

Ohio Department of Education and Workforce  
Office of Nutrition

## FOOD SERVICE MANAGEMENT COMPANY REQUEST FOR PROPOSALS AND CONTRACT – FIXED PRICE

### Is this the right contract for me?

Answer the questions below. A “yes” response to the questions below indicates that this is the appropriate contract for your organization. A “no” response to any of the questions below indicates that an individual from your organization should contact your assigned education program specialist (EPS) to discuss other meal purchasing options.

Yes	No	
		I want a company to prepare and serve meals in my school(s).
		I want the company to perform some or all of the following duties: ordering food/supplies; developing menus/recipes; collecting Income Eligibility Applications; counting the number of reimbursable meals served; maintaining the Benefit Issuance document; promoting school meal programs.
		I understand that the company will charge me a fixed price per meal served. The company will not be responsible for reporting its actual expenses.
		I will develop specific, measurable criteria to judge the proposals. I will award the contract to the proposal that scores highest based on my criteria.
		I understand that I am required to advertise this opportunity in a newspaper prior to awarding the contract.

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### PROCUREMENT REGULATIONS

National School Lunch Program procurement requirements are found in [7 CFR 210.21](#). The summary below addresses some key points of the regulation:

- Full requirements are documented in 2 CFR 200, subpart D; 2 CFR 400; and 2 CFR 415.
- You are bound by the provisions of any contract you enter into, whether or not that contract resulted from a proper procurement process, **but** any costs incurred under a contract that does not meet the requirements of the regulation are unallowable costs.
- The Ohio Department of Education and Workforce is not a party to any contract formed pursuant to this agreement.
- If you make any changes to this prototype document, you need to submit those changes to us for approval **prior to** beginning your solicitation process.
- SFAs and Vendors are required to comply with the “Buy American” provision by purchasing agricultural commodities and food products that are produced and processed in the United States.

**Carefully read the attached instructions.** Please contact your Program Specialist or call our office toll-free at 1-800-808-6325 if you have questions or need assistance.

Procurement resources are also available on our web site at [education.ohio.gov](http://education.ohio.gov)

# Ohio Department of Education and Workforce

## Sample

### Food Service Management Company

## Request for Proposals and Contract –Fixed Price

This Request for Proposal (RFP), also referred to as the “sample contract”, is provided by the Ohio Department of Education and Workforce, Office of Nutrition (“OON”) and is for use by school food authorities (“You”) initiating a cost reimbursable contract with a food service management company (FSMC).

In general, federal regulations require OON to approve any FSMC contracts. Any changes you make to this prototype contract must be approved in writing by OON before the contract is executed. To comply with this requirement, you must submit this contract to OON after you complete all necessary sections. You may release the contract for soliciting purposes after OON reviews and approves the submitted sample contract.

All costs resulting from contracts that do not meet federal requirements are unallowable costs. If you fail to incorporate OON’s required changes to solicitation or contract documents, all costs resulting from the subsequent contract award are unallowable costs.

You must submit the following procurement documents to OON and allow at least 15 business days for review and approval prior to executing the contract:

1. Newspaper advertisement with date of publication
2. List of proposers that received the solicitation/contract documents and all addenda issued (include date mailed/delivered)
3. A list of proposers in attendance at the pre-proposal meeting along with a written copy of all questions with answers posed from the meeting (provided to all potential proposers)
4. Correspondence from proposers opting not to submit a proposal (or phone call documentation)
5. The sample contract with all attachments completed
6. Proposal evaluation (based on the Award Criteria on page 3).

After written notification from OON that you may proceed with the award, you must provide OON with an executed contract.

Federal regulations require OON to review all contracts with FSMCs for program compliance. OON is also required to review any amendments in extension years prior to their execution.

Contracts with a FSMC must be for 1 year (or less depending on start/end dates and services required). They may include up to 4 optional 1-year renewals.

OON is not a party to this contract. OON only reviews the contract to assure compliance with Federal and State procurement requirements. OON does not review or judge the fairness, advisability, efficiency, or fiscal implications of the contract.

Where multiple SFAs have solicited a single consolidated proposal for a FSMC contract, an independent, ancillary or alternative Request for Proposal by one of those SFAs is permissible, provided the SFA engaging in an individual, ancillary, or alternative Request for Proposal ensures that the new solicitation will not conflict with, materially change, or otherwise interfere with the ability of proposers or SFAs to maintain or execute the consolidated proposal/contract.

## Instructions and Guidance for Completing the Fixed Price Contract

<b>Within the contract, items that require action by SFA are highlighted in green</b>	
Page 1, Item B:	Insert the name of the school SFA.
Page 1, Item C:	All procurement transactions shall be conducted in a manner that provides maximum open and free competition consistent with 2 CFR 200. The SFA must share with prospective proposers sufficient information to make this a meaningful RFP, including all informational sheets contained as attachments to this contract.
Page 1, Item D:	<ul style="list-style-type: none"> <li>• Insert date, time, and place of pre-proposal meeting.</li> <li>• The meeting must be scheduled no less than 10 business days after release of the RFP, but more lead time will provide for a more competitive procurement.</li> <li>• Indicate if attendance is required or optional. We recommend making attendance mandatory.</li> <li>• Complete the contact information for question submission.</li> </ul> <p><b>Note:</b> Pre-proposal meetings should take place during normal food service operation hours in order to provide contractors the optimal information needed to make a competitive proposal.</p>
Page 2, Item E.1:	Complete time, date, and address for proposal submission
Page 2, Item E.2:	Complete dates for evaluation and award
Page 2, Item E.6:	Insert information for contact person.
Page 2, Item G:	<p>Complete the award criteria. Keep the following points in mind when developing criteria:</p> <ul style="list-style-type: none"> <li>• Cost must be weighted higher than any other individual criterion.</li> <li>• Criteria should be based on areas that you want the FSMC to address in its bid. Think of them as a kind of “wish list” of items that your ideal proposal would include. For example, “Programs and strategies to increase student participation beyond reimbursable meals” or “Plan for providing menus, nutrition information, and other communications via the district website”.</li> <li>• For each criterion, you should be able to envision responses that earn different scores. If the responses will only receive full points or no points, that item may be better suited as a mandatory requirement.</li> <li>• Try to come up with 5-7 criteria.</li> </ul>
Page 3, Section I.A:	Insert beginning date and ending date: (Not to exceed one year). The beginning date cannot be before the date on which the contract is signed.
Page 4, Section I.D:	Check all programs that apply.
Page 4, Section I.I:	Choose pricing or non-pricing
Page 5, Section I.R:	Insert the number of days in which the school food authority (SFA) will make payment on the monthly invoices.

Page 5, Section I.T:	Complete the escalator provision information. The most commonly used is CPI-U for Food away from home
Page 6, Item Section I.U:	Insert the current reimbursement & commodity rates. The meal equivalent calculations listed here are the USDA recommendation.
Pages 6-8, Section II.A:	This section designates the program expenses to be incurred by FSMC and SFA. Review each line and mark with an X the column for the entity responsible for the listed expense. If you have specific expenses not listed, please add them.
Page 8, Section IV.E:	Choose whether or not the FSMC will assist in <b>verifying</b> Income Eligibility Applications.
Page 8, Section V.J:	Choose the method for valuing USDA donated foods (i.e. commodities) and the method for the FSMC to report the credits for these values
Page 11, Section XI.B:	Check the box that applies.
Page 14, Section XX.A:	Insert the amount of each type of insurance coverage desired.
Page 15, Section XXII.H.1-2:	Read through each option, and mark as desired
Page 16, Section XXII.K.8:	Complete the projected number of feeding days.
Page 16-17, Section XXIII.B.1-2:	(Complete only if proposal includes the Summer Food Service Program (SFSP) and the SFSP reimbursement will exceed \$150,000.) Insert the required amount of the performance bond. Mark through entire item if SFA does not participate in the SFSP.
Page 18 (“Agreement Page”)	Once proposal is awarded/accepted, SFA and FSMC must sign and date. This document now becomes the contract to which SFA and FSMC must abide. Once signed and dated, a copy must be mailed to:  Ohio Department of Education and Workforce Office of Nutrition 25 S. Front St. Mail Stop 303 Columbus, OH 43215  <b>NOTE: If this document is used in full, an additional contract is not needed.</b>  <b>If this document is being utilized as a Request for Proposal only, OON must receive both the RFP and the final contract.</b>
Page 19 (“Attachments”)	The chart on page 19 lists all contract attachments and designates who is responsible for filling out the information. Please note that for Attachment 17 (“Projected Operations – Expenses”), SFA must complete only the portion related to USDA donated foods. The remainder must be filled out by FSMC as a part of its proposal.

**FOOD SERVICE  
MANAGEMENT COMPANY**

**REQUEST FOR PROPOSAL  
AND CONTRACT**

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## General Information

**A. Definitions.** For purposes of this contract, the following definitions apply:

Applicable credits shall have the meaning established in 2 CFR part 200 and USDA implementing regulations 2 CFR part 400 and part 415.

Contractor means a commercial enterprise, public or nonprofit private organization or individual that enters into a contract with a SFA.

Cost reimbursable contract means a contract that provides for payment of incurred costs to the extent prescribed in the contract, with or without a fixed fee.

Fixed fee means an agreed upon amount that is fixed at the inception of the contract. In a cost reimbursable contract, the fixed fee includes the contractor's direct and indirect administrative costs and profit allocable to the contract. The fixed fee can be expressed either as a fixed amount or as a cost per meal.

Food service management company means a commercial enterprise, nonprofit organization, or public institution that is, or may be, contracted with by a recipient agency to manage any aspect of a recipient agency's food service, in accordance with 7 CFR parts 210, 225, or 226.

Nonprofit school food service account means the restricted account in which all of the revenue from all food service operations conducted by SFA principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service.

OON means the Ohio Department of Education and Workforce, Office of Nutrition

School food authority means the governing body which is responsible for the administration of one or more schools; and has the legal authority to operate the Program therein or be otherwise approved by FNS to operate the Program.

**B. Intent.** This solicitation is for the purpose of entering into a contract for the operation of a food service program for >>>>SFA Name<<<<, hereinafter referred to as School Food Authority (SFA).

