

**COST REIMBURSABLE
FOOD SERVICE MANAGEMENT COMPANY
REQUEST FOR PROPOSAL (RFP) AND CONTRACT
SY 2021-2022**



Local Education Agency (LEA) Name: _____

LEA Number: _____

Send Sealed Proposals to:

_____ **SFA Contact Person**

_____ **Address**

_____ **City, State, Zip**

_____ **Contact Phone Number**

All proposals must be received by:

_____ **Time**

_____ **Date**

To be completed by the SFA after contract is awarded.

FSMC Awarded: _____ **FSMC Name**

Signatures on page 38 shall constitute acceptance of all contract terms and responsibilities.

ASSURANCE

"The program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 C.F.R. § Part SO.3 and 42; and FNS directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement."

"By accepting this assurance, the Program applicant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Program applicant, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on the behalf of the Program applicant."

SFA's Superintendent, School Board President and FSMC Representative will sign this acknowledgement on the Contract Signature Page on page 38 of this document.

SCHOOL FOOD AUTHORITY (SFA) INFORMATION – PAGES 1 - 13 TO BE COMPLETED BY THE SFA

The purpose of this solicitation is for the outsourcing of food service for the 2021-2022 school year. The awarded cost reimbursable contract will include the operation of some or all of the food service program between the School Food Authority (SFA) and the Food Service Management Company (FSMC). The services to be included are found on **page 4**.

Each offeror must submit a completed response to this solicitation using the forms provided. No other documents submitted with the Request for Proposal (RFP)/contract will affect the contract provisions. If the FSMC provides additional provisions, they must be attached to this proposal for review by the Arkansas Department of Education, Division of Elementary and Secondary Education, Child Nutrition Unit (CNU). CNU's review of the contract is limited to assuring compliance with federal and state regulations. 7 C.F.R. § 210.16(a).

1. A pre-proposal meeting to review the RFP, to clarify any questions, and to tour the facilities with school personnel will be held on _____ **Date**, _____ **Time**, _____ **Location**, _____ **Location Address**. (SFAs must provide a minimum two (2) week notice to all offerors.) **Virtual Tour to be provided via:** _____
2. Sealed proposals are to be submitted to:
SFA Contact _____
Address _____
City, State, Zip _____
Number of Proposal Copies Requested _____
No email or fax submissions will be allowed.
3. Proposals must be submitted by _____ **Date**, _____ **Time**. Proposals will not be accepted after the deadline.
4. This contract shall become effective on July 1, 2021, or _____ **new date** with the termination date of June 30, 2022. If the SFA chooses another date to begin the contract, the termination date remains as June 30, 2022. The effective date may not occur prior to the date on which the contract is signed.

- If a program is added, the appropriate procurement procedures must be followed. *Note: Any program added after the contract has been awarded may constitute a material change, and the SFA may be required to rebid for FSMC services if the new program exceeds the 2021 small purchase threshold. The 2020-2021 small purchase threshold is \$21,284. The threshold is subject to annual adjustment based on the Consumer Price Index (CPI).*

- 6. The SFA is procuring the following services: Check all that apply.**

- Additional Services requested should be attached to this document.***

7. The following must be included in the administrative fees and are not to be charged in any other expenses.
- Teaching and Training Programs including state certification programs
 - Personnel and Labor Relations Services and Visitation
 - Legal Department Services
 - Purchasing and Quality Control
 - Technical Research
 - Cost Incurred in Hiring and Relocating FSMC Management Personnel
 - Dietetic Services (Administrative and Nutritional)
 - Accounting and Accounting Procedures
 - Tax Administration
 - Technical Supervision
 - Supervisory Personnel and Regular Inspections or Audit Personnel
 - FSMC Employee Background and Maltreatment Checks
 - General Regional and National Support
 - Design Services
 - Menu Development and Test Kitchens
 - Information Technology and Support
 - Nutrition Education, programming, consumable marketing material, and committee meetings expense
 - Payroll Documentation
 - Sanitation
 - Meal modifications
8. The contract for meal service is based on an estimated number of ____ regular serving days, in a
- ☐ 4-day school week.
 - ☐ 5-day school week.
9. Employees will be:
- ☐ retained by the SFA.
 - ☐ employed by the FSMC.
 - ☐ both retained by the SFA and employed by the FSMC.
- Specific details concerning employment must be attached. Page 11 and/or Page 15.*
10. The SFA shall provide the FSMC with a schedule of retained employees, assigned locations, and work hours on the Labor Worksheet. **Page 11**
11. The FSMC shall provide the SFA with the number of employees hired, assigned locations, contracted salaries and work hours on the FSMC Labor Worksheet. **Page 15**
12. All employees that are employed in Arkansas Schools must have both a background and a child nutrition maltreatment check. Ark. Code Ann. §6-17-411 and 415.

13. The Administrative Fee must include any cost associated with these checks and may not be charged back to the SFA. SFA will be responsible for their employees. FSMC will be responsible for their employees.
14. ☐SFA ☐FSMC shall be responsible for any costs resulting from the processing of USDA foods.
15. ☐On-site preparation ☐Vended. Type of Food Service Preparation requested.
16. The SFA authorizes the FSMC to manage and operate on its behalf the school kitchens, cafeterias and any additional food sites during the normal breakfast and lunch periods.
Complete Site Building Worksheet on page 10.
17. **Attach eFinance reports** – Detailed Expenditure Report for Fund 8000 and Detailed Revenue Report for Fund 8000 for the 2020-2021 school year.
18. Attach **“Year to Date” report** from the CNU Claims System for the 2020-2021 school year.
19. **Attach a SFA 21-day menu* cycle (lunch, breakfast, and afterschool snack, if applicable).**
If the SFA is rebidding a contract, remove all names and details of the current FSMC from the menus. If additional information is required, contact _____ **Child Nutrition Director**, _____ **Phone Number**, _____ **Email**.
**See page 20 for additional requirements of the 21-day cycle menu.*

CNU must provide written approval before the RFP is released to the registered vendors.

Division of Responsibilities for Food Service Program

SFA marks each box to show who is responsible for each of the following. If both the SFA and the FSMC are responsible, mark both.

	FSMC	SFA	Not Applicable
FOOD COSTS			
Food Cost (including food condiments and beverages)			
Food purchasing			
Receiving and Check in inventory			
Processing of Invoices – Collect and total invoices			
Maintain current inventory			
Payment of Invoices			
USDA Donated Food Inventory			
USDA Donated Food Inter-district Transportation			
Submission of all inventory and invoices in a timely manner			
LABOR COST			
Collection of Time (timesheets, computer log etc.)			
Payment of Kitchen Managers and/or Supervisors			
Taxes and Benefits for employees			
Preparation of employee payroll			
Processing of employee payroll			
Unemployment Compensation			
Workman's Compensation			
Insurance – (Health, Dental, Vision, Other) specify			
Substitutes for SFA Employees			
Substitutes for FSMC Employees			
SFA Substitute Payroll			
FSMC Substitute Payroll			
Holiday Pay			
Labor charges for supervision of outside groups using facilities			
Child Nutrition Director – SFA Employed			
Taxes and Benefits for Child Nutrition Director – SFA Employed			
FSMC Site Director – FSMC Employed			
Taxes and Benefits for Site Director – FSMC Employed			
Other - Specify			
OTHER PURCHASED SERVICES			
Telephone, local service			
Telephone, long distance			
Telephone, cell			
Utilities			
Extermination			
Removal of Trash and Garbage from Kitchen			
Removal of Trash and Garbage from Cafeteria			
Removal of Trash and Garbage from Premises			
Other – Specify			
Equipment Repair			
Small Equipment Replacement			
Equipment Replacement			
Hardware, Software and Maintenance			

