carbonated	31%	\$1.25
*12oz cans-carbonated	31%	\$0.75
20oz PowerAde	31%	\$1.25
20oz Dasani	31%	\$1.25
20oz Smart water	31%	\$1.50
20oz Vitamin Water	31%	\$1.50
18.5oz Gold Peak tea	31%	\$1.50

\*only diet carbonated drinks sold in student access venders

- (b) Commissions are paid based upon cash collected, after deducting taxes.
- (c) Vend prices and packages shall be firm and in effect for the first year of the Agreement Term, July 1, 2017 through June 30, 2018. After which time the Contractor may adjust the vend prices on an annual basis as necessary to reflect changes in its costs, including cost of goods, subject to the limitations as set forth within the Pricing section of the RFP. These commissions will be paid on or about the 15th of each month with an accounting of all sales and monies in a form satisfactory to the Board and shall become immediate property of the Board.

**7. Competitive Products.**

Subject to the Permitted Exceptions in Section 8, during the entire Agreement Term and any renewal or extension thereof:

- (a) No Competitive Vending Beverages may be sold, dispensed or served anywhere on the Campus.
- (b) No Permanent or temporary advertising, signage or trademark visibility for Competitive Vending Products will be displayed or permitted anywhere on the Campus, including locker rooms, but not including sidelines and players benches.
- (c) No agreement or relationship will be entered into or maintained by Board pursuant to which Competitive Vending Products are associated in any manner with the Campus, Schools, Stadium, in any advertising,



promotional activity or other endeavor which creates or tends to create the impression of a relationship or connection between Competitive Products and Campus, Schools or Stadium.

**8. Permitted Exceptions.**

The following items shall be considered "Permitted Exceptions":

- (a) **Permitted Competitive Beverage Availability.** Board's right to make available for sale on the Campus (i) fresh-squeezed juice, (ii) fresh-brewed hot tea, (iii) fresh-brewed hot coffee, (iv) water drawn from a public water supply, (v) milk and (vi) hot chocolate and all other beverage products sold by Board's School Food Service Provider. Trademarks for such Competitive Products may be displayed on menus, advertising and on dispensing equipment. All school concession stands, student fundraisers, booster clubs, and the Board's School Food Service Provider are exempt from the stated requirements or prohibitions related to the rights granted by Board to Contractor under this Agreement including: (i) Exclusive Beverage Availability Rights; (ii) Exclusive Beverage Merchandising Rights; (iii) Exclusive Beverage Advertising and Promotional Rights.

**9. Pricing for In-Kind funding.**

During Agreement year one, Contractor shall provide Beverages to and/or its concessionaires at the prices set forth in Section 6 (a). During the remainder of the Agreement Term, Contractor shall notify Board in writing thirty (30) days prior to any annual price increase.

**10. Equipment and Service.**

- (a) During the Agreement Term, Contractor will loan to at no cost to Board, all Beverage dispensing equipment ("Equipment"), which is reasonably required in Contractor's discretion to dispense Products at the Campus pursuant to the Contractor's standard Equipment Placement Agreement ("BEPA").
- (b) Contractor will provide all maintenance and vending service to its Equipment at no cost to Board. All equipment service will be provided during normal business hours. Contractor shall not be obligated to provide service hereunder during periods in which it is prevented from doing so due to strikes, civil disturbances, unavailability of parts or other causes beyond the control of Contractor. Contractor shall not be liable for damages of any kind arising out of delays in rendering service.
- (c) Contractor agrees to equip all the bottle vending machines with Credit Card Readers.

- (d) Contractor agrees to evaluate all equipment to assess need for replacement or upgrade.
- (e) Contractor agrees to allow Board to utilize the "HUG ME" Vendor at one (1) campus location, per year, to be determined by the Board.

#### 11. Remedies for Loss of Rights.

- (a) In addition to any other legal or equitable remedy, Board will have the right to terminate this Agreement upon forty-five (45) days prior written notice to Contractor at any time if:
  - (i) Contractor fails to make any payment due under this Agreement, and if such default continues uncured for the forty-five (45) day period referenced in Section 11(a); or
  - (ii) Contractor breaches any material term or condition of this Agreement, and if such breach continues uncured for the forty-five (45) day period referenced in Section 11(a).
- (b) In addition to any other legal or equitable remedy, Contractor will have the right to terminate this Agreement upon forty-five (45) days prior written notice to Board at any time if:
  - (i) Board breaches any material term or condition of this Agreement, and if such breach continues uncured for the forty-five (45) day period referenced in Section 11(b); or
  - (ii) Board's right to convey the promotional and Beverage availability rights contained in this Agreement expire or are revoked; or
  - (iii) Government or other regulation prohibits the availability of Beverages as defined in Section 2 hereto.