The proposer will be referred to as Food Service Management Company (FSMC), and the contract will be between FSMC and SFA.

**C. Procurement method.** Procurement shall be executed through submission of sealed proposals.

**D. Pre-proposal conference.**

A meeting with interested proposers to review the specifications; to clarify any questions; and for a walk-through of the facilities with school officials will be held on >>>>Date<<<< at >>>>Time<<<<.

Location: >>>>Facility Address<<<<. Attendance is **(select one) required/optional**.

1. **Questions for pre-proposal conference.** Submit questions regarding the RFP in writing by 12 Noon EST on >>>>Date<<<< to >>>>Contact person<<<< via >>>>Email address<<<<. SFA will acknowledge receipt of questions no later than >>>>Time<<<< EST on >>>>Date<<<<.

- a. Questions submitted prior to the Pre-Proposal Conference will be answered at the Pre-Proposal Conference.
- b. Questions from the floor at the Pre-Proposal Conference must also be presented in writing. These questions may or may not be answered at the Pre-Proposal Conference.
- c. All questions presented at the Pre-Proposal Conference will be answered in writing after the meeting and sent to all individuals that signed in at the Pre-Proposal Conference.

2. **Written communication** will override any verbal communication that takes place during the process between any FSMC and SFA.

**E. Proposal submission and award.**

1. Proposals are to be submitted by >>>>Time<<<<< EST on >>>>Date<<<<< to:

Name of Agency: >>>>SFA Name<<<<<  
 Mailing Address: >>>>Mailing Address<<<<<  
 Physical Address: >>>>Physical Address<<<<<  
 City/State/Zip >>>>City, State Zip<<<<<

Proposals will not be accepted after this time. Proposal is to be submitted in an envelope marked **Food Service Management Proposal**. SFA reserves the right to retain all proposals for a period of at least sixty (60) days.

2. Evaluation of proposals is expected to begin on >>>>Date<<<<< and be completed by >>>>Date<<<<<. Negotiations with selected FSMC will begin following evaluation. The projected award date for the contract is >>>>Date<<<<<. These dates are subject to change based upon the number and nature of received proposals, OON approval process, and any unforeseen factors.
3. SFA reserves the right to waive minor irregularities or informalities in the proposal process and to reject any or all proposals if deemed to be in the best interest of SFA.
4. To be considered, each proposer must submit a complete response to this solicitation **using the forms provided**. There may be no material modification to the contract language.
5. Award shall only be made to a responsible proposer whose proposal is responsive to this solicitation. A responsible proposer is one whose financial, technical, and other resources indicate an ability to perform the services required by this solicitation.
6. Proposers or their authorized representatives are expected to fully inform themselves as to the conditions, requirements and specifications before submitting proposals; failure to do so will be at the proposer's/offoror's own risk, and he or she cannot secure relief on the plea of error. SFA is not liable for any cost incurred by the proposer prior to the signing of a contract by all parties. Paying FSMC from the Child Nutrition Program (CNP) funds is prohibited until the contract is signed.

If additional information is required, please contact >>>>Name<<<<< at >>>>email address<<<<<.

**F. Late proposals.** Any proposal received after the exact time specified for receipt in Section E will not be considered.

**G. Award criteria.**

Proposals will be evaluated by a committee against the following criteria. Each area of the award criteria must be addressed in detail in the proposal. **SFA must assign the weights for the criteria. Cost must be the most heavily weighted.**

Weight		Criteria
##	points	Cost
##	points	
##	points	
##	points	
##	points	
##	points	
##	points	
<b>100</b>	<b>points</b>	<b>TOTAL</b>

**H. Awarded contract.**

1. **OON Review.** 7 CFR 210.19 requires OON to review each contract between any SFA and FSMC annually to ensure compliance with program regulations. Regulations require OON's approval of each contract and renewal year amendment before the contract is executed. OON is not a party to any contractual relationship between any SFA and FSMC. OON is not obligated, liable, or responsible for any action or inaction taken by any SFA or FSMC based on this contract. OON's review of the contract is limited to assuring compliance with federal and state procurement

requirements. OON does not review or judge the fairness, advisability, efficiency, or fiscal implications of the contract.

All costs resulting from contracts that do not meet the requirements of 7 CFR 210 are unallowable nonprofit school food service account expenses. When SFA fails to incorporate OON required changes to solicitation or contract documents, all costs resulting from the subsequent contract award are unallowable charges to the nonprofit school food service account.

## 2. Prohibited Items.

- a. No firm, corporation, or individual shall blacklist or require a letter of relinquishment or publish or cause to be published or blacklisted any employee, mechanic, or laborer, discharged from or voluntarily leaving the service of such company, corporation, or individual, with intent and for the purpose of preventing such employee, mechanic, or laborer from engaging in or securing similar or other employment from any other corporation, company, or individual.
  - b. FSMCs may not require any additional liability coverage, regardless of dollar value, beyond that which SFA would require under procurements not involving a FSMC. This prohibition would be effective in any situation where SFA conducts its own procurement or where FSMC procures products on behalf of SFA (reference FNS Instruction 1998-SP-25).
3. **Execution.** After the complete RFP/contract is approved by OON, the contract must be signed by all local parties. Changes or amendments are not valid unless approved in writing by OON prior to execution.

## Standard Terms and Conditions

### I. Scope and Purpose

- A. Duration of Contract.** This contract shall be for a period of up to one (1) year, beginning on >>>>Start Date<<<<<, and ending on >>>>End Date<<<<<, with four (4) renewals of one (1) year each with mutual agreement between SFA and FSMC.
- B. Independent contractor.** FSMC shall be an independent contractor and not an employee of SFA. The employees of FSMC are not employees of SFA.
- C. Permanent agreement.** FSMC shall operate in conformance with SFA's Permanent Agreement/Policy Statement with OON.
- D. Scope of operations.** Only the programs checked below will be included in the awarded contract. The programs checked below shall be the same as those listed in Attachment 2. If a program is added later, the appropriate procurement procedures must be followed.

- |  |  |
|--|--|
| <input type="checkbox"/> National School Lunch Program (NSLP)      | <input type="checkbox"/> A la carte Sales    |
| <input type="checkbox"/> School Breakfast Program (SBP)            | <input type="checkbox"/> Adult Meals         |
| <input type="checkbox"/> After School Care Snack Program (ASCSP)   | <input type="checkbox"/> Catering            |
| <input type="checkbox"/> Summer Food Service Program (SFSP)        | <input type="checkbox"/> Contract Meals      |
| <input type="checkbox"/> Special Milk Program (SMP)                | <input type="checkbox"/> Vending/Concessions |
| <input type="checkbox"/> Child and Adult Care Food Program (CACFP) |  |

FSMC shall have the exclusive right to operate the above program(s) at the sites specified by SFA in Attachment 2.

- E. Program beneficiaries.** The food service provided shall be operated and maintained as a benefit to SFA's students, faculty, and staff.
- F. Nonprofit food service account.** All income accruing as a result of payments by children and adults, federal reimbursements, and all other sources (including, but not limited to, donations, special functions, catering, a la carte sales, vending, concessions, contract meals, grants, and loans) shall be deposited daily in SFA's nonprofit food service account. Any profit or guaranteed return shall remain in SFA's nonprofit food service account. SFA shall retain control of the CNP nonprofit food service account and overall financial responsibility for the CNP.
- G. Nature of contract.** SFA and FSMC agree that this contract is neither a *cost-plus-a-percentage-of-income* nor a *cost-plus-a-percentage-of-cost* contract as required under United States Department of Agriculture (USDA) Regulations 7 CFR 210.16(c) and 2 CFR 200.
- H. Responsibility for program.** SFA shall be legally responsible for the conduct of the food service program and shall supervise the food service operations in such manner as will ensure compliance with the rules and regulations of OON and USDA regarding each of the CNPs covered by this contract.
- I. Establishing prices.** SFA is a **(select one) pricing/non-pricing** program. SFA shall establish all selling prices, including price adjustments, for all reimbursable and non-reimbursable meals, milk, and a la carte sales (including vending, adult meals, contract meals, and catering).
- J. Additional services.** FSMC shall provide additional food service such as banquets, parties, and refreshments for meetings as requested by SFA. USDA Foods shall not be used for these special functions unless SFA's students will be primary beneficiaries. SFA reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after SFA's regularly scheduled lunch or breakfast periods, provided such service is not prohibited by federal program regulations. Any additional food service that is a material change to the contract and/or involves a total cost of \$150,000 or more must be approved by OON and be competitively procured.
- K. Nutrition education.** FSMC shall cooperate with SFA in promoting nutrition education and coordinating SFA's food service with classroom instruction.
- L. Regulatory compliance.** FSMC shall comply with the rules, regulations, policies, and instructions of OON and USDA and any additions or amendments thereto, including 7 CFR Parts 210, 220, 225, 245, and 250, as well as 2 CFR parts 200, 400, and 415 as applicable.
- M. Food service staff.** FSMC shall provide necessary staff to manage the food service operations as proposed and supervise all employees.
- N. Special dietary needs.**
1. FSMC shall make substitutions in the food components of the meal pattern for students with disabilities when their disability restricts their diet as stated in the students' *Individual Educational Plans (IEPs)* or 504 Plans. A licensed physician's statement must accompany any school meal accommodation requirements for students with disabilities.
  2. Students with conditions not meeting the definition of disability but who are unable to consume regular meals because of medical or other special dietary needs will also be accommodated (or not accommodated) per the district decision. Substitutions shall be made on a case-by-case basis when supported by a statement of the need for substitutes that includes recommended alternative foods, unless otherwise exempted by USDA. Such statement shall be signed by a medical doctor or a recognized medical authority.
  3. There will be no additional charge to the student for meals of which substitutions have been accommodated per this section of the contract.
- O. Dates of operation.** SFA will make the final determination of the opening and closing dates of all sites, if applicable.
- P. Gifts from FSMC.** SFA's officers, employees, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors nor potential contractors.
- Q. Payment terms.** FSMC shall invoice SFA at the end of each month for amounts due based on on-site records. SFA shall make payments within **>>##<<** business days of the invoice date. Upon termination of the Agreement, all outstanding amounts shall immediately become due and payable.