	FSMC	SFA	Not Applicable
SUPPLIES			
Disposable Service Products			
Cleaning Supplies			
Paper Supplies			
Uniforms			
Kitchen Linens			
Menu Paper			
Menu Printing			
Promotional Materials			
Nutrition Education and Materials			
Office Supplies			
Postage			
FACILITIES			
Routine Cleaning of Cafeteria Walls and Floors			
Routine Cleaning of Kitchen Walls and Floors			
Periodic Waxing and Buffing of Floors			
Sanitation and Proper Use of Equipment			
Daily Cleaning of Cafeteria Tables and Chairs			
Deep Cleaning of Cafeteria Tables and Chairs			
Deep Cleaning of Equipment including steamers, walk-ins, etc.			
Employee Restroom Cleaning			
Grease filters and traps			
Vent-a-hood			
Light Fixtures			
Windows			
Duct work			
Exhaust fans			
CAPITAL IMPROVEMENTS			
Painting			
Other - Specify			
OTHER			
NSLP Free/Reduced Application Approval			
NSLP Free/Reduced Application Verification			
Point of Service (POS) Accountability and Integrity			
Daily meal count records supporting reimbursement claims			
Collection of Daily Cash Receipts			
Daily Cash Receipt Deposits			
Parent/Guardian Contact – Low Account Balances			
Menu Development			
Menu Printing and Distribution			
Satellite deliveries			
Licenses/Permits			
Promotions			
Employee Physicals			
Sales Tax			
Performance Bond			
Liability Insurance			

	FSMC	SFA	Not Applicable
FSMC Staff Training			
FSMC Staff Training Registration			
FSMC Staff Training Housing			
FSMC Staff Training Mileage			
SFA Staff Training			
SFA Staff Training Housing			
SFA Staff Training Mileage			
Conference Registration			
Conference Housing			
Conference Mileage			
Payment for Staff to attend training outside assigned work			

SFA SITE/BUILDING LIST – GENERAL DATA

Mark each service to be provided.

School	Address	Grades	Enrollment	ADP BREAKFAST	ADP LUNCH	Breakfast					Lunch					Pre-K	FFVP	ASP	SSO	SFSP	CACFP	Contract Meals	Concessions	Catering
						Meal	OVS	Ala Carte	Contract Meals	Adult Meals	Meal	OVS	Ala Carte	Contract Meals	Adult Meals									

- **ADP = Average Daily Participation**
- **OVS = Over vs Serve.** Required at the high school level. Optional for Elementary
- **Ala Carte = any item not served as a reimbursable meal**
- **Pre-K =** If the SFA has Pre-Kindergarten or provides contracted meals, mark Pre-K. The meal pattern is different.
- **FFVP – Fresh Fruit and Vegetable Program**
- **ASP = Afterschool Snack Program** through CNU
- **SSO = Seamless Summer Option** through CNU
- **SFSP = Summer Food Service Program** through the Department of Human Services (DHS)
- **CACFP = Child and Adult Care Feeding Program** including the supper program through DHS
- **Contract Meals =** may include groups such as an off-site Pre-K program, etc.
- **Concessions =** may include ballgame concessions, etc.
- **Catering =** may include banquets, school board meetings, etc.

LABOR WORKSHEET

To be completed by the SFA for current SFA employees. Additional pages may be added as needed.

[illegible]

Evaluation and Award Process

After determining that a bid satisfies the mandatory requirements stated in the RFP, the SFA shall analyze each bid received. The SFA must evaluate the bids and use the pre-approved rubric approved by the CNU. SFAs must use the categories listed below. Additional categories may be inserted to meet the specific needs of the SFA. SFAs may not include as a category prior experience with a FSMC as it would violate USDA's free and open competition regulation for procurement.

Weight	Criteria
____ points	Price/Cost (Price must be the primary factor)
____ points	Service Capability Plan
____ points	Experience, References
____ points	Financial, Condition/Stability, Business Practices
____ points	Accounting and Reporting Systems
____ points	Personnel Management
____ points	Innovation
____ points	Promotion of the Food Service Program
____ points	Involvement of Students, Staff and Patrons
____ total	Must equal 100

While price alone is not the sole basis for award, **price remains the primary consideration** when awarding a contract under the competitive proposal method. The SFA shall maintain complete documentation of the award process including the tally sheets for each bid received. Copies of score sheets and/or rubrics must be part of the packet sent to CNU for approval.

The SFA's officers, employees, board members, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors nor potential contractors. To the extent permissible under Arkansas law, rules, or regulations, such standards shall be provided for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of both federal and state standards.

Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statement of work, or invitation form bids or requests for proposals must be excluded from competing for such procurements (2 C.F.R. § 200.319).

Some of the situations considered to be restrictive of competition include but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business;
2. Requiring unnecessary experience and excessive bonding;
3. Noncompetitive pricing practices between firms or between affiliated companies;
4. Noncompetitive contracts to consultants that are on retainer contracts;
5. Original conflicts of interest;
6. Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
7. Any arbitrary action in the procurement process.

Opening of Bids

Bids must be opened at the pre-determined time and location. As cost reimbursable bids are opened, the name of the FSMC offeror and the prices for both the Administrative and Management Fees should be stated. No other information should be provided until the SFA has analyzed the proposals. No information should be shared with the vendors who may choose to attend the bid opening. No photographs and/or display of information will be allowed. Received proposals become the property of the SFA.

If the SFA needs clarification on any proposal, the SFA may contact the FSMC for clarification. At no time should proposal information from competing vendors be discussed. The CNU will not be present at the opening of bids. The decision belongs solely to the SFA.

The SFA has the right to reject any or all bids if there is a sound documented reason.

2 C.F.R. § 200.320(c)(2)(v).

FSMC INFORMATION **FSMC completes pages 14 – 15.**

The Meal Equivalent Factor is included in the chart below. All non-program foods and outside catered events will be subject to the percent change in the *Consumer Price Index for all Urban Consumers Food Away from Home* from January of the previous year to January of the current year, at the time of contract renewal. The specific CPI price increase will be documented with the renewal agreement.

The financial arrangements between the SFA and FSMC for the management of the school food services are as follows:

FSMC COMPLETES THE INFORMATION BELOW FOR THE 2021-2022 SY	
Administrative Fee Per Meal: Student Lunch	
Administrative Fee Per Meal: Student Breakfast	
Administrative Fee Per Meal: Student Snack	
Management Fee Per Meal: Student Lunch	
Management Fee Per Meal: Student Breakfast	
Management Fee Per Meal: Student Snack	
Administrative Fee Per Meal Equivalent per all non-program food	
Management Fee Per Meal Equivalent per non-program food	
The meal equivalent factor for the 2021-2022 school year – to be applied to all non-program foods including a la carte items.	1 Lunch = 1.00 1 Supper = 1.00 1 Breakfast = 0.67 1 Snack = 0.33 <i>Non-program Food = Dollar Amount of Non-program food sales ÷ (Current free lunch reimbursement rate + current USDA Donated Food value + \$0.07 Performance Base)</i>
See Commissioner's Memo CNU-21-002 for the 2020-2021 reimbursement rates.	
The meal equivalent factor for 2021-2022 per a la carte items	Same as non-program food
The meal equivalent factor per outside catered events 2021-2022	Same as non-program food

LABOR WORKSHEET

To be completed by the FSMC for FSMC employees hired

Information may be listed by job title only since FSMCs may not hire anyone until contract is reviewed by CNU and accepted by the SFA's School Board

Site/School	Employee Name or Number Hired	Job Title	Hourly Rate (\$)	Daily Hours	Number of Days	Total Annual Wages (\$)
TOTAL LABOR						\$
Retirement						\$
Substitute Pay						\$

General Information – Terms and Conditions to be Included in RFP/Contract (Pages 16 – 37)

The SFA wishes to retain the FSMC to provide certain food and food related services at the sites specified by the LEA. The contract is acknowledged by the SFA and FSMC to be satisfactory and adequate. Both parties agree as follows:

1. The food service program provided shall be operated and maintained as a benefit to the SFA students, faculty, and staff.
2. The FSMC must give evidence of financial stability.
3. The FSMC must be registered with CNU to do business in the State of Arkansas.
4. Award shall be made to a qualified and responsible offeror whose proposal is most responsive to this solicitation. A responsible offeror is one who has the financial, technical, and other resources that indicate the ability to perform the services required by this solicitation.
5. The FSMC 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 FSMC's own risk and cannot secure relief on the plea of error.
6. The SFA is not liable for any cost incurred by the FSMC prior to the signing of a contract by all parties. **Paying the FSMC from the Child Nutrition Program Funds is prohibited until the contract is approved by the CNU and signed by both parties.**
7. Food service equipment may be purchased from the CNU's approved equipment list. Purchases made by the FSMC must be approved by the SFA. Equipment purchased by the FSMC and paid for through pro-rated yearly payments must be approved by the SFA in advance of the purchase. If the purchase exceeds the local small purchase threshold, the FSMC must have written permission from the SFA. If the SFA chooses not to renew the contract with the FSMC, the SFA may purchase the equipment from the FSMC or request the equipment be removed.
8. No oral interpretation will be made to any FSMC as to the meaning of the RFP. Any oral communication will be considered unofficial and non-binding to the SFA. Unauthorized contact by the FSMC with other SFA employees or SFA Board Members regarding the RFP may result in disqualification. Each request for such interpretation shall be made in writing to the SFA. Every interpretation made by the SFA will be in the form of an addendum to the specification, emailed to each FSMC, and will be on file at the school. All such addenda shall become part of the final contract and FSMC shall be bound by such addenda.
9. In the event the contract initially awarded by the SFA is terminated for any reason, the SFA reserves the right to accept any other submitted proposal in conformance to the requirements of this solicitation including submission by the original date by which such proposals were due.
10. Additional requests made by the SFA or the FSMC must be attached to this document, reviewed and approved by CNU before approval.