#### 12. Representations, Warranties and Covenants.

- (a) Representations, Warranties and Covenants of Board. Board represents, warrants and covenants to Contractor as follows:
  - (i) Board Authority. Board has full power and authority to enter into this Agreement and to grant and convey to Contractor the rights set forth herein. Upon any expiration or revocation of Board's authority to grant, in whole or in part, the above advertising, promotional, Beverage availability and merchandising rights, then, in addition to the termination rights set forth, in whole or in part, in Section 11 above, Contractor shall have the right, but not the

obligation, to cease payment to Board and instead make commission payments to any party that thereafter assumes responsibility for any Beverage advertising, promotional and/or availability rights on the Campus and/or promotional and advertising rights with respect to the Board, Schools, Stadium and the Teams.

- (ii) **Board Binding Obligation.** All necessary procedures and approvals for the execution, delivery and performance of this Agreement by Board have been followed and/or obtained, and this Agreement has been duly executed and delivered by Board and constitutes the legal and binding obligation of Board enforceable in accordance with its terms.
  - (iii) **Board will not, during the term of this Agreement, enter into any agreement granting Beverage availability and merchandising or promotional and/or advertising rights that are inconsistent with the rights granted to Contractor pursuant to this Agreement, with vending companies, which sell, distribute or advertise Beverages.**
- (b) **Representations and Warranties and Covenants of Contractor.** Contractor hereby represents, warrants and covenants as follows:
- (i) **Authority.** Contractor, has full power and authority to enter into and perform this Agreement.
  - (ii) **Binding Agreement.** All necessary approvals for the execution, delivery and performance of this Agreement by Contractor, have been obtained, and this Agreement has been duly executed and delivered by Contractor, and constitutes the legal and binding obligation of Contractor, enforceable in accordance with its terms.
  - (iii) **No Conflict with Other Agreements.** Contractor has not entered into and during the Agreement Term of this Agreement, will enter into, any other agreements, which would prevent it from fully complying with the provisions of this Agreement.
- (c) **General.** Each of the parties hereto agrees that the representations, warranties and covenants contained herein shall survive the execution and delivery, and if appropriate the termination, of this Agreement.

### 13. Notices.

Any notices or other communication hereunder shall be in writing, shall be sent via registered or certified mail, and shall be deemed given when received.

If to Contractor:

COCA-COLA BOTTLING COMPANY UNITED-SUNCOAST. LLC  
d/b/a VALPARAISO Coca-Cola Bottling Company  
Attn: Jared Elmore  
647 Valparaiso Pkwy  
Valparaiso, FL 32580

If to Board:

The School Board of Okaloosa County  
120 Lowery Place S.E.  
Fort Walton Beach, Fl. 32548

14. Assignment.

This Agreement or any part hereof shall not be assigned or otherwise transferred by either party without the prior written consent of the other party. Notwithstanding the foregoing, Contractor shall be entitled to assign their rights and obligations under this Agreement pursuant to the sale of substantially all of its assets.

15. Confidentiality.

Subject to the provisions of applicable law, including but not limited to the Florida Public Records Act, Board agrees that the amount of Commissions provided to Board by Contractor under this Agreement will be kept confidential by Board, its agents, employees and representatives and will not be disclosed in any manner whatsoever, in whole or in part, by Board or its agents, employees or representatives without the prior written consent of Contractor.

16. Modifications.

No modification or waiver of any of the terms and conditions of this Agreement shall be effective unless such modification or waiver is expressed in writing and executed by each of the parties hereto. This Agreement may be amended only in writing signed by each of the parties hereto.

17. Relationship to Parties.

The parties are acting herein as independent contractors and independent employers. Nothing herein contained shall create or be construed as creating a partnership, joint venture or agency relationship between any of the parties and no party shall have the authority to bind the other in any respect.

18. Retention of Rights.

Board shall not obtain, by this Agreement, any right, title or interest in the trademarks of the Coca-Cola Company, nor shall this Agreement give Board the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks or copyrights of The Coca-Cola Company, without the express written consent of The Coca-Cola Company.

19. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

20. Entire Agreement.

This Agreement shall constitute the complete and exclusive written expression of the intentions of the parties hereto and shall supersede all previous communications representation, Agreements, promises or statements either oral or written, by and between either party.

IN WITNESS WHEREOF the undersigned have caused this Agreement to be duly executed as of the last date written below.

The School Board of Okaloosa County, FL



By: \_\_\_\_\_

Printed Name: Lamar White

Title: Chairman

Date: 8/14/2017

COCA-COLA BOTTLING  
COMPANY UNITED-SUNCOAST.  
LLC d/b/a VALPARAISO Coca-  
Cola Bottling Company



Printed Name: Jared Elmore

Title: Sales Manager

Date: 8/7/2017

Attest



By: \_\_\_\_\_

Mary Beth Jackson, Superintendent