- R. **Changes/amendments.** Once approved by OON, any further changes or amendments to this contract must be approved by OON prior to execution.
- S. **Escalator provision.** Cost reimbursable contracts may be subject to an annual escalator provision as stipulated in this contract by SFA. Adjustment factors may include changes in federal reimbursement rates, changes in third-party cost or price indexes.

To be completed by SFA (if applicable). Please check the CPI website at <http://www.bls.gov/cpi>

Annual Escalator Adjustment Factor: >>>>Factor<<<<<

T. **Meal Equivalent Information.**

1. 1 Lunch or Supper = 1 Meal
2. 1 Breakfast = 0.67 Meal
3. 1 Snack = 0.33 Meal
4. A la Carte and additional sales shall be converted into meals using the following formula:

*Total Sales*

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Free lunch reimbursement + USDA Commodity allowance

Currently, the Free lunch reimbursement is \$4.33 and the commodity allowance is \$0.45

**II. Designation of Program Expenses**

- A. FSMC guarantees to SFA that FSMC shall be responsible for the expenses as checked under Column I. FSMC shall be responsible for negotiating/paying all employee fringe benefits, employee expenses, and accrued vacation and sick pay for staff on their payroll. FSMC shall factor these expenses into the fees that will be billed to SFA. SFA shall pay directly for the expenses as checked under Column II. Any expenses that will be not applicable to the contract shall be marked with N/A.

DESCRIPTION	COLUMN I (FSMC)	COLUMN II (SFA)
<b>LABOR:</b>		
Managers and/or Supervisors		
Full and Part-time Workers		
Monitors		
<b>EMPLOYEE BENEFITS:</b>		
Life Insurance		
Medical/Dental Insurance		
Retirement Plans		
Social Security		
Vacation		
Sick Leave		
Holiday Pay		
Uniforms		
Tuition Reimbursement		
Labor Relations		
Unemployment Compensation		

DESCRIPTION	COLUMN I (FSMC)	COLUMN II (SFA)
Workers Compensation		
Processing and Payment of Payroll		
<b>FOOD:</b>		
USDA Foods		
Handling and Processing Charges		
Direct Diversion Charges		
Commercial Distribution Charges		
Other Foods		
<b>OTHER EXPENSES:</b>		
Accounting		
Bank Charges		
Data Processing		
Recordkeeping		
Processing and Payment of Invoices		
Equipment – Major		
Original Purchase		
Routine Maintenance		
Major Repairs		
Replacement		
Equipment-Expendable (trays, tableware, glassware, utensils)		
Original Purchase		
Replacement		
Cleaning/Janitorial Supplies		
Insurance		
Liability Insurance		
Insurance on Supplies/Inventory		
Laundry and Linen		
Office Materials		
Paper/Disposable Supplies		
Pest Control		
Postage		
Printing		
Product Testing		
Promotional Materials		
Taxes and License		
Telephone		
Local		
Long Distance		
Expenses incurred to maintain the point of service count (i.e. the cost of tickets, tokens, and/or computer point of service system)		
Training		
Transportation of meals		
Trash Removal		
From Kitchen		

DESCRIPTION	COLUMN I (FSMC)	COLUMN II (SFA)
From School Premises		
Travel		
Required		
Requested		
Utilities		
Vehicles		

### III. Signature Authority

- A. SFA shall retain signature authority for the application/agreement, free and reduced-price policy statement, programs indicated in Section I.D, and the monthly claim for reimbursement. (Reference 7 CFR 210.9(a) and (b) and 7 CFR 210.16(a)(5))

### IV. Free and Reduced Price Meals Policy

- A. **Eligibility roster.** SFA shall be responsible for the establishment and maintenance of the free and reduced price meals eligibility roster. SFA is ultimately responsible for assuring the accuracy of this roster.
- B. **Point of service count.** FSMC shall conduct an accurate point-of-service count using the counting system submitted by SFA and approved by OON in the annual contract between SFA and OON as required under USDA regulations. Any counting system must eliminate the potential for overt identification of free and reduced price eligible students under USDA Regulation 7 CFR 245.8.
- C. **Eligibility application.** SFA shall be responsible for the development and distribution of the parent letter and Application for Free and Reduced Price Meals; Direct Certification; and determination of eligibility for free or reduced price meals. FSMC may act as an agent for SFA related to these responsibilities.
- D. **Eligibility hearings.** SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free or reduced price meals.
- E. **Verification of eligibility.** SFA shall be responsible for verifying Applications for Free and Reduced Price Meals as required by USDA regulations. FSMC **(select one) may/ may not** act as an agent for SFA related to verification of applications.

### V. Donated foods

- A. **Use for SFA's benefit.** Any donated foods received by SFA and made available to FSMC must accrue solely to the benefit of SFA's CNPs, and shall be fully utilized therein. Donated foods shall be considered received when the foods arrive at the school kitchen, SFA storage facility, or FSMC storage facility in either raw form or in processed end products. FSMC shall have records available to substantiate that the full value of all donated foods is used solely for the benefit of SFA.
- B. **Title.** SFA shall retain title to all donated foods and the selected FSMC will conduct all activities relating to donated foods for which it is responsible in accordance with 7 CFR Parts 210, 220, 225, 226, and 250 as applicable.
- C. **Acceptance of foods.** FSMC shall accept and use donated foods in as large quantities as may be efficiently utilized in SFA's nonprofit food service, subject to approval of SFA. SFA shall consult with FSMC in the selection of donated foods; however, the final determination as to the acceptance of donated foods must be made by SFA
- D. **Storage and inventory.** FSMC will comply with all storage and inventory requirements for donated foods. FSMC will ensure that its system of inventory management will not result in SFA being charged for donated foods.
- E. **Specific use requirements.** FSMC will use all donated ground beef and ground pork products, and all processed end products, without substitution, in SFA's food service. FSMC will use all other donated foods, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in SFA's food service.

- F. **Recordkeeping.** FSMC is required to maintain accurate and complete records with respect to the receipt, use/disposition, storage, and inventory of donated foods in accordance with 7 CFR 250.54(b). Failure by FSMC to maintain the required records under this contract shall be considered prima facie evidence of improper distribution or loss of donated foods.
- G. **Negligence.** FSMC shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to donated foods.
- H. **Processing contracts.** FSMC is prohibited from entering into any processing contracts utilizing donated foods on behalf of SFA. Selected FSMC agrees that any procurement and/or utilization of end products by selected FSMC on behalf of SFA will be in compliance with the requirements in subpart C of 7 CFR Part 250 and with the provisions of SFA's processing agreements.
- I. **Discounts, rebates, refunds.** SFA must receive all discounts or rebates for donated foods purchases made on its behalf. All refunds received from processors must be retained in the nonprofit food service account.
- J. **Credit for food value.** FSMC must credit SFA for the value of all donated foods received for use in SFA's meal service in the school year or fiscal year (including both entitlement and bonus foods), and including the value of donated foods contained in processed end products, in accordance with the contingencies in 7 CFR 250.51(a). The donated foods will be credited using **(select one) entitlement/fair market** value. Credits will be reported on **(select one) the monthly invoice from FSMC/an annual adjustment invoice.**
- K. **Reconciliation.** Year-end reconciliation shall be conducted by SFA to ensure and verify correct and proper credit has been received for the full value of all donated foods used by FSMC during the fiscal year. SFA reserves the right to conduct donated foods credit audits throughout the year to ensure compliance with federal regulations 7 CFR 210 and 7 CFR 250. If any adjustments are necessary, SFA is responsible for assuring such adjustments are made.
- L. **Review of records.** The distributing agency, subdistributing agency, SFA, the Comptroller General, the Department of Agriculture, or their duly authorized representatives, may perform onsite reviews of FSMCs food service operation, including the review of records, to ensure compliance with the requirements for the management and use of donated foods;
- M. **Contingency for extension or renewal.** Extensions or renewals of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to donated foods.

## VI. Food Safety

- A. **Inspection requirements.** SFA shall comply with food safety inspection requirements as prescribed by USDA for its facilities and shall ensure that all state and local regulations are being met by FSMC preparing or serving meals at any SFA facility.
- B. **Outside facility requirements.** FSMC shall maintain state and/or local health certifications for any facility outside SFA in which it proposes to prepare meals and shall maintain this health certification for the duration of the contract as required under USDA Regulations 7 CFR 210.16(c) and shall comply with food safety inspection requirements as prescribed by USDA for its facilities and shall ensure that all state and local regulations are being met in its facilities.

## VII. Meals

- A. **Schedule.** FSMC shall serve meals on such days and at such times as requested by SFA
- B. **SFA responsibility.** SFA shall retain control of the quality, extent, and general nature of the food service.
- C. **Free, reduced, and paid.** FSMC shall offer free, reduced price, and full price reimbursable meals to all eligible children participating in the programs indicated in Section I.D.
- D. **Meal pattern.** FSMC shall provide meals that satisfy the Meal Pattern requirements for the programs identified in Section I.D. The Meal Pattern requirements are included as Attachment 10. This includes a la carte items as provided by 7 CFR 210.11. If FSMC offers à la carte items, FSMC shall also offer free, reduced price and paid reimbursable lunches to all eligible children (7 CFR 210.16(a)).

- E. Participation.** FSMC shall promote efforts to increase participation in the child nutrition programs.
- F. Scope of services.** FSMC shall provide the specified types of service in the schools/sites listed in Attachment 2, which is a part of this contract.
- G. Authorized sales.** FSMC shall sell on the premises only those foods and beverages authorized by SFA and only at the times and places designated by SFA.
- H. Meals not meeting requirements.** No payment will be made to FSMC for meals that are spoiled or unwholesome at the time of delivery; do not meet detailed specifications as developed by SFA for each food component in the meal pattern; or do not otherwise meet the requirements of this contract.
- I. Adult meals.** Adult meal charges must be established in accordance with FNS Instruction 782-5, Pricing of Adult Meals in the National School Lunch and School Breakfast Programs. Pricing must include overall cost of the lunch including the value of any USDA Foods used to prepare meals.