Intent

1. The FSMC shall conduct the food service in such a manner as will ensure compliance with the rules and regulations of the CNU and the USDA regarding Child Nutrition Programs.
2. The SFA is prohibited from entering into contracts that are on a "cost-plus-a-percentage of cost" or "cost-plus-a-percentage-of-income" basis. 7 C.F.R. § 210.16.

3. If the SFA determines that significant changes are necessary, the SFA must rebid the contract. The following changes would normally not substantially change the contract.

Number of schools - new schools added, unless the result of annexation or consolidation;

Changes in enrollment - decrease and increase in student enrollment and the corresponding change expected in participation, unless the result of annexation or consolidation;

Changes in meal prices charged to students by SFA - meal price changes (determined by the SFA);

Cost increases - cost increases limited to a measurable index (Consumer Price Index for all Urban Consumers – Food Away from Home).

Material changes which may require the SFA to rebid the contract include:

Addition of a program - such as the Afterschool Snack Program;

Meal equivalent formula changes;

Major shift in responsibilities for the SFA/FSMC staff.

4. The SFA/FSMC shall promote nutrition education and coordinate the SFA's food service in the classroom.
5. The SFA reserves the right to maintain present food and beverage vending machines in its facilities.
6. The FSMC will utilize the SFA's point of sale software. Information regarding the software will be available at the pre-bid conference. The FSMC will follow the Division of Responsibilities for Food Service Program Checklist on pages 7-9 to determine the payment obligation for purchasing any new or upgrades to the software system. The FSMC and SFA must collaborate in the purchase to ensure the needs of both parties are being met.
7. Employees working for the FSMC or the district may work after hours for the other entity in situations where normal work hours do not overlap, when separate time sheets are maintained for both entities, and when separate funds are used to cover salaries. Districts must ensure that at no time is the employee compensated by both the district and the FSMC simultaneously for the same duties/time. District policies governing outside employment and conflicts of interest should be developed and considered.
8. The FSMC shall provide additional food service, such as banquets, parties, refreshments for meetings, etc., as requested by the SFA. The SFA or requesting organization will be billed for the actual cost of food, supplies, labor, and the FSMC's overhead and administrative expense if applicable to providing such service. USDA donated foods shall not be used for these special functions.
9. This contract constitutes the entire agreement between the SFA and the FSMC and **may not** be changed, extended orally, or altered by cause of conduct.
10. No provision of this contract shall be assigned or subcontracted without prior written consent of the SFA.
11. Any agreement between the SFA and the FSMC shall be subject to approval by the CNU.

Duration and Termination

1. This contract shall be for duration of no longer than one year; and options for the yearly renewal of a contract may not exceed four (4) additional years. (7 C.F.R. § 210.16(d)).
2. Either party may cancel for cause with a 60-day notification. (7C.F.R. § 210.16(d)).
3. Any amendment, addendum, and/or renewal to the contract shall become effective at the time specified and must be approved by the CNU before implementation. If the amendment, addendum, and/or renewal to the contract institutes a material change, the SFA must rebid the contract. The SFA must ensure that the CNU has

reviewed and approved contract terms and that the SFA has incorporated all CNU required changes into the contract or amendment before any contract or amendment to an existing FSMC contract is executed. Any changes made by the SFA or FSMC to the CNU pre-approved prototype contract or the CNU approved contract term must be approved in writing by the CNU before the contract is executed. When requested, the SFA must submit all procurement documents, including responses submitted by potential contractors, to the CNU, by the established due date. (7 C.F.R. § 210.16(a)(10)).

4. Neither the FSMC nor the SFA shall be responsible for any losses resulting if the fulfillment of the terms of the contract is delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or any other acts which could not have been prevented by the exercise of due diligence.

Cost Reimbursable Financial Agreements

1. The FSMC will be paid on the basis of the direct cost incurred plus a fixed fee.
2. The SFA must determine the existence of the proper pass-through value of USDA Donated Foods to determine how credits in the month of utilization. The monetary values of all USDA Donated Foods are to be used based on the current pricing of the items received from the Arkansas Department of Human Services (DHS) Food Distribution unit. The total value of all USDA Donated Foods including bonus items must be included.
3. All program expenses not otherwise defined in the contract will be covered by the administrative fees and may not be charged in any other expenses. All indirect and overhead costs are to be included in the administrative fee.
4. The following must be included in the administrative fees and may not be charged in any other expenses. Any related travel must be covered by the administrative fee.
 - Teaching and Training Programs including state certification programs
 - Personnel and Labor Relations Services and Visitation
 - Legal Department Services
 - Purchasing and Quality Control
 - Technical Research
 - Cost Incurred in Hiring and Relocating FSMC Management Personnel
 - Dietetic Services (Administrative and Nutritional)
 - Accounting and Accounting Procedures
 - Tax Administration
 - Technical Supervision
 - Supervisory Personnel and Regular Inspections or Audit Personnel
 - FSMC Employee Background and Maltreatment Checks
 - General Regional and National Support
 - Design Services
 - Menu Development and Test Kitchens
 - Information Technology and Support
 - Nutrition Education, programming, consumable marketing material, and committee meetings expense
 - Payroll Documentation
 - Sanitation
 - Meal modifications
5. The FSMC shall submit an invoice to the SFA that includes the cost of food, labor, and non-food items. The management and administrative fees must be separated from other costs. Daily records must be maintained that show the number of student meals, adult meals, snacks, and a la carte sales served by building for each service provided. Breakfast, lunch, snack, and a la carte will be separated on the same invoice. If an itemized invoice requested is not provided to the SFA within 45 days written notice, the SFA shall have the right upon ten (10) days written notice to terminate performance under this contract. The FSMC understands that any issue of involving the noncompliance of the SFA's request for itemized invoices may result in non-payment. Failure to submit itemized invoices as specified by the SFA may constitute a breach of contract.

6. The SFA's failure to pay an invoice may constitute a breach of the contract. In the event any invoice is unpaid for more than 45 days, the FSMC may have the right upon ten (10) days written notice to terminate performance under this contract. The SFA further agrees to pay all costs of collection of amounts due including a reasonable attorney's fee. Waiver by FSMC of the right to terminate for one or more late payments shall not constitute waiver of FSMC's rights for future last payments.
7. Management and administrative fees may be charged to the SFA for non-program foods. Non-program foods include: adult meals, a la carte, catering, vending, student stores operated, coffee shops, or any other sales generated through the nonprofit school food service account not already described. This information is used in determining compliance with revenue from non-program foods. 7 C.F.R. § 210.14(f).

Professional Standards for Local School Nutrition Personnel

Local school nutrition personnel in the National School Lunch and School Breakfast Programs must possess the knowledge and skills to manage and operate the programs correctly and successfully. School nutrition personnel must meet the minimum professional standards found in the USDA Professional Standards and the Arkansas Rules Governing Certification. For a child nutrition director to be paid from child nutrition funds, the person employed must meet the Arkansas Rules Governing Certification and USDA Professional Standards.

Training standards apply to contract employees that are involved in the management or operation of the school nutrition programs, as well as, the SFA employed child nutrition director, regardless of the contract duration. The SFA must request documentation from the FSMC to show compliance with the annual training standards. SFA employees must document initial certification and annual professional development.