## **VIII. Books and Records**

- A. Reporting to SFA.** FSMC shall maintain such records (supported by invoices, receipts, or other evidence) as SFA will need to meet monthly reporting responsibilities and shall submit monthly operating statements in a format approved by SFA no later than the tenth calendar day succeeding the month in which services were rendered. Participation records, including claim information by eligibility category, shall be submitted no later than the fifth working day succeeding the month in which services were rendered. SFA shall perform edit checks on the participation records provided by FSMC prior to the preparation and submission of the claim for reimbursement.
- B. Year-end statement.** FSMC shall provide SFA with a year-end statement.
- C. Review of records.** Books and records of FSMC pertaining to the contract shall be made available, upon demand, in an easily accessible manner for a period of three years after the final claim for reimbursement for the fiscal year to which they pertain. The books and records shall be made available for audit, examination, excerpts, and transcriptions by SFA and/or any state or federal representatives or auditors. If audit findings regarding FSMC's records have not been resolved within the three-year record retention period, the records must be retained beyond the three-year period for as long as required for the resolution of the issues raised by the audit. (Reference 7 CFR 210.9(b)(17) and 2 CFR 200.333)
- D. Federally required records.** FSMC shall not remove federally required records from SFA premises upon contract termination.

## **IX. Employees**

- A. Designation of employer.** Attachment 12 ("Labor Worksheet, SFA Employees") designates those employees who shall be retained by SFA and those subject to employment by FSMC.
- B. Staffing plan.** FSMC shall provide SFA with a schedule of employees, positions, assigned locations, salaries, and hours to be worked as part of the proposal. Specific locations and assignments will be provided to SFA two full calendar weeks prior to the commencement of operation.
- C. Site Manager.** SFA shall have final approval regarding the hiring of FSMC's site manager. Any site manager proposed by FSMC must meet the minimum hiring qualifications for School Nutrition Program Directors set forth in the USDA Final Rule: Professional Standards for School Nutrition Programs Personnel as Required by the Healthy, Hunger-Free Kids Act of 2010.
- D. Wage and hour requirements.** FSMC shall comply with all wage and hours of employment requirements of federal and state laws. FSMC shall be responsible for supervising and training personnel, including SFA-employed staff. Supervision activities include employee and labor relations, personnel development, and hiring and termination of FSMC management staff, except the site manager. FSMC shall also be responsible for the hiring and termination of non-management staff who are employees of FSMC.
- E. Workers' compensation.** FSMC shall provide Workers' Compensation coverage for all its employees.

- F. **SFA policies.** FSMC shall instruct its employees to abide by the policies, rules, and regulations with respect to use of SFA's premises as established by SFA and which are furnished in writing to FSMC.
- G. **Staffing patterns.** Staffing patterns shall be mutually agreed upon.
- H. **Facilities.** SFA shall provide sanitary toilet and hand washing facilities for the employees of FSMC.
- I. **Removal of employees.** SFA may request, in writing, the removal of any employee of FSMC who violates health requirements or conducts himself or herself in a manner that is detrimental to the well-being of the students, provided such request is not in violation of any federal, state, or local employment laws. In the event of the removal or suspension of any such employee, FSMC shall immediately restructure the food service staff without disruption of service.
- J. **Emergency procedures.** All SFA and/or FSMC personnel assigned to the food service operation in each school shall be instructed in the use of all emergency valves, switches, and fire safety devices in the kitchen and cafeteria areas.
- K. **Background check.** SFA will require FSMC to perform a criminal background check on any of FSMC employee that will be working at SFA and disclose results to SFA.

## X. Monitoring

- A. **SFA observation.** SFA shall monitor the food service operation of FSMC through periodic on-site SFA school building visits to ensure that the food service is in conformance with USDA program regulations (Reference 7 CFR 210.16). Further, if there is more than one school site, there is an additional requirement that SFA conduct an on-site review of the counting and claiming system no later than February 1 of each year as required by 7 CFR 210.8.
- B. **Review of records.** The records necessary for SFA to complete the required monitoring activities must be maintained by FSMC under this contract and must be made available to the Auditor General, USDA, OON, and SFA upon request for the purpose of auditing, examination, and review.
- C. **SFSP sites.** If applicable, SFA, as a SFSP sponsor, is responsible for conducting and documenting the required SFSP site visits of all sites for preapproval and during operation of the program.

## XI. Menus

- A. **Advisory group.** SFA shall establish and FSMC shall participate in the formation, establishment, and periodic meetings of an SFA advisory board composed of students, teachers, and parents to assist in menu planning. (Reference 7 CFR 210.16(a)(8))
- B. **Menu development.** (select one) FSMC/SFA shall develop menus for all programs.
- C. **Menu cycle.** FSMC must comply with the agreed upon menus included in the proposal document for the first 21 days of program operation. Any changes made by FSMC after the initial menu cycle may be made only with the approval of SFA. SFA shall approve the menus no later than two weeks prior to service. (Reference 7 CFR 210.16(b)(1)). FSMC must also comply with the Minimum Food Specifications in Attachment 9 for all programs.

## XII. Use of Facilities, Inventory, Equipment, and Storage

- A. **Use of space.** SFA will make available, without cost or charge to FSMC, area(s) of the premises agreeable to both parties in which FSMC shall render its services.
- B. **Beginning and ending inventory.** Prior to the start of initial operations, FSMC and SFA will take a beginning inventory of all usable food, supplies, and USDA Foods on the premises. FSMC will utilize such inventory at a value determined by SFA and supported by invoices or other documentation. On termination of the Contract, FSMC and SFA will take a similar inventory. If the value of the ending inventory is greater than the beginning inventory, the difference shall be added to FSMCs Cost of Business and if lesser, the difference shall be subtracted from FSMCs Cost of Business.
- C. **Supplies and equipment.** FSMC shall maintain the inventory of silverware, chinaware, kitchen utensils, and other operating items necessary for the food service operation at the inventory level as specified by SFA. SFA will replace

expendable equipment and replace, repair, or maintain nonexpendable equipment except when damages result from the use of less than reasonable care by the employees of FSMC.

- D. **Keys.** FSMC shall provide SFA with one set of keys for all food service areas secured with locks.
- E. **Regulatory compliance.** SFA shall furnish and install any equipment and/or make any structural changes needed to comply with federal, state, or local laws, ordinances, rules, and regulations.
- F. **Equipment or utility malfunction.** SFA shall be responsible for any losses, including USDA Foods, which may arise due to equipment malfunction or loss of electrical power not within the control of FSMC.
- G. **SFA equipment.** All food preparation and serving equipment owned by SFA shall remain on the premises of SFA.
- H. **FSMC equipment.** FSMC shall notify SFA of any equipment belonging to FSMC on SFA premises within 10 days of its placement on SFA premises. SFA shall not be responsible for loss or damage to equipment owned by FSMC and located on SFA premises.
- I. **Access to facilities.** SFA shall have access, with or without notice, to all of SFA's facilities used by FSMC for the purposes of inspection and audit.
- J. **Use of facilities other than for programs.** FSMC shall not use SFA's facilities to produce food, meals, or services for other organizations without the approval of SFA. If such usage is mutually acceptable, there shall be a signed agreement which stipulates the fees to be paid by FSMC to SFA for such facility usage.
- K. **Return of equipment.** FSMC shall surrender to SFA, upon termination of the contract, all equipment and furnishings in good repair and condition, reasonable wear and tear expected.

### XIII. Purchases

- A. **FSMC acting as agent.** If FSMC is procuring goods or services which are being charged to SFA under the contract (e.g. equipment), FSMC is acting as an agent for SFA and must follow the same procurement rules under which SFA must operate and that FSMC may not serve as a vendor. Any rebates, discounts, or commissions associated in any manner with purchases must be returned to the nonprofit school food service account. Only net costs may be charged to SFA.
- B. **Food specifications.** Any purchase of food must meet the specification listed in Attachment 9.

### XIV. Sanitation

- A. **Trash removal.** FSMC shall place garbage and trash in containers in designated areas as specified by SFA. SFA shall remove all garbage and trash from the designated areas.
- B. **Cleaning of service areas.** FSMC shall clean the meal production and service areas used to provide the services detailed on Attachment 2.
- C. **General care.** FSMC shall operate and care for all equipment and food service areas in a clean, safe, and healthy condition in accordance with standards acceptable to SFA and comply with all applicable laws, ordinances, regulations, and rules of federal, state, and local authorities, including laws related to recycling.
- D. **Ventilation hoods.** SFA shall clean ducts and hoods above the filter line. FSMC shall clean hood filters.
- E. **Local and state requirements.** FSMC shall comply with all local and state sanitation requirements in the preparation of food.

### XV. Licenses, Fees, and Taxes

- A. **Taxes.** FSMC shall be responsible for paying all applicable taxes and fees, including (but not limited to) excise tax, state and local income tax, payroll and withholding taxes for FSMC employees. FSMC shall hold SFA harmless for all claims arising from payment of such taxes and fees.

**B. Licenses.** FSMC shall obtain and post all licenses and permits as required by federal, state, and/or local law.

**C. SFA rules.** FSMC shall comply with all SFA building rules and regulations.

## **XVI. Nondiscrimination**

**A.** Both SFA and FSMC agree that no child who participates in the NSLP, SBP, ASCSP, SFSP and SMP will be discriminated against on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the USDA.

## **XVII. Emergency Closing**

**A. Utility interruption.** SFA shall notify FSMC of any interruption in utility service of which it has knowledge.

**B. School closing.** SFA shall notify FSMC of any delay in the beginning of the school day or the closing of school(s) due to snow or other emergency conditions.

## **XVIII. Terms, Nonperformance, and Termination**

**A. Remedies for nonperformance.** In the event of FSMC's nonperformance under this contract and/or the violation or breach of the contract terms, SFA shall have the right to pursue all administrative, contractual, and legal remedies against FSMC and shall have the right to seek all sanctions and penalties as may be appropriate.

**B. Fiscal penalties.** FSMC shall reimburse SFA for the full amount of any fiscal penalties resulting from adjusted or disallowed claims which are attributable to FSMC's negligence, including those fiscal penalties based on reviews or audit findings that occurred during the effective dates of original and renewal contracts.

**C. Force Majeure.** Neither FSMC nor SFA shall be responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, flood, acts of God, or for any acts not within the control of FSMC or SFA, respectively, and which, by the exercise of due diligence, it was unable to prevent.

**D. Termination for cause.** In the event either party commits a material breach, including, but not limited to, violation of program regulations, the non-breaching party may terminate this agreement for cause by giving 60 days written notice. If the breach is remedied prior to the proposed termination date, the non-breaching party may elect to continue this agreement.

**E. Termination for convenience.** At any time, because of circumstances beyond the control of SFA as well as FSMC, FSMC or SFA may terminate the contract by giving 60 days written notice to the other party.

**F. Contract authority.** SFA is the responsible authority without recourse to USDA or OON to the settlement and satisfaction of all contractual and administrative issues arising from the transaction. Such authority includes, but is not limited to: source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violations of the law will be referred to the local, state, or federal authority that has proper jurisdiction.

## **XIX. Trade Secrets and Proprietary Information**

**A. FSMC trade secrets.** During the term of the Agreement, FSMC may grant to SFA a nonexclusive right to access certain proprietary materials of FSMC, including menus, recipes, signage, food service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed by FSMC), and similar compilations regularly used in FSMC's business operations (trade secrets). SFA shall not disclose any of FSMC's trade secrets or other confidential information, directly or indirectly, during or after the term of the Agreement. SFA shall not photocopy or otherwise duplicate any such material without the prior written consent of FSMC. All trade secrets and other confidential information shall remain the exclusive property of FSMC and shall be returned to FSMC immediately upon termination of the Agreement. Without limiting the foregoing and except for software provided by SFA, SFA specifically agrees that all software associated with the operation of the food service, including without limitation, menu systems, food production systems, accounting systems, and other software, are owned by or licensed to FSMC and not SFA. Furthermore, SFA's access or use of such software shall not create any right, title interest, or copyright in such

software and SFA shall not retain such software beyond the termination of the Agreement. In the event of any breach of this provision, FSMC shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. This provision shall survive the termination of the Agreement.

- B. **Right to inventions.** Any discovery, invention, software, or programs paid for by SFA shall be the property of SFA to which OON and USDA shall have unrestricted rights including copyrights.

## XX. Insurance

- A. **Required coverage.** FSMC shall maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the state of Ohio. A Certificate of Insurance of FSMC's insurance coverage indicating these amounts must be submitted at the time of the award. The information below must be completed by SFA.

- 1. Comprehensive General Liability – includes coverage for:

- a. Premises – Operations
- b. Products – Completed Operations
- c. Contractual Insurance
- d. Broad Form Property Damage
- e. Independent Contractors
- f. Personal Injury

\$>>##<< Combined Single Limit

- 2. Automobile Liability: \$>>##<< Combined Single Unit
- 3. Workers' Compensation-Statutory; Employer's Liability: \$>>##<<
- 4. Excess Umbrella Liability: \$>>##<< Combined Single Unit

- B. **SFA as additional insured.** SFA shall be named as additional insured on General Liability, Automobile, and Excess Umbrella. FSMC must provide a waiver of subrogation in favor of SFA for General Liability, Automobile, Workers' Compensation, and Excess Umbrella.

- C. **Notice to SFA.** The contract of insurance shall provide for notice to SFA of cancellation of insurance policies 30 days before such cancellation is to take effect. SFA may ask for proof of such direction in the form letter from the insurance company.

## XXI. Certification

- A. **Energy efficiency.** FSMC shall comply with the mandatory standards and policies relating to energy efficiency that are contained in the state energy plan issued in compliance with the Energy Policy and Conservation Act (P.L.94-163, 89 Stat. 871).
- B. **Contract Work Hours and Safety Standards Act.** FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (the Act), 40 U.S.C. §§327-330, as supplemented by Department of Labor regulation, 29 CFR Part 5. Under Section 103 of the Act, FSMC shall be required to compute the wages of every laborer on the basis of a standard workday of eight hours, and a standard work week of 40 hours. Work in excess of the standard workday or standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or 40 hours in any work week.
- C. **Equal employment opportunity.** FSMC shall comply with Executive Order 11246, entitled *Equal Employment Opportunity*, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, 41 CFR Part 60.
- D. **Civil rights law.** FSMC shall comply with the following civil rights laws, as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age

Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, *Civil Rights Compliance and Enforcement in School Nutrition Programs*.

- E. Buy American.** FSMC shall comply with the *Buy American Provision* for contracts that involve the purchase of food, USDA Regulation 7 CFR Part 250.23 and 210.21.
  - 1. FSMC shall purchase, to the maximum extent practicable, domestic commodities or products which are either an agricultural commodity produced in the United States (U.S.) or a food product processed in the U.S. substantially using agricultural commodities produced in the U.S.
  - 2. FSMC shall certify the percentage of U.S. content in the products supplied to SFA.
  - 3. SFA reserves the right to review vendor purchase records to ensure compliance with the Buy American provision.
- F. Independent price determination.** FSMC has signed the *Certification of Independent Price Determination*, Attachment 18, which was attached as an addendum to FSMC's proposal and which is incorporated herein by reference and made a part of this contract.
- G. Disbarment, suspension, ineligibility, and Voluntary Exclusion.** FSMC certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- H. Clean Air Act and Federal Water Pollution Control Act.** FSMC shall comply with all applicable standards, orders, or requirements issued under Clean Air Act [42 U.S.C. 7401-7671q] and the Federal Water Pollution Control Acts [33 U.S.C. 1251-1387], Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15).
- I. Lobbying certification.** FSMC has signed the Lobbying Certification, Attachment 20, which was attached as an addendum to FSMC's proposal and which is incorporated and made a part of this contract. If applicable, FSMC has also completed and submitted Standard Form-LLL, *Disclosure Form to Report Lobbying*, (Attachment 21), or will complete and submit as required in accordance with its instructions included in Attachment 21.
- J. Copeland Act.** FSMC shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C.874) as supplemented in Department of Labor regulations (29 CFR Part 3).
- K. Davis-Bacon Act.** FSMC shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
- L. Other pertinent laws.** FSMC shall comply with all other pertinent state and federal laws.

## XXII. Miscellaneous

- A. Proposal specifications.** FSMC shall comply with the provisions of the proposal specifications, which are hereby in all respects made a part of this contract including all agreed to negotiations between SFA and selected FSMC which have been approved in writing by OON.
- B. Subcontracting prohibited.** No provision of this contract shall be assigned or subcontracted without prior written consent of SFA.
- C. Waiver of claim.** No waiver of any default shall be construed to be or constitute a waiver of any subsequent claim.
- D. Best commercial practices.** Any silence, absence, or omission from the contract specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only materials (e.g. food, supplies, etc.) and workmanship of a quality that would normally be specified by SFA are to be used.
- E. Claims for adjustment.** Payments on any claim shall not preclude SFA from making a claim for adjustment on any item found not to have been in accordance with the provisions of this contract and proposal specifications.
- F. Program review findings.** SFA shall be responsible for ensuring the resolution of program review and audit findings.
- G. OON Review.** This contract is subject to review and approval by OON.

**H. Equipment investment.** The following provisions will apply to FSMC investment:

1. FSMC **(select one) may/may not** purchase equipment for the food service program. If yes, the equipment purchase may be up to but may not exceed \$>>##<<. FSMC shall be subject to the same procurement requirements to which SFA is subject in any procurement action and may not serve as a vendor when procuring on behalf of the school food service. SFA shall repay at the rate specified when the equipment was purchased, which shall be charged to SFA as an operating expense of the food service program. Ownership of the investment will vest in SFA upon full payment of the purchase price to FSMC. Upon such payment, FSMC shall deliver a bill of sale evidencing transfer of title to the equipment to SFA.
2. If the contract expires or is terminated prior to the complete repayment of the investment, SFA shall, on the expiration date, or within five days after receipt by either party of any notice of termination under this Agreement, either:

Reimburse FSMC the unpaid portion of the investment

**OR**

Deliver the equipment or other items funded by the investment to FSMC

**OR**

Continue to pay FSMC at the rate specified when the equipment was purchased until the balance of the investment is repaid.

**I. Indemnification.** Except as otherwise expressly provided in this contract, FSMC will defend, indemnify, and hold SFA harmless from and against all claims, liability, loss and expense, including reasonable collection expenses, attorneys' fees and court costs that may rise because of the sole negligence, misconduct, or other fault of the FSMC, its agents or employees in the performance of its obligations under this contract, except to the extent any such claims or actions result from the negligence of SFA, its employees or agents. This clause shall survive termination of the Agreement.

**J. Financial soundness.** SFA and FSMC shall work together to ensure a financially sound operation.

**K. Assumptions.** Financial terms of the Agreement are based upon existing conditions and the following assumptions. If there is a material change in conditions, including, without limitations, changes to the following assumptions, the contract (1) may be terminated at the end of the current term or (2) continue under the same terms as written, whichever is mutually agreed upon.

1. SFA's policies, practices, and service requirements shall remain materially consistent throughout the contract term and any subsequent contract renewals.
2. Legislation, regulations, and reimbursement rates that create changes in the school lunch program shall remain materially consistent throughout the year.
3. Usable USDA Foods, of adequate quality and variety required for the menu cycle, valued at an amount as set forth by USDA per pattern meal for the contract year will continue to be available.
4. The government reimbursement rates in effect shall remain materially consistent throughout the year.
5. Meal components and quantities required for applicable CNPs remain consistent with prior years.
6. Service hours, service requirements, and type or number of facilities selling food and/or beverages on SFA's premises shall remain materially consistent throughout the year.
7. The state or federal minimum wage rate and taxes in effect shall remain materially consistent throughout the year.
8. The projected number of full feeding days is: >>##<<.
9. SFA revenue credited to the nonprofit food service program shall include all state and federal amounts received specifically for child nutrition operations.

The term materially consistent shall mean that a change does not (1) materially increase FSMC's cost of providing management service or (2) materially decrease the net revenue derived from the food service operations.