Training standards do not apply to a vended meal provider, commercial entity off-site from the school food service that provides pre-plated meals. However, the SFA child nutrition director must ensure that vendors providing meals for the school nutrition programs have the knowledge and skills to supply safe and nutritious meals that meet the meal patterns and dietary specifications.

*Each SFA **must have a SFA employed child nutrition director**, in addition to, any employee of the FSMC who may have the same title.*

Contracting with and minority businesses, women's business enterprises, and labor surplus area firms (2 C.F.R. § 200.321).

1. The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
2. Affirmative steps must include:
 - Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - Establishing delivery schedule, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development of the Department of Commerce; and
 - Requiring the prime contractor, if subcontracts allowed, to take the affirmative steps listed above.

Food Service Management Company Responsibilities

1. The FSMC shall comply with the all state and federal rules, regulations, policies, and instructions of the CNU and the USDA and any addition or amendments thereto, including USDA Regulation 7 C.F.R. § Part 210, 220, 245, 250, 7 C.F.R. § Part 225 (SFSP) if applicable, 2 C.F.R. § 200 318-326, Appendix II to Part 200, 2 C.F.R. § 400, 2 C.F.R. § 416, 2 C.F.R. § 417, 2 C.F.R. § 418, 7 C.F.R. § 417, 2 C.F.R. § 418, 7 C.F.R. § 215 (SMP) if applicable, 7 C.F.R. § 226 (CACFP) if applicable.

Cost reimbursable contracts 7 C.F.R. §210.21 (f)

(1) **Required provisions.** The school food authority must include the following provisions in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts:

(i) Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;

(ii)(A) The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or

(B) The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;

(iii) The contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;

(iv) The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;

(v) The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and

(vi) The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.

(2) **Prohibited expenditures.** No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include the requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.

2. The FSMC shall not sell or offer on the premises of any school, any food, or beverage item other than the prescribed meals except those a la carte items authorized by the SFA. In order for the FSMC to offer ala carte food service, the FSMC must offer free, reduced-price, and full-priced reimbursable meals to all eligible children. 7 C.F.R. § 210.16(a). The SFA must approve the selling of any a la carte items offered in the elementary, middle or high school in advance of the start date. The FSMC must comply with the implementation of Section 10 of the Child Nutrition Act of 1966, 42 USC 1779, as amended by the Healthy, Hunger-Free Kids Act of 2010 which requires that all food sold outside of the school meal program, on the school campus and at any time during the school day meet the nutrition standards set forth in the "Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010" and the "Arkansas Department of Education Rules Governing Nutrition, Physical Activity and BMI, May 2016".
3. Menus shall be provided to the SFA for approval at least two weeks before the scheduled use.
4. The food service management company must adhere to the 21-day cycle menu for the first 21 days of meal service. Changes thereafter may be made with the approval of the school food authority. 7 CFR 210.16(b)(1).
5. The FSMC shall serve, on such days and at such time as requested by the SFA:
 - a. Lunches, breakfasts and after school snacks priced as a units, which meet the requirements prescribed by USDA. Documentation of all items served must be provided to the SFA. Example – Smart Snack Calculator Printout.

- b. Milk must be available to all children
 - c. Other foods agreed upon by the FSMC and the SFA
- 6. The FSMC shall serve free and reduced price meals, afterschool snacks and other USDA programs to all eligible students based on the SFA's participation.
- 7. The FSMC is required to provide meal modifications for students on a case-by-case basis according to the SFA's policy. Meal modifications will be provided at no additional cost to the SFA. Meal modifications for students without a disability may be made if the modification can be made within the meal pattern. Accommodating Children with Disabilities in the School Meal Programs Guidance for School Food Service Professionals, USDA July 25, 2017; SP 26-2017 Accommodating Disabilities in the School Meal Programs: Guidance and Questions and Answers (Q&A)
- 8. The FSMC shall participate in the formation, establishment, and periodic meetings of the SFA advisory board composed of students, teachers, and parents to assist in menu planning. 7 C.F.R. § 210.16(a)(8); Arkansas Act 2285 of 2005, Ark Code Ann. § 20-7-133 and all applicable federal and state regulations.
- 9. Section 204 of the *Healthy, Hunger-Free Kids Act of 2010*, Public Law 111-296 expands the wellness policy requirement by emphasizing ongoing implementation and assessment and expands the team of wellness policy collaborators. The FSMC must comply with the SFA's ongoing local wellness policy and federal and state laws that affect school meal preparation and/or service.
- 10. The FSMC shall implement the collection procedures as specified by the SFA. FSMC employees may not refuse a child a meal regardless of their ability to pay. The FSMC shall provide the SFA with access to any meal counting program that shows student debt. Arkansas Code 6-18-714 as referred as the Hunger-Free Students' Bill of Rights Act.
- 11. The FSMC shall provide the SFA with daily deposits. Revenue must be categorized as student meals, adult meals, and ala carte items.
- 12. The FSMC shall prepare and maintain such records supported by invoice, receipts, or other evidence that the SFA may need to support its claim for reimbursement and shall, at a minimum, report claim information to the SFA at the end of the calendar month and make reports available upon request. Documentation needed to meet state and federal reporting responsibilities must be provided to the SFA. 7 C.F.R. § 210.16(c)(1).
- 13. The FSMC agrees to provide the SFA with necessary financial information, including detailed breakouts of all income and expenditures categories for reporting to the CNU. All information must be maintained for five (5) years and may not be removed from the SFA at any time.
- 14. The FSMC shall not use SFA facilities for preparation of food served at any location other than the SFA's approved program without written permission from the SFA.
- 15. If food or meals are prepared outside the school, the FSMC shall maintain State and local health certification of their facility, and shall maintain this health certification for the duration of the contract. 7 C.F.R. § 210.16(c)(2).
- 16. If reimbursement is denied as a direct result of the failure of the FSMC to comply with the provisions of this contract, the FSMC shall assume responsibility for the amount denied.
- 17. The FSMC will provide to the SFA all federally required records and shall not remove them from the SFA premises upon termination of the contract.
- 18. All records of the FSMC pertaining to the contract shall be made available, upon demand, in an easily accessible manner for a period of five (5) years after the final claim for reimbursement for the fiscal year to which they pertain. All records shall be made available and must be retrievable by the SFA for audit, examination, excerpts, and transcriptions by the SFA and/or any state or federal representatives and auditors. If audit findings regarding the FSMC's records have not been resolved within the five (5) year record retention period, the records must be retained beyond the requirement until the resolution of the issues raised by the audit. 7 C.F.R. § 210.9(b)(17), 2 C.F.R. § 200.333 and 336, ACA § 6-20-704(n).