## XXIII. Summer Food Service Program

Additional Requirements, if applicable (SFA must mark through or delete this entire section if not applicable)

- A. **List of sites.** SFA shall provide to FSMC a list of State agency approved food service sites, along with the approved level for the number of meals which may be claimed for reimbursement for each site, established under 7 CFR §225.6(d)(2), and shall notify FSMC of all sites which have been approved, cancelled, or terminated subsequent to the submission of the initial approved site list and of any changes in the approved level of meal service for a site.
- B. **Unitized meals.** All meals prepared by FSMC shall be unitized, with or without milk or juice, unless the State agency has approved a request for exceptions to the unitizing requirement for certain components of a meal.
- C. **Meal requirements.** Meals served under the contract shall conform to the cycle menus upon which the proposal was based, and to menu changes agreed upon by SFA and FSMC. All meals served under the program must meet the requirements of 7 CFR §225.16. All meals furnished must meet or exceed the minimum food specifications listed in Attachment 9 and the program meal pattern requirements listed in Attachment 10.
- D. **Subcontracting.** FSMC shall not subcontract for the total meal, with or without milk, or for the assembly of the meal; and shall not assign, without the advance written consent of SFA, its contract or any interest therein. In the event of any assignment, FSMC shall remain liable to SFA as principal for the performance of all its obligations under this contract.
- E. **Payment for meals.** FSMC shall be paid by SFA for all meals delivered in accordance with this contract and SFSP regulations. However, neither the USDA nor the State agency assumes any liability for payment of differences between the number of meals delivered by the contractor and the number of meals served by the sponsor that are eligible for reimbursement.
- F. **Meal delivery.** Meals are to be delivered, unloaded, and placed in the designated site by FSMC's personnel at each of the locations and times listed in Attachments 1 and 2.
- G. **Meal order adjustment.** Sponsor reserves the right to increase or decrease the daily number of meals ordered on a (insert: number of hours) hour notice or less if mutually agreed upon by SFA and FSMC.
- H. **Noncompliance.** In cases of nonperformance or noncompliance on the part of FSMC, FSMC shall pay SFA for any excess costs which SFA may incur by obtaining meals from another source.
- I. **Reporting.** The food service management company shall submit records of all costs incurred in the sponsor's food service operation in sufficient time to allow the sponsor to prepare and submit the claim for reimbursement to meet the 60-day submission deadline.
- J. **Bonding Requirement.** FSMC shall comply with the appropriate bonding requirements, as set forth in 7 CFR §225.15(m)(5) through (m)(7).
  - 1. If the estimated SFSP reimbursement based on this RFP exceeds \$150,000, FSMC shall obtain and submit a bid bond in the amount of 5%-10% of expected SFSP reimbursement along with its proposal.
  - 2. If the estimated SFSP reimbursement of the awarded contract exceeds \$150,000, FSMC shall obtain a performance bond in the amount of 10% of expected SFSP reimbursement and furnish this bond to SFA within 30 calendar days of contract award, but not later than 7 calendar days prior to contract commencement.

## AGREEMENT PAGE

By submission of this proposal, FSMC certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency; and that it shall operate in accordance with all current program regulations.

Furthermore, consistent with Section I.Q of this RFP, FSMC certifies that is has not exchanged any gratuities, favors, nor anything of monetary value with SFA and that this proposal is made without prior understanding, agreement, or connection with any other offeror submitting a proposal for the same type of service, and is in all respects fair and without collusion or fraud. FSMC agrees to abide by all terms and conditions of this RFP and certifies that the person below is authorized to sign the RFP on behalf of FSMC.

FSMC NAME: \_\_\_\_\_

FSMC ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
SIGNATURE (Of authorized representative):

\_\_\_\_\_  
Date:

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

PHONE: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

---

(SFA will complete section below this line)

### Awarding of the Contract:

In accepting this proposal and awarding this contract, SFA certifies that the SFA's officers, employees or agents have not taken any action which may have jeopardized the independence of the proposal referred to above and that SFA will operate in accordance with program regulations.

SFA by signing below is awarding the contract for this RFP to the proposer. This proposal, all sections of the proposal, all terms and conditions, addendums, and attachments, including any additional addendums mutually agreed to by both SFA and proposer will be incorporated in to this awarded contract.

The undersigned hereby accepts proposer's services as an FSMC as specified in this proposal for the period of **(contract beginning date)** and ending **(contract ending date)**.

\_\_\_\_\_  
SIGNATURE (Of authorized representative):

\_\_\_\_\_  
Date:

PRINT NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

## LIST OF CONTRACT ATTACHMENTS

TITLE	ATTACHMENT	SFA ACTION REQUIRED	FSMC ACTION REQUIRED
Site/Building Listing - General Data	Attachment 1	<b>X</b>	
Site/Building Listing - Services to Be Provided	Attachment 2	<b>X</b>	
Site Average Daily Participation for Lunch	Attachment 3	<b>X</b>	
Site Average Daily Participation for Breakfast	Attachment 4	<b>X</b>	
Site Average Daily Participation for After School Snacks	Attachment 5	<b>X</b>	
Site Average Daily Participation for the Special Milk Program	Attachment 6	<b>X</b>	
Site Average Daily Participation for SFSP	Attachment 7	<b>X</b>	
District Calendar	Attachment 8	<b>X</b>	
Minimum Food Specifications	Attachment 9		
Meal Pattern Charts	Attachment 10		
Program Menus	Attachment 11	<b>X</b>	<b>X</b>
Labor worksheet – SFA	Attachment 12	<b>X</b>	
Projected Operations – Revenue	Attachment 13	<b>X</b>	
Projected Operations – Meal Charges	Attachment 14	<b>Donated food values only</b>	<b>X</b>
Projected Operations – Summary	Attachment 15		<b>X</b>
Independent Price Determination Certificate	Attachment 16	<b>X</b>	<b>X</b>
Lobbying Certification	Attachment 17		<b>X</b>
Disclosure of Lobbying Activities	Attachment 18		<b>X</b>
Unallowable SFA-FSMC Contract Document Provisions	Attachment 19	<b>X</b>	<b>X</b>















## DISTRICT CALENDAR

District calendar to be inserted here by SFA.

## MINIMUM FOOD SPECIFICATIONS

To be completed by SFA. OON does not approve, evaluate, or endorse specifications. Examples may include the following listed below. SFA may also include additional requirements such as "High School menus must include a daily entrée salad option".

Meat/Seafood – All meats, meat products, poultry products, and fish must be government-inspected.

- Beef, lamb, and veal shall be USDA Grade Choice or better.
- Pork shall be U.S. No.1 or U.S. No. 2 (check this reference, is this appropriate now?)
- Poultry shall be U.S. Government Grade A
- Seafood to be top grade, frozen fish – must be a nationally distributed brand, packed under continuous inspection of the USDA

Dairy Products – All dairy products must be government-inspected.

- Fresh eggs, USDA Grade A or equivalent, 100 percent candled
- Frozen eggs, USDA – inspected
- Milk, pasteurized Grade A

Fruits and Vegetables

- Fresh fruits and vegetables selected according to written specifications for freshness, quality, and color – U.S. Grade A Fancy
- Canned fruits and vegetables selected to requirements – U.S. Grade A Choice or Fancy (fruit to be packed in light syrup or natural juices)
- Frozen fruits and vegetables shall be U.S. Grade A Choice or better

Baked Products

- Bread, rolls, cookies, pies, cakes, and puddings either prepared or baked on premises or purchased on a quality level commensurate with meeting USDA breakfast and lunch requirements, as applicable

Staple Groceries

- Staple groceries to be a quality level commensurate with previously listed standards

FSMC shall comply with the *Buy American Provision* for contracts that involve the purchase of food, USDA Regulation 7 CFR Part 250.23 and 210.21. See Section XX. Certification, Letter E of this contract for additional Buy American requirements.

**MEAL PATTERN CHARTS**

<b>NATIONAL SCHOOL LUNCH PROGRAM</b>				
<i>Lunch Meal Pattern</i>				
<i>Menu Component</i>	<i>Amount of food per week (Minimum per day)</i>			
	<i>Grades K-5</i>	<i>Grades 6-8</i>	<i>Grades 9-12</i>	<i>Grades K-8</i>
Fruit (cups)	2 ½ (½)	2 ½ (½)	5 (1)	2 ½ (½)
Vegetables (cups)	3 ¾ (¾)	3 ¾ (¾)	5 (1)	3 ¾ (¾)
Dark Green	½	½	½	½
Red/Orange	¾	¾	1 ¼	¾
Beans/Peas/Legumes	½	½	½	½
Starchy	½	½	½	½
Other vegetable	½	½	¾	½
Additional Vegetables to reach total	1	1	1 ½	1
Grains (oz. eq)*	8 (1)	8 (1)	10 (2)	8 (1)
Meat/Meat Alternate (oz.)	8 (1)	9 (1)	10 (2)	9 (1)
Fluid Milk (cups)**	5 (1)	5 (1)	5 (1)	5 (1)
<b>OTHER SPECIFICATIONS: DAILY AMOUNT BASED ON THE AVERAGE FOR A 5-DAY WEEK</b>				
Min-Max calories	550-650	600-700	750-850	600-650
Saturated fat (% of total calories)			<10%	
Sodium, mg	≤ 1230	≤ 1360	≤ 1420	≤ 1230
Trans Fat	<b>Nutrition label or manufacturer specifications must indicate zero grams of trans fat per serving</b>			

\*NOTE – All Grains must be Whole Grain Rich

\*\*Fluid milk must be offered in a variety of low-fat (1%, unflavored) and/or fat-free (flavored or unflavored)

# SCHOOL BREAKFAST PROGRAM

<b>Breakfast Meal Pattern</b>	<b>AMOUNT OF FOOD PER WEEK (MINIMUM PER DAY)</b>			
	<b>Grades K-5</b>	<b>Grades 6-8</b>	<b>Grades 9-12</b>	<b>Grades K-12</b>
<i>Fruit (cups)</i> <sup>1</sup>	5 (1)	5 (1)	5 (1)	5 (1)
<i>Vegetables (cups)</i>	0	0	0	0
<i>Grains (oz. eq.)</i> <sup>2*</sup>	7 (1)	8 (1)	9 (1)	9 (1)
<i>Meat/Meat Alternate</i> <sup>3</sup>	0	0	0	0
<i>Fluid Milk (cups)</i> **	5 (1)	5 (1)	5 (1)	5 (1)
<b>OTHER SPECIFICATIONS: DAILY AMOUNT BASED ON THE AVERAGE FOR A 5-DAY WEEK</b>				
<b>Min-Max calories</b>	350-500	400-550	450-600	450-500
<b>Saturated Fat (% of total calories)</b> <sup>4</sup>	<10%	<10%	<10%	<10%
<b>Sodium (mg)</b>	No standards for 2014 2015 target ≤ 540	No standards for 2014 2015 target ≤ 600	No standards for 2014 2015 target ≤ 640	No standards for 2014 2015 target ≤ 540
<b>Trans Fat</b> <sup>5</sup>	Nutrition label or manufacturer specifications must indicate zero grams of fat per serving			
<b>*All Grains must be Whole Grain Rich</b>				
<b>**Fluid milk must be offered in a variety of low-fat (1%, unflavored) and/or fat-free (flavored or unflavored)</b>				

1 One quarter-cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. All juice must be 100% full-strength. Vegetables from the Dark Green, Red/Orange, Beans/Peas/Legumes or Other subgroup may be offered in place of fruit. Starchy vegetables may be offered after 2 cups of vegetables referenced above are met.

2 All grains must be whole grain-rich in both the NSLP and the SBP.

3 There is no separate meat/meat alternate component in the SBP. Schools may substitute 1 oz. eq. of meat/meat alternate for 1 oz. eq. of grains after the minimum daily grains requirement is met.

4 In the SBP, calories and trans fat specifications took effect beginning July 1, 2013 (SY 2013-2014).

5 In the SBP, calories and trans fat specifications took effect beginning July 1, 2013 (SY 2013-2014).

## After School Care Snack Program Menu Pattern

### Select Two of the Four Components for a Reimbursable Snack

Food Components	Ages 1-2	Ages 3-5	Ages 6-18
<b>Milk</b> fluid milk	½ cup	½ cup	½ cup
<b>Fruit/vegetable</b> Juice <sup>1</sup> , fruit and/or vegetable	½ cup	½ cup	¾ cup*
<b>Grains/bread<sup>2</sup></b> bread or cornbread or biscuit or roll or muffin or cold dry cereal or hot cooked cereal or pasta or noodles or grains	½ slice ½ serving ¼ cup ¼ cup ¼ cup	½ slice ½ serving ⅓ cup ¼ cup ¼ cup	1 slice 1 serving ¾ cup ½ cup ½ cup
<b>Meat/meat alternate</b> meat or poultry or fish <sup>3</sup> or alternate protein product or cheese or egg or cooked dry beans or peas or peanut or other nut or seed butters or nuts and/or seeds or yogurt <sup>4</sup>	½ oz. ½ oz. ½ oz. ½ ⅛ cup 1 Tbsp. ½ oz. 2 oz.	½ oz. ½ oz. ½ oz. ½ ⅛ cup 1 Tbsp. ½ oz. 2 oz.	1 oz 1 oz 1 oz ½ ¼ cup 2 Tbsp. 1 oz 4 oz.

<sup>1</sup> Fruit or vegetable juice must be full-strength. Juice cannot be served when milk is the only other snack component.

<sup>2</sup> Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole-grain or enriched or fortified.

<sup>3</sup> A serving consists of the edible portion of cooked lean meat, poultry or fish.

<sup>4</sup> Yogurt may be plain or flavored, unsweetened or sweetened.

**\* Note that this required portion size is larger than that of the lunch program; however two items may be combined to meet the ¾ cup fruit and/or vegetable component.**

# Summer Food Service Program Meal Pattern for Children

## SELECT THE APPROPRIATE COMPONENTS FOR A REIMBURSABLE MEAL

FOOD COMPONENTS AND FOOD ITEMS	BREAKFAST Serve all three	LUNCH OR SUPPER Serve all four	SNACK Serve two of the four
<b>Milk</b>	<b>Required</b>	<b>Required</b>	
Fluid milk (whole, low-fat, or fat-free)	1 cup <sup>1</sup> (½ pint, 8 fluid ounces) <sup>2</sup>	1 cup (½ pint, 8 fluid ounces) <sup>3</sup>	1 cup (½ pint, 8 fluid ounces) <sup>2</sup>
<b>Vegetables and Fruits</b> <i>Equivalent quantity of any combination of...</i>	<b>Required</b>	<b>Required</b>	
Vegetable or fruit or	½ cup	¾ cup total <sup>4</sup>	¾ cup
Full-strength vegetable or fruit juice <sup>5</sup>	½ cup (4 fluid ounces)	¾ cup <sup>4</sup>	¾ cup (6 fluid ounces) <sup>5</sup>
<b>Grains/Breads</b> <sup>6</sup> <i>Equivalent quantity of any combination of...</i>	<b>Required</b>	<b>Required</b>	
Bread or	1 slice	1 slice	1 slice
Cornbread, biscuits, rolls, muffins, etc. or	1 serving	1 serving	1 serving
Cold dry cereal or	¾ cup or 1 ounce <sup>7</sup>	¾ cup or 1 ounce <sup>7</sup>	
Cooked cereal or cereal grains or	½ cup	½ cup	½ cup
Cooked pasta or noodle products	½ cup	½ cup	½ cup
<b>Meat and Meat Alternates</b> <i>Equivalent quantity of any combination of...</i>	<b>Optional</b>	<b>Required</b>	
Lean meat or poultry or fish or	1 ounce	2 ounces	1 ounce
Alternate protein products <sup>8</sup> or	1 ounce	2 ounces	1 ounce
Cheese or	1 ounce	2 ounces	1 ounce
Egg (large) or	½	1	½
Cooked dry beans or peas or	¼ cup	½ cup	¼ cup
Peanut or other nut or seed butters or	2 tablespoons	4 tablespoons	2 tablespoons
Nuts or seeds <sup>9</sup> or		1 ounce=50% <sup>10</sup>	1 ounce
Yogurt <sup>11</sup>	4 ounces or ½ cup	8 ounces or 1 cup	4 ounce or ½ cup

### NOTES

<sup>1</sup> For the purposes of the requirement outlined in this table, a cup means a standard measuring cup.

<sup>2</sup> Served as a beverage or on cereal or used in part for each purpose.

<sup>3</sup> Served as a beverage.

<sup>4</sup> Serve two or more kinds of vegetable or fruits or a combination of both. Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement

<sup>5</sup> Juice may not be served when milk is served as the only other component.

<sup>6</sup> Bread, pasta or noodle products, and cereal grains (such as rice, bulgur, or corn grits) shall be whole-grain or enriched. Cornbread, biscuits, rolls, muffins, etc., shall be made with whole-grain or enriched meal or flour. Cereal shall be whole-grain, enriched or fortified. Serving sizes and equivalents will be in guidance materials to be distributed by FNS to State agencies.

<sup>7</sup> Either volume (cup) or weight (ounces), whichever is less.

<sup>8</sup> Must meet the requirements of 7 CFR 225 Appendix A.

<sup>9</sup> Tree nuts and seeds that may be used as meat alternate are listed in Program guidance.

<sup>10</sup> No more than 50 percent of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. For purposes of determining combinations, one ounce of nuts or seeds is equal to one ounce of cooked lean meat, poultry or fish.

<sup>11</sup> Plain or flavored, unsweetened or sweetened.

## SAMPLE 21-DAY LUNCH MENU

Attach a sample 21-day lunch menu prepared by (SFA / FSMC). This menu must be used for the first 21-days of the contract period.

## **SAMPLE 21-DAY BREAKFAST MENU**

Attach a sample 21-day breakfast menu prepared by (SFA / FSMC). This menu must be used for the first 21 days of the contract period.

**SAMPLE [REDACTED] DAY SNACK MENU**

Attach a sample [REDACTED] day snack menu prepared by (SFA / FSMC). This menu must be used for the first [REDACTED] days of the contract period.

## SAMPLE [REDACTED] DAY SUMMER FOOD SERVICE PROGRAM MENU

Attach a sample SFSP menu prepared by (SFA / FSMC). This menu must be used for the first [REDACTED] days of SFSP operation.



## PROJECTED OPERATIONS - REVENUE FOR PROGRAMS AND SITES TO BE CONTRACTED

Based on XXX days of service

Page 1 - In-School Revenue

	Meals	x	Price	=	Total
<b>Breakfast</b>					
Elementary Full Price		x	\$	=	\$
Secondary Full Price		x	\$	=	\$
Reduced Price		x	\$	=	\$
Adult		x	\$	=	\$
<b>Subtotal Breakfast</b>					<b>\$</b>
<b>Lunch</b>					
Elementary Full Price		x	\$	=	\$
Secondary Full Price		x	\$	=	\$
Reduced Price		x	\$	=	\$
Adult		x	\$	=	\$
<b>Subtotal Lunch</b>					<b>\$</b>
<b>After-School Care Snack</b>					
Full Price		x	\$	=	\$
Reduced Price		x	\$	=	\$
Adult		x	\$	=	\$
<b>Subtotal Snack</b>					<b>\$</b>
<b>Special Functions (Catering)</b>					<b>\$</b>
<b>A la Carte</b>					<b>\$</b>
<b>Concessions</b>					<b>\$</b>
<b>Vending</b>					<b>\$</b>
<b>Contract Meals</b>					<b>\$</b>
<b>Non-Reimbursable Meals</b>					<b>\$</b>
<b>Total In-School Revenue</b>					<b>\$</b>

# PROJECTED OPERATIONS - REVENUE

## FOR PROGRAMS AND SITES TO BE CONTRACTED

Based on XXX days of service

Page 2 - Federal Reimbursement

**Meals      x      Price      =      Total**

Breakfast					
Free		x	\$	=	\$
Free, Severe Need		x	\$	=	\$
Reduced Price		x	\$	=	\$
Reduced Price, Severe Need		x	\$	=	\$
Full Price		x	\$	=	\$
<b>Subtotal Breakfast</b>					<b>\$</b>

Lunch					
Free		x	\$	=	\$
Reduced Price		x	\$	=	\$
Full Price		x	\$	=	\$
<b>Subtotal Lunch</b>					<b>\$</b>

After-School Care Snack					
Free		x	\$	=	\$
Reduced Price		x	\$	=	\$
Full Price		x	\$	=	\$
<b>Subtotal Snack</b>					<b>\$</b>

Summer Food Service Program					
Breakfast		x	\$	=	\$
Lunch/Supper		x	\$	=	\$
Snacks		x	\$	=	\$
<b>Subtotal SFSP</b>					<b>\$</b>