SFA Responsibilities

1. The SFA shall ensure that FSMC operation of food service conforms to the SFA's agreement with CNU. 7 C.F.R. § 210.16(a)(2).
2. The SFA shall retain control of the quality, extent and general nature of its food service and the prices that will be charged to children for meals, milk, after school snack, ala carte items, adult meals, and vending machine items (if applicable). 7 C.F.R. § 210.16(a)(4).
3. The SFA must receive all food service revenue, including rebate payments. Revenue must be deposited in the nonprofit child nutrition fund. 7 C.F.R. § 210.14.
4. The SFA shall monitor the food service program through periodic on-site reviews to include the inspection of meals, food preparation, storage and service areas, sanitation practices, and procedures for accurately counting and claiming meals. 7 C.F.R. § 210.16(a)(3).
5. The SFA shall retain approval of menus and recipes for meals and other food to be served or sold to students to ensure compliance with the rules and regulations of the CNU and the USDA. Menus must be provided to the SFA Child Nutrition Director least two (2) weeks in advance of use.
6. The SFA shall inform the FSMC of any requested adjustments to menus and monitor the implementation of the adjustments.
7. The SFA shall approve all ala carte items and the prices charged in advance of their sale by the FSMC.
8. The SFA shall ensure that an advisory board composed of parents, teachers, and students is established and functioning. Responsibilities include assisting in the planning and approving of menus. (Wellness Committee) 7 C.F.R. § 210.14(a)(8).
9. The SFA shall retain signature authority on the CNU/SFA agreement, free and reduced price policy statement and claims for reimbursement. 7 C.F.R. § 210.16(a)(5).
10. The SFA has the responsibility of distributing and collecting free and reduced price letters and applications. The SFA has the responsibility for determining eligibility, conducting hearings, and completing verification. 7 C.F.R. § 245.
11. The SFA is responsible for maintaining accurate student data through the Direct Certification portal.
12. The SFA shall ensure health inspections are completed and that all state and local regulations are being met by the FSMC preparing and serving meals at the SFA's facilities. 7 C.F.R. § 210.16(a)(7).
13. The SFA shall conduct annual reviews of the storage facilities that includes storage and inventory management of USDA Donated Foods. The annual review shall include a physical inventory reconciled with the inventory records maintained by the SFA and the FSMC. 7 C.F.R. § 250.14(e).
14. The SFA shall be responsible for resolution of program review and audit findings.
15. The SFA reserves the right to cancel or shorten any school day and agrees to give the FSMC at least twenty-four (24) hours advance notice of changes when feasible.
16. The SFA ensures that any invitation to bid or request for proposal indicate that nonperformance subjects the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The school food authority shall indicate these sanctions in accordance with the procurement provisions stated in 7 C.F.R. § 210.21. Sanctions may include a specific time to correct the violation or breach, withholding payment to the FSMC or termination of the contract. 7 C.F.R. § 210.16(b)(2).
17. All records of the SFA/FSMC agreement pertaining to the contract shall be made available, upon demand, in an easily accessible manner for a period of five (5) years after the final claim for reimbursement for the fiscal year to which they pertain. All records shall be made available for audit, examination, excerpts, and transcriptions by the SFA and/or any state or federal representatives or auditors. If audit findings regarding the FSMC's records have

not been resolved within the five (5) year record retention period, the records must be retrievable by the SFA until the issues have been resolved. 7 C.F.R. § 210.9(b)(17), 2 C.F.R. § 200.333 and 336, ACA § 6-20-704(n).

Use of Facilities and Equipment

1. The SFA shall have access, with or without notice to the FSMC, to the all the SFA's facilities used by the FSMC for purpose of inspections and/or audit.
2. The SFA shall make available, without any cost or charge to the FSMC, the areas and premises agreeable to both parties, where the FSMC shall render service. The FSMC shall make no alterations, changes, or improvements to these areas without obtaining written consent from the SFA.
3. The 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 the SFA and comply with all applicable laws, ordinances, rules and regulations of federal, state, and local authorities.
4. The SFA shall provide at its expense necessary expendable equipment including, but not limited to, flatware, serving trays, pots, pans, and utensils; and shall periodically replace expendable equipment as items become worn, broken, used, lost or otherwise disposed of to maintain the original inventory. Replacement necessary because of the FSMC's negligence will be the responsibility of the FSMC.
5. The SFA shall provide and maintain at its expense necessary inter-school vehicles, satellite transporter units, and equipment including its operating costs if applicable.
6. The FSMC shall take reasonable care in the use of the premises, equipment, vehicles, and other items furnished by the SFA.
7. The FSMC and the SFA shall inventory the equipment and supplies owned by the SFA at the beginning of the school year, including but not limited to flatware, trays, and kitchen utensils.
8. The SFA shall furnish and install any equipment and make any structural changes necessary to comply with federal, state, and local laws, ordinance, rules, and regulations.
9. The FSMC shall not remove food preparation and servicing equipment owned by the SFA.
10. The SFA shall repair and service equipment except when damages are a result of less-than-reasonable care by the employees of the FSMC.
11. The SFA shall not be legally responsible for loss or damage to any equipment owned by the FSMC and located on the SFA premises except when damage results from the use of less-than-reasonable care by SFA employees.
12. The FSMC shall provide written notification to the SFA of any equipment belonging to the FSMC within ten (10) days of placement on the SFA premises.
13. The SFA reserves the right, at its sole discretion, to use it facilities to sell or dispense any food or beverage before or after the regularly scheduled lunch or breakfast periods provided such use does not interfere with the operation of the Child Nutrition Program.
14. SFA shall return facilities and equipment to the FSMC in the same condition as received when the SFA uses the facilities for extra-curricular activities.
15. The SFA shall be responsible for removing and garbage resulting from food service operation after the FSMC's employees have placed it in the assigned containers furnished by the SFA for such purposes.
16. The SFA shall furnish at its expense, space, light, heat, power, hot and cold water, and other utilities as necessary for the operation of the food service program. Indirect cost, if charged, is the responsibility of the SFA.
17. The SFA will notify the FSMC immediately of any interruption in utility service except in case of emergency, for necessary repairs, or for the improvement of service.

18. The SFA must give prior approval and final authority for the purchases of equipment used for storage, preparation or delivery of school meals.
19. The FSMC shall surrender to the SFA upon termination of the contract all equipment and furnishings belonging to the SFA in good repair and condition. Any approved FSMC equipment purchase made for the SFA with a lease to purchase contract may be purchased by the SFA by paying the outstanding balance. If the SFA chooses not to purchase the item(s), the FSMC shall reimburse the SFA the cost of the purchase less normal depreciation.
20. The SFA, on the termination or expiration of the contract, shall conduct a physical inventory of all equipment.

Employees

1. The FSMC shall be responsible for supervising and training personnel, including SFA employed staff. Supervision activities include employee and labor relations, personnel development, and the hiring and termination of FSMC staff including the site director. The SFA shall be responsible for the hiring and termination of SFA employed staff. Supervision will be the responsibility of the FSMC site director. Issues with SFA employed staff should be discussed with the SFA's Child Nutrition Manager.
2. The FSMC shall instruct its employees to abide by the policies, rules, and regulations, with respect to use of the SFA's premises, as established by the SFA and furnished in writing to the FSMC.
3. The FSMC shall provide worker's compensation coverage and unemployment insurance for its employees.
4. The FSMC shall maintain its own personnel and fringe benefit policies for its employees, subject to review by the SFA.
5. The FSMC and the SFA shall mutually agree upon staffing patterns for all serving sites. If the FSMC is obligated by the SFA to hire more than the number of employees required for efficient operation, the FSMC will not be responsible for the excess. If the SFA is obligated by the FSMC to hire more than the number of employees required for efficient operation, the FSMC will be responsible for the excess charges and may not increase the original bid cost to the accepted contracted amount.
6. The FSMC will provide the SFA with a list of its personnel policies. The SFA will provide the FSMC with a list of its personnel policies. Food service employees will be expected to follow each set of policies.
7. The SFA may request the removal of any employee who violates any federal, state or local policy.
8. In the event of the removal or suspension of any employee, the FSMC shall immediately restructure its staff without disruption in service.
9. All food service personnel shall be instructed in the use of all emergency valves, switches, fire and safety devices in the kitchen and cafeteria areas.

USDA Donated Food

1. The bid rate per meal must be calculated as if no donated foods are available.
2. The FSMC must credit the SFA for the value of all donated foods received for use in the SFA's meal service in the school year (both entitlement and bonus foods), including the value of donated foods contained in processed end-products, in accordance with the contingencies in 250.51(a).
3. Crediting may be done monthly or annually as determined by the SFA.
4. The SFA reserves the right to conduct donated food credit audits to ensure compliance with federal regulations. 7 C.F.R. § 210, 7 C.F.R. § 250.
5. The method of determining the donated food values to be used in crediting, in accordance with 7 C.F.R. § 250.51(c), or the actual donated food values established by the Department of Human Services (DHS) Commodity Distribution.