Special Milk Program	<b>\$</b>
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**Total Federal Reimbursement      \$**

**PROJECTED OPERATIONS - REVENUE**  
**FOR PROGRAMS AND SITES TO BE CONTRACTED**

Based on XXX days of service

Page 3 - Total Revenue

<b>Total In-School Revenue</b>	<b>\$</b>
<b>Total Federal Reimbursement</b>	<b>\$</b>
State Match	\$
State Breakfast Match	\$
<b>Total State Reimbursement</b>	<b>\$</b>
<b>Total Revenue</b>	<b>\$</b>

## PROJECTED OPERATIONS – MEAL CHARGES FOR PROGRAMS AND SITES TO BE CONTRACTED

Based on XXX days of service

Page 1 - To be completed by FSMC

**Meals Served (from page 41)**

Breakfast	<input style="width: 90%;" type="text"/>	x	0.67	=	<input style="width: 95%;" type="text"/>
Lunch	<input style="width: 90%;" type="text"/>	x	1	=	<input style="width: 95%;" type="text"/>
Snack	<input style="width: 90%;" type="text"/>	x	0.5	=	<input style="width: 95%;" type="text"/>
<b>Total Meals Served</b>					<input style="width: 95%;" type="text"/>

**À la carte equivalents (from page 40)**

Catering	<input style="width: 90%;" type="text"/>				
À la carte sales	<input style="width: 90%;" type="text"/>				
Concessions	<input style="width: 90%;" type="text"/>				
<b>Total equivalents</b>	<input style="width: 90%;" type="text"/>	÷	<b>\$3.485</b>	=	<input style="width: 95%;" type="text"/>

**Total Meals + Equivalents**

Total meals + equivalents		FSMC Price per meal			<b>Gross estimated cost</b>
<input style="width: 95%;" type="text"/>	x	<input style="width: 90%;" type="text"/>	\$	=	<input style="width: 95%;" type="text"/>

Less credit for value of USDA Foods	<input style="width: 95%;" type="text"/>
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**Net estimated cost**

**PROJECTED OPERATIONS – SUMMARY**  
**FOR PROGRAMS AND SITES TO BE CONTRACTED**

Based on XXX days of service

Page 2 - To be completed by FSMC

A	<b>Total Revenue</b>	<b>\$</b>
B	<b>Total Meal Charges, less credits for value of USDA Foods</b>	<b>\$</b>
	<b>Profit (Loss)</b>	<b>\$</b>

**MEAL EQUIVALENT INFORMATION**

- 1 Lunch = 1 Meal
- 1 Breakfast = 0.67 Meal
- 1 Snack = 0.5 Meal
- A la Carte and additional sales shall be converted into meals using the following formula:

$$\frac{\text{Total Sales}}{\text{Free meal reimbursement} + \text{USDA Commodity allowance}}$$

Currently, the Free meal reimbursement is **\$3.15** and the commodity allowance is **\$0.335**

## INDEPENDENT PRICE DETERMINATION CERTIFICATE

\_\_\_\_\_  
Name of Food Service Management Company

>>>>SFA NAME<<<<<

\_\_\_\_\_  
Name of School Food Authority

A. By submission of this offer, the Offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

1. The prices in this offer have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or with any competitor.
2. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed to the Offeror and will not knowingly be disclosed by the Offeror (to whom?) prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other Offeror for the purpose of restricting competition.
3. No attempt has been made or will be made by the Offeror to induce any person or firm to submit or not submit an offer for the purpose of restricting competition.

B. Each person signing this offer on behalf of the Offeror certifies that:

1. He or she is the person in the Offeror's organization responsible within the organization for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to A.1 through A.3 above; or
2. He or she is not the person in other Offeror's organization responsible within the organization for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate in any action contrary to A.1 through A.3 above, and as their agent does hereby certify; and he or she has not participated, and will not participate, in any action contrary to A.1 through A.3 above.

**To the best of my knowledge, this Offeror, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any government agency and have not in the last three years been convicted of or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to proposal on any public contract, except as follows:**

\_\_\_\_\_  
Signature of Food Service Management Company's  
Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**In accepting this offer, SFA certifies that no representative of SFA has taken any action that may have jeopardized the independence of the offer referred above.**

\_\_\_\_\_  
Signature of School Food Authority's  
Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**NOTE: Accepting a proposer's/offeror's offer does not constitute award of the contract.**

## LOBBYING CERTIFICATION

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts exceeding \$100,000 in federal funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by Section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of a federal contract, the making of a federal grant, the making of a federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, an employee of a Member of Congress, in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

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\_\_\_\_\_  
Name/Address of Organization

\_\_\_\_\_  
Name/Title of Submitting Official

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**DISCLOSURE OF LOBBYING ACTIVITIES**

STANDARD FORM -LLL

APPROVED BY OMB

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT  
TO 31 U.S.C. 1352

(SEE NEXT PAGE FOR PUBLIC DISCLOSURE)

<b>1. Type of Federal Action</b> <input type="checkbox"/> A. Contract <input type="checkbox"/> B. Grant <input type="checkbox"/> C. Cooperative Agreement <input type="checkbox"/> D. Loan <input type="checkbox"/> E. Loan Guarantee <input type="checkbox"/> F. Loan Insurance	<b>2. Status of Federal Action</b> <input type="checkbox"/> A. Proposal/Offer/Application <input type="checkbox"/> B. Initial Award <input type="checkbox"/> C. Post award	<b>3. Report Type</b> <input type="checkbox"/> A. Initial Filing <input type="checkbox"/> B. Material Change <b>For Material Change Only:</b> Year: _____ Quarter: _____ Date of Last Report: _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, if known: _____	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b> Congressional District, if known: _____	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b> CFDA Number, if applicable: _____	
<b>8. Federal Action Number: (if known)</b>	<b>9. Award Amount: (if known)</b>	
<b>10. a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI)</b>	<b>10. b. Individual Performing Services: (including address if different from No. 10 a) (Last name, first name, MI)</b>	
<b>11. Amount of Payment: (check all that apply)</b> \$ _____ Actual <input type="checkbox"/> Planned <input type="checkbox"/>	<b>13. Type of Payment: (check all that apply)</b> <input type="checkbox"/> A. Retainer <input type="checkbox"/> B. One-Time Fee <input type="checkbox"/> C. Commission <input type="checkbox"/> D. Contingency Fee <input type="checkbox"/> E. Deferred <input type="checkbox"/> F. Other: (specify) _____	
<b>12. Form of payment: (check all that apply)</b> <input type="checkbox"/> A. Cash Nature _____ <input type="checkbox"/> B. In-kind (specify) Value _____	<b>14. Brief Description</b> of services performed or to be performed and date(s) of service, including officer(s), employees, or members) contracted for payment indicated in Item 11. (Attach Continuation Sheets if necessary)	
<b>15. Continuation Sheets Attached:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>		
16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. The disclosure of lobbying activities is a material representation of fact upon which evidence was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. The information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosures shall be subject to a civil penalty of no less than \$10,000 and no more than \$100,000 for each such failure.	<b>Signature:</b> _____ <b>Print Name:</b> _____ <b>Title:</b> _____ <b>Telephone Number:</b> _____ <b>Date:</b> _____	
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# INSTRUCTIONS FOR COMPLETION OF DISCLOSURE OF LOBBYING ACTIVITIES FORM

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action or a material change in a previous filing, pursuant to Title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Use a Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget (OMB) for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include, but are not limited to, subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks *Subawardee*, then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if know. For example: Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in Item 1; e.g., Request for Proposal (RFP) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the federal agency. Include prefixes; e.g., *RFP-DE-90-001*.
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in Item 4 or Item 5.
10.
  - a. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
  - b. Enter the full name of the individual performing services, and include full address if different from 10a. Enter last name, first name, and middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate item. Check all items that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box. Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the dates of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal officials or employees contacted or the officers, employees, or Members of Congress that were contacted.
15. Check whether Continuation Sheets are enclosed.
16. The certifying official shall sign and date the form; print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

## Unallowable SFA-FSMC Contract Document Provisions

	The following indicate problem areas that have been identified in some SFA-FSMC contract documents. The contract documents must be thoroughly checked, regardless of the procurement method used, to ensure that these areas have not been included, in any form. Mark an (X) in each block that indicates no such provisions are in your document(s), unless specified below.	
<input type="checkbox"/>	1. <b>NO</b> Cost Plus a Percentage of Cost/Income – cost plus a percentage of cost/income to FSMC, however represented.	
<input type="checkbox"/>	2. <b>NO</b> Duplicate Fees – fee structures that permit a FSMC to bill management fees and charge the same costs as cost-reimbursable expenses.	
<input type="checkbox"/>	3. <b>NO</b> Purchasing Restrictions – if SFA does the purchasing, clauses that limit the selection of vendors to only FSMC-approved vendors.	
<input type="checkbox"/>	4. <b>NO</b> Improper Acceleration Clause – provisions (multi-year) that require full payment (e.g. program equipment purchases) if the contract is not renegotiated.	
<input type="checkbox"/>	5. <b>NO</b> Interest Payments – interest payments to the contractor, however represented, including interest payments for equipment purchases.	
<input type="checkbox"/>	6. <b>NO</b> Contingent Guaranteed Return – “guaranteed return” provisions unless the “return” remains in the nonprofit food service account. “Returns” cannot be contingent upon multi-year contract duration.	
<input type="checkbox"/>	7. <b>NO</b> Delegation of SFA Responsibilities – FSMC responsibility for any of the functions that must be retained by SFA (signature authority on the Permanent Agreement and claims, etc.)	
<input type="checkbox"/>	8. <b>NO</b> Automatic Renewal – provisions which automatically renew the contract.	
<input type="checkbox"/>	9. <b>NO</b> Subcontracted Processing – contract document language that permits FSMC to subcontract USDA Foods for further processing.	
	For the item(s) above not checked (X), indicated item number(s) with corresponding page number(s) of document(s) where provision(s) appears.	
	Item Number(s)	Page Number(s)
	_____	_____
	_____	_____
	_____	_____
	I, the undersigned, hereby confirm that the above language is not included in the contract documents with named FSMC.	
	SFA reviewer: _____	_____
	Signature	Date
	FSMC reviewer: _____	_____
	Signature	Date