6. Any activities relating to donated foods that the food service management company will be responsible for must be in accordance with 7 C.F.R. § 250.50(d).
7. The FSMC assures that any activities involving USDA Donated Foods will be performed in accordance with the applicable requirements in 7 C.F.R. § 250.
8. The FSMC will use all donated ground beef and ground pork products, and all processed end-products, in the recipient agency's food service.
9. The 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 the recipient agency's food service.
10. The SFA shall ensure that all federally donated foods received by the SFA and made available to the FSMC shall only be used to the benefit the SFA's nonprofit child nutrition program. 7 C.F.R. § 210.16(a)(6).
11. The SFA and the FSMC shall agree on the end-products to be produced from USDA Donated Foods during the time of this contract. If the SFA chooses not to pursue processing, the FSMC will utilize the donated foods in the form received. The FSMC may not enter into a processing agreement utilizing USDA Donated Foods on behalf of the SFA as required in subpart C of 7 C.F.R. § part 250.
12. The FSMC will comply with the storage and inventory requirements for all donated foods. 7 C.F.R. § 250.52.
13. The FSMC will ensure that its system of inventory management will not result in the recipient agency being charged for donated foods.
14. The FSMC shall indicate the frequency and type of discounts, rebates and credits that will be represented on invoices: Net off Invoice (NOI), Fixed Fee Service (FFS), Direct Discount, or Rebate System
15. The FSMC and the SFA agree to comply with federal regulations 7 C.F.R. § Part 250, Section 250.12(b)(3) which states that SFAs have and reserve the right to assert claims against other persons to whom donated foods are delivered for care, handling, and distribution. Section 250.12(b)(4) states that the SFA will take action to obtain restitution in connection with claims for improper distribution, use, or loss or damage to donated foods. 7 C.F.R. § 250.12(b)(3) and (b)(4).
16. The FSMC must accept liability for any negligence on their part that results in any loss, damage, out of condition or improper use of donated foods, and shall credit the SFA the value of the donated foods.
17. The SFA shall be legally responsible for any loss of federally donated food that may arise due to equipment malfunctions or loss of electrical power not within the control of the FSMC.
18. The FSMC shall have records maintained and available to substantiate the receipt, use, storage, and inventory compliance of USDA Donated Foods in accordance with 250.54(b). The FSMC must submit to the SFA monthly inventory reports showing all transactions for processed and non-processed donated foods.
19. The FSMC will use all donated meat products in the SFA's food service, or will substitute commercially purchased foods of the same generic identity of U.S. origin, and of equal or better quality than the donated foods. 7 C.F.R. § 250.33, 7 C.F.R. § 250.34(a).
20. Renewal of the FSMC's contract is contingent on the fulfillment of all provisions related to USDA Donated foods.
21. The FSMC assures that the procurement of products on behalf of the SFA will ensure compliance with the requirements in subpart C of 7 C.F.R. § part 250 and with the State Agency or the SFA processing agreements, and will ensure crediting of the SFA for the value of donated foods contained in such frequency at the processing agreement value.
22. The State Agency, the SFA, the Comptroller General, the United States Department of Agriculture, or their duly authorized representative, may perform on-site reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of all donated foods.

23. The FSMC assures that the responsibility of all donated foods will be performed in accordance with 250.50(d) and all other applicable requirements in 7 C.F.R. § part 250.
24. The FSMC will ensure that its system of inventory management will not result in the SFA being charged for donated foods.
25. Disposition of donated foods and credit reconciliation upon termination of the contract. When a contract terminates, and is not extended or renewed, the FSMC must return all unused donated ground beef, ground pork, and processed end-products, and must, at the recipient agency's discretion, return other unused donated foods. The recipient agency must ensure that the FSMC has credited it for the value of all donated foods received for use in the recipient agency's meal service in a school year or fiscal year, as applicable. 7 C.F.R. § 250.52(c).

Contract Provisions for Non-Federal entity Contracts Under Federal Awards

1. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3148) as supplemented by the Department of Labor regulations (29 C.F.R. § Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contract must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by the Department of Labor regulations (29 C.F.R. § Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
2. **Contract Work Hours and Safety Standards Act 40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by the Department of Labor Regulations (29 C.F.R. § Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute

the wages of every mechanic and laborer based on a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided the worker's compensation is not less than one and half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

3. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of "funding agreement" under 37 C.F.R. § § 401.2(a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub-recipient must comply with the requirements of 37 C.F.R. § 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Contract Agreements," and any implementing regulations issued by the awarding agency.
4. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and sub grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardee to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

5. **Equal Employment Opportunity.** Except as otherwise provided under 41 C.F.R. § Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. § Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 F.R. 12319 and 12935; 3 C.F.R. Parts 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor”.
6. **Debarment and Suspension (Executive Orders 12549 and 12689)** - A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders 12549 (3 C.F.R. § part 1986 Comp., p. 189) and 12689 (3 C.F.R. § part 19890 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. [Page 35](#)
7. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** – Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not given Federal appropriated funds to any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. [Page 37](#)

Licenses and Taxes

1. The 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 all FSMC employees; the FSMC shall hold the SFA harmless for all claims arising from payment of such taxes and fees.
2. The FSMC shall obtain and post all licenses and permits as required by federal, state, and/or local law.
3. The FSMC shall comply with all SFA building rules and regulations.

Insurance

1. The SFA shall be named as additional insured on General Liability, Automobile, and Excess Umbrella.
2. The contract of insurance shall provide for notice to the SFA of cancellation of insurance policies 30 days before such cancellation is to take effect.

Meal Patterns K-12

Meal pattern	Breakfast meal pattern			Lunch meal pattern		
	Grades K-5 ^a	Grades 6-8 ^a	Grades 9-12 ^a	Grades K-5	Grades 6-8	Grades 9-12
Amount of food ^b per week (minimum per day)						
Fruits (cups) ^{c,d}	5 (1) ^e	5 (1) ^e	5 (1) ^e	2½ (½)	2½ (½)	5 (1)
Vegetables (cups) ^{c,d}	0	0	0	3¾ (¾)	3¾ (¾)	5 (1)
Dark green ^f	0	0	0	½	½	½
Red/Orange ^f	0	0	0	¾	¾	1¼
Beans/Peas (Legumes) ^f	0	0	0	½	½	½
Starchy ^f	0	0	0	½	½	½
Other ^{f,g}	0	0	0	½	½	¾
Additional Veg to Reach Total ^h	0	0	0	1	1	1½
Grains (oz eq) ⁱ	7-10 (1) ^j	8-10 (1) ^j	9-10 (1) ^j	8-9 (1)	8-10 (1)	10-12 (2)
Meats/Meat Alternates (oz eq)	0 ^k	0 ^k	0 ^k	8-10 (1)	9-10 (1)	10-12 (2)
Fluid milk (cups) ^l	5 (1)	5 (1)	5 (1)	5 (1)	5 (1)	5 (1)
Other Specifications: Daily Amount Based on the Average for a 5-Day Week						
Min-max calories (kcal) ^{m,n,o}	350-500	400-550	450-600	550-650	600-700	750-850
Saturated fat % of total calories ^{n,o}	< 10	< 10	< 10	< 10	< 10	< 10
Sodium (mg) ^{n,p}	≤ 430	≤ 470	≤ 500	≤ 640	≤ 710	≤ 740
Trans fat ^{n,o}	Nutrition label or manufacturer specifications must indicate zero grams of <i>trans</i> fat per serving.					

SODIUM TARGETS 1 & 2 (average for a 5 day week)

	Breakfast Meal Pattern			Lunch Meal Pattern		
	K-5	6-8	9-12	K-5	6-8	9-12
Target 1	≤ 540	≤ 600	≤ 640	≤ 1230	≤ 1360	≤ 1420
Target 2	≤ 485	≤ 535	≤ 570	≤ 935	≤ 1035	≤ 1080

Sodium Target 2 is in effect beginning SY 20-21

^a In the SBP, the above age-grade groups are required beginning July 1, 2013 (SY 2013-14). In SY 2012-2013 only, schools may continue to use the meal pattern for grades K-12 (see § 220.23).

^b Food items included in each food group and subgroup and amount equivalents. Minimum creditable serving is ½ cup.

^c One quarter-cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.

^d For breakfast, vegetables may be substituted for fruits, but the first two cups per week of any such substitution must be from the dark green, red/orange, beans and peas (legumes) or "Other vegetables" subgroups as defined in § 210.10(c)(2)(iii).

^e The fruit quantity requirement for the SBP (5 cups/week and a minimum of 1 cup/day) is effective July 1, 2014 (SY 2014-2015).

^f Larger amounts of these vegetables may be served.

^g This category consists of "Other vegetables" as defined in § 210.10(c)(2)(iii)(E). For the purposes of the NSLP, "Other vegetables" requirement may be met with any additional amounts from the dark green, red/orange, and beans/peas (legumes) vegetable subgroups as defined in § 210.10(c)(2)(iii).

^h Any vegetable subgroup may be offered to meet the total weekly vegetable requirement.

ⁱ At least half of the grains offered must be whole grain-rich in the NSLP beginning July 1, 2012 (SY 2012-2013), and in the SBP beginning July 1, 2013 (SY 2013-2014). All grains must be whole grain-rich in both the NSLP and the SBP beginning July 1, 2014 (SY 2014-15).

^j In the SBP, the grain ranges must be offered beginning July 1, 2013 (SY 2013-2014).

^k There is no separate meat/meat alternate component in the SBP. Beginning July 1, 2013 (SY 2013-2014), schools may substitute 1 oz. eq. of meat/meat alternate for 1 oz. eq. of grains after the minimum daily grains requirement is met.

^l Fluid milk must be low-fat (1 percent milk fat or less, unflavored) or fat-free (unflavored or flavored).

^m The average daily amount of calories for a 5-day school week must be within the range (at least the minimum and no more than the maximum values).

ⁿ Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, *trans* fat, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent milk fat are not allowed.

^o In the SBP, calories and *trans* fat specifications take effect beginning July 1, 2013 (SY 2013-2014).

^p Final sodium specifications are to be reached by SY 2022-2023 or July 1, 2022. Intermediate sodium specifications are established for SY 2014-2015 and 2017-2018. See required intermediate specifications in § 210.10(f)(3) for lunches and § 220.8(f)(3) for breakfasts.

Afterschool Snack Requirements for grades PK through 12.

Meal Components¹		Pre-K	K-12
Milk	Fluid milk	4 fl oz (1/2 cup)	8 fl oz (1 cup)
Vegetables or Fruit ^{2, 9}	Juice ^{2, 9} , fruit, and/or vegetable	1/2 cup	3/4 cup
Grains/Breads ^{3, 4} (Select one)	Bread	1/2 slice	1 slice
	Cornbread/biscuit/roll/muffin	1/2 serving	1 serving
	Cold dry cereal ⁴	1/3 cup or 1/2 oz	3/4 cup or 1 oz
	Cooked cereal grains	1/4 cup	1/2 cup
	Pasta/noodles	1/4 cup	1/2 cup
Meats/Meat Alternates ^{5, 6, 7} (Select one)	Meat/poultry/fish ⁵	1/2 oz	1 oz
	Alternate protein products ⁶	1/2 oz	1 oz
	Cheese	1/2 oz	1 oz
	Egg (large)	1/2 large egg	1/2 large egg
	Cooked dry beans/peas	1/8 cup	1/4 cup
	Peanut/other nut/seed butters	1 Tbsp	2 Tbsp
	Nuts and/or seeds ⁷	1/2 oz ⁷	1 oz
	Yogurt ⁸	2 oz (1/4 cup)	4 oz (1/2 cup)

Snacks served through the NSLP Afterschool Snack Service must include full servings of two of any of the above four food components.

- ¹ Children age 12 and older may be served larger portions based on their greater food needs. They may not be served less than the minimum quantities listed in this column.
- ² Full-strength vegetable or fruit juice may count towards the entire vegetables or fruit component.
- ³ Grains/Breads must be whole grain or enriched, or made from whole grain or enriched flour or meal that may include bran and/or germ. Cereal must be whole grain, enriched, or fortified.
- ⁴ Either volume (cup) or weight (oz), whichever is less.
- ⁵ A serving consists of the edible portion of cooked lean meat or poultry or fish.
- ⁶ Alternate protein products must meet requirements in Appendix A of 7 C.F.R. § Part 210.
- ⁷ Nuts and seeds are generally not recommended to be served to children ages 1-3 since they present a choking hazard. If served, nuts and seeds should be finely minced.
- ⁸ Yogurt may be plain or flavored, unsweetened or sweetened – commercially prepared.
- ⁹ Juice may not be served at snack when milk is served as the only other component.

PRESCHOOL BREAKFAST MEAL PATTERN

Breakfast (Select all three components for a reimbursable meal)		
Food Components and Food Items¹	Ages 1-2	Ages 3-5
Fluid Milk³	4 fluid ounces	6 fluid ounces
Vegetables, fruits, or portions of both⁴	¼ cup	½ cup
Grains (oz eq)^{5,6,7}		
Whole grain-rich or enriched bread	½ slice	½ slice
Whole grain-rich or enriched bread product, such as biscuit, roll or muffin	½ serving	½ serving
Whole grain-rich, enriched or fortified cooked breakfast cereal ⁸ , cereal grain, and/or pasta	¼ cup	¼ cup
Whole grain-rich, enriched or fortified ready-to-eat breakfast cereal (dry, cold) ^{8,9}		
Flakes or rounds	½ cup	½ cup
Puffed cereal	¾ cup	¾ cup
Granola	⅓ cup	⅓ cup

¹ Must serve all three components for a reimbursable meal.

² Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored low-fat (1 percent), unflavored fat-free (skim), or flavored fat-free (skim) milk for children six years old and older.

⁴ Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

⁵ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards meeting the grains requirement.

⁶ Meat and meat alternates may be used to meet the entire grains requirement a maximum of three times a week. One ounce of meat and meat alternates is equal to one ounce equivalent of grains.

⁷ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of creditable grains.

⁸ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

⁹ Beginning October 1, 2019, the minimum serving size specified in this section for ready-to-eat breakfast cereals must be served. Until October 1, 2019, the minimum serving size for any type of ready-to-eat breakfast cereals is ¼ cup for children ages 1-2; 1/3 cup for children ages 3-5; and ¾ cup for children ages 6-12.

PRESCHOOL LUNCH MEAL PATTERN

Lunch (Select all five components for a reimbursable meal)		
Food Components and Food Items¹	Ages 1-2	Ages 3-5
Fluid Milk³	4 fluid ounces	6 fluid ounces
Meat/meat alternates		
Lean meat, poultry, or fish	1 ounce	1 ½ ounce
Tofu, soy product, or alternate protein products ⁴	1 ounce	1 ½ ounce
Cheese	1 ounce	1 ½ ounce
Large egg	½	¾
Cooked dry beans or peas	¼ cup	⅓ cup
Peanut butter or soy nut butter or other nut or seed butters	2 tbsp	3 tbsp
Yogurt, plain or flavored unsweetened or sweetened ⁵	4 ounces or ½ cup	6 ounces or ¾ cup
The following may be used to meet no more than 50% of the requirement: Peanuts, soy nuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternates (1 ounces of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish)	½ ounce = 50%	¾ ounce = 50%
Vegetables⁶	⅓ cup	¼ cup
Fruits^{6,7}	⅓ cup	¼ cup
Grains (oz eq)^{8,9}		
Whole grain-rich or enriched bread	½ slice	½ slice
Whole grain-rich or enriched bread product, such as biscuit, roll or muffin	½ serving	½ serving
Whole grain-rich, enriched or fortified cooked breakfast cereal ¹⁰ , cereal grain, and/or pasta	¼ cup	¼ cup

¹Must serve all five components for a reimbursable meal.

² Must be unflavored whole milk for children age one. Must be unflavored low-fat (1 percent) or unflavored fat-free (skim) milk for children two through five years old. Must be unflavored low-fat (1 percent), unflavored fat-free (skim), or flavored fat-free (skim) milk for children six years old and older.

³ Alternate protein products must meet the requirements in Appendix A to Part 226.

⁴ Yogurt must contain no more than 23 grams of total sugars per 6 ounces.

⁵ Pasteurized full-strength juice may only be used to meet the vegetable or fruit requirement at one meal, including snack, per day.

⁶ A vegetable may be used to meet the entire fruit requirement. When two vegetables are served at lunch or supper, two different kinds of vegetables must be served.

⁷ At least one serving per day, across all eating occasions, must be whole grain-rich. Grain-based desserts do not count towards the grains requirement.

⁸ Beginning October 1, 2019, ounce equivalents are used to determine the quantity of the creditable grain.

⁹ Breakfast cereals must contain no more than 6 grams of sugar per dry ounce (no more than 21.2 grams sucrose and other sugars per 100 grams of dry cereal).

Any changes in meal pattern made by the United States Department of Agriculture (USDA) will become part of the contract based on the effective date provided by USDA.

Food Quality and Specifications

1. No payment is to be made for meals that are all or unwholesome at time of delivery, do not meet detailed specifications as developed by the school food authority for each food component specified in 7 C.F.R. § 210.10, or do not otherwise meet the requirements of the contract. Specifications shall cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time. 7 C.F.R. § 210.16(c)(3).
2. Purchased products will follow the Grade and Quality Specifications; i.e., grade, purchase units, style, condition, weight, ingredients, formulations and delivery times, as outlined by the SFA and agreed to by the FSMC in procuring food components. 7 C.F.R. § 210.16(c)(3).

Minimum Food Specifications

All Food Specifications must meet requirements of the United States Department of Agriculture (USDA)'s Food Buying Guide. The Food Buying Guide is found at <https://foodbuyingguide.fns.usda.gov/>. The Food Buying Guide should be checked periodically for changes and additions. **Food specifications must be changed annually to comply with implementation of new USDA menu guidance.**

- A. Meats – All meats, meat products, poultry, 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
 - 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
- B. 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
- C. 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, water, or natural juices)
 - Frozen fruits and vegetables shall be U.S. Grade A Choice or better
- D. Baked Products
 - Bread, rolls, cookies, pies, cakes and puddings whether prepared and baked on premises or purchased must be of USDA quality level that meets breakfast, lunch, Seamless Summer Option, or Afterschool Snack requirements, as applicable.
- E. Staple Groceries
 - Must meet quality levels as previously stated.

Arkansas Nutrition Standards

Food Service Management Companies must adhere to both USDA regulations and the most recent Arkansas Nutrition Standards and Regulations for all menus, ala carte, and foods available on the school campus during the school day.

http://dese.ade.arkansas.gov/public/userfiles/Legal/Legal-Current%20Rules/2020/FINAL_Nutrition_and_Physical_Activity.pdf

USDA Nutrition Standards

<https://www.fns.usda.gov/school-meals/nutrition-standards-school-meals>

Smart Snacks in Schools

<https://www.fns.usda.gov/school-meals/smart-snacks-school>
<http://foodplanner.healthiergeneration.org/calculator/>

Proprietary Rights

During the term of the contract, the FSMC may grant to the SFA a nonexclusive right to access certain proprietary materials of the FSMC including menus, recipes, signage, food service surveys and studies, management guidelines and procedures, operating manuals, software owned by and licensed by the FSMC, and other confidential information regularly used in the FSMC's business operations (trade secrets). The SFA shall not disclose any of the FSMC's trade secrets during or after the term of the contract, except as may be required by state or federal law. All trade secrets shall remain the exclusive property of the FSMC and shall be returned to the FSMC immediately upon termination of the contract. The SFA shall not use any similar names, marks, systems, insignia, symbols, procedures, and methods.

Buy American

All purchases made on behalf of the SFA must follow the guidelines established in the "Buy American" Clause. Any product purchased that does not meet the requirements must be documented and a justification form completed. The required form may be found on the CNU website: <http://dese.ade.arkansas.gov/divisions/child-nutrition-unit/forms>. Forms must be filed in the procurement documentation. 7 C.F.R. § Part 210.21(d).

Geographic Preference

The SFA may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. The school food authority has the discretion to determine the local area to which the geographic preference option will be applied.

The FSMC, as the agent of the SFA, will promote, encourage and increase participation in the Arkansas Grown Program using Arkansas grown/locally grown products to the maximum extent practicable, including but not limited to, fruits, vegetables, protein and dairy products, whenever possible, and when purchased by the SFA directly, such fruits, vegetables, protein and dairy products must be used by the FSMC in the SFA's Food Service Program. Arkansas Code §15-4-3802 as amended by ACT 796 of 2019

The FSMC is encouraged to participate and facilitate involvement and participation in the Arkansas Farm to School Program in an effort to connect schools (K-12) with Arkansas local farms in order to serve healthy meals using locally-produced foods, and participate in relevant state education and marketing initiatives that support farm to school. The FSMC is encouraged to track for the purpose of reporting the use of Arkansas grown products. Arkansas Code §15-4-3802 as amended by ACT 796 of 2019

Summer Food Service Program (SFSP) through the Department of Human Services (DHS) and/or Child and Adult Care Food Program (CACFP) through the Department of Human Services (DHS) Afterschool Meal Program

Supper Feeding Programs (CACFP) and Summer Feeding Programs (SFSP) are programs administered through the Department of Human Services. The Arkansas Department of Education Child Nutrition Unit does not administer these programs. If the SFA chooses to participate in either or both of these feeding programs offered through the Department of Human Services (DHS), both parties must follow the rules and regulations of the program. Contact DHS for specific information.

If the SFA chooses to operate the SFSP program, then the following requirements must be met.

1. FSMCs shall obtain bid bonds and performance bonds only from surety companies listed in the current Department of Treasury Circular 570. No sponsor or State Agency shall allow FSMCs to post any ALTERNATIVE forms of bid performance bonds, including but not limited to, cash, certified checks, letters of credit, or escrow accounts. 7 C.F.R. § 225.15(m)(5-7).
2. Each FSMC which submits a proposal over \$100,000 shall obtain a bid bond in an amount not less than 5 percent nor more than 10 percent, as determined by the sponsor of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid. 7 C.F.R. § 225.15(m)(5-7).

Term and Termination

1. Termination for Cause and Convenience

The SFA or the FSMC may terminate the contract for cause by giving 60 days written notice. At any time because of circumstances beyond the control of the SFA as well as the FSMC, the contract may be terminated with 30 days written notice to the other party.

2. Termination for Nonperformance by the FSMC

In the event of the FSMC's nonperformance under this contract and/or the violation or breach of the contract terms, the SFA shall have the right to pursue all administrative, contractual and legal remedies against the FSMC and shall have the right to seek all sanctions and penalties as may be appropriate. The FSMC shall pay the SFA the full amount of any meal overclaims which are attributable to FSMC's negligence, including those overclaims based on review or audit findings that occurred during the effective dates of the original or any renewal contracts.

3. Termination for Material Breach

In the event either party commits a material breach, the non-breaching party may terminate this contract 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 contract. The SFA may terminate this contract for breach/neglect as determined by the SFA with written notification to the FSMC for such deficiencies as: Failure to maintain and enforce required standards of sanitation, failure to maintain proper insurance coverage as outlined by the contract, failure to provide required periodic information/statements, or failure to maintain quality of service at a level satisfactory to the SFA.

The SFA is the responsible authority without recourse to USDA or the CNU to the settlement and satisfaction of all contractual and administrative issues arising from the transactions. Such authority includes, but is not limited to: source evaluation, protest, disputes, claims, or other matters of contractual nature. Matters concerning violations of the law will be referred to a local, state or federal authority that has proper jurisdiction. 7 C.F.R. § 210.16(b)(2), 210.211(b).

Civil Rights

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](#), (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil
Rights 1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: program.intake@usda.gov.

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**UNITED STATES DEPARTMENT OF AGRICULTURE (USDA) SUSPENSION AND DEBARMENT
CERTIFICATION**

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

Non-federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 C.F.R. § part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders 12549 (3 C.F.R. § part 1986 Comp., p. 189) and 12689 (3 C.F.R. § part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, **(Before completing certification, read instructions on reverse.)**

1. The prospective lower-tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the prospective lower-tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name(s) and Title(s) of Authorized Representative(s)

Signature(s)

Date

INSTRUCTIONS FOR SUSPENSION AND DEBARMENT CERTIFICATION

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

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 the 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, or 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.

Name/Address of Organization

Name/Title of Submitting Official

Signature

Date

Contract Signature Page

The FSMC and the SFA certify that they shall operate in accordance with all applicable State and Federal regulations, that all terms and conditions within the Bid Solicitation shall be considered a part of the contract and are binding. Any misstatements in the document shall be treated as fraudulent. This agreement shall be in effect for one (1) year and may be renewed four (4) additional one-year periods.

_____ LEA

_____ FSMC

_____ Superintendent's Signature

_____ Signature

_____ School Board President Signature

_____ Title

_____ Date

_____ Date

This contract is not valid until reviewed by the Arkansas Department of Education, Division of Elementary and Secondary Education, Child Nutrition Unit. The FSMC is not authorized to begin performance until the contract letter of approval has been received by the SFA. The SFA may not use child nutrition funds to pay the FSMC until official approval letter of approval is received.