

# Ohio Department of Education Sample Food Service Management Company Request for Proposal/ Contract Cost Reimbursable

This Request for Proposal (RFP) which is also referred to as the "sample contract" is provided by the Ohio Department of Education, Office for Child Nutrition (ODE, OCN) and is for use by school food authorities (SFAs) initiating a cost reimbursable contract with a food service management company (FSMC). In accordance with 7 CFR 210.16, any changes made by the SFA or a FSMC to this prototype contract must be approved in writing by the ODE, OCN before the contract is executed. To comply with this requirement, the SFA must submit this contract to ODE, OCN after the SFA completes the necessary sections of this sample contract. After ODE, OCN reviews and approves the submitted sample contract; the SFA may release the contract for soliciting purposes.

In accordance with 7 CFR 210.19, all costs resulting from contracts that do not meet the requirements of Part 210 are unallowable nonprofit school food service account expenses. When the SFA fails to incorporate ODE, OCN required changes to solicitation or contract documents, all costs resulting from the subsequent contract award are unallowable charges to the nonprofit school food service account.

The SFA must submit all procurement documents as specified in General Information Part D of this contract to the ODE, OCN for review and approval prior to executing the contract.

7 CFR 210.19 requires ODE, OCN to annually review each contract between any SFA and FSMC to ensure compliance with program regulations. Regulations require the ODE, OCN to review renewal year contract amendment documentation before execution.

Contracts between a SFA and FSMC shall be duration of no longer than one year and options for yearly renewal not to exceed four additional years.

ODE, OCN is not a party to any contractual relationship between the SFA and a FSMC. ODE, OCN is not obligated, liable or responsible for any action or inaction taken by the SFA or selected FSMC based on this prototype contract. ODE, OCN's review of the contract is limited to assuring compliance with Federal and State procurement requirements. The ODE, OCN does not review or judge the fairness, advisability, efficiency, or fiscal implications of the contract.

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

For purposes of this sample contract, the following definitions in 7 CFR 210.2 apply:

**Applicable credits** shall have the meaning established in Office of Management and Budget Circulars A-87, C(4) and A-122, Attachment A, A(5), respectively. For availability of OMB circulars referenced in this definition see 5 CFR 1310.3.

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

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

**Fixed fee** means an agreed upon amount that is fixed at the inception of the contract. In a cost reimbursable contract, the fixed fee includes the contractor's direct and indirect administrative costs and profit allocable to the contract.

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

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## Instructions for Completing the FSMC Cost Reimbursable Contract

**The SFA will indicate all of the information listed below unless otherwise indicated.**

Page 6, Item A:	Insert the name of the school SFA.
Page 6, Item D:	Insert date, time, and place of pre-proposal meeting. Indicate if attendance is required or optional. Indicate if vendor presentations will or will not be scheduled at this time.
Page 7, Item E.6:	Complete address where proposal must be submitted.
Page 7, Item E.7:	Insert time and date for final acceptance of proposal.
Page 7, Item E.12:	Insert name and telephone number of contact person.
Page 8, Section I, Item A:	Insert beginning date and ending date: (Not to exceed one year).
Page 8, Section I, Item B:	Check all programs that apply.
Page 10, Section 6, Item B:	Insert the number of days in which the school food authority (SFA) will make payment on the monthly invoices. Complete the escalator choice and the award criteria.
Pages 11-12, Section II, Item B:	This section designates the program expenses to be incurred by the FSMC and the SFA.
Page 16, Section IX Item A:	Check the box that applies. This information must agree with the information recorded on Attachments A and B.
Page 17, Section XI, Item B:	Check the box that applies.
Page 19, Section XVIII:	Insert the number of days of written notice for termination by either party (must not exceed 60 days).
Page 19, Section XIX, Item C:	Insert the number of days of written notice for material breach.
Pages 21-22, Section XXII, Items B-E:	Insert the amount of each type of insurance coverage desired.
Page 22, Section XXIII, Items A.1 and A.2:	Read through each option, and mark as desired
Pages 22-23, Section XXIII, Item D:	Complete the projected number of feeding days (second to last bullet).

Page 24, Section XXV, Items B.1 and B.2:

(Complete only if proposal/proposal includes the Summer Food Service Program (SFSP) and the SFSP will exceed \$150,000.) Insert the required amount of the performance bond. Mark through entire item if SFA does not participate in the SFSP.

Pages 25-29:

Self-explanatory

Page 30:

Once proposal is awarded/accepted, the SFA and the FSMC must sign and date in the presence of witnesses. This document now becomes the contract to which the SFA and the FSMC must abide. Once signed and dated, a copy must be mailed to the following:

The Ohio Department of Education  
Office for Child Nutrition  
School Meals Section  
25 S. Front St. Mail Stop 303  
Columbus, OH 43215

NOTE: If this document is used in full, an additional contract is not needed.

If this document is being utilized as a Request for Proposal only, the SA must receive both documents.

**NOTE: If this document is used in full, an additional contract is not needed.**

**If this document is being utilized as a Request for Proposal only, ODE, OCN must receive both documents.**

Pages 31-57:

Self-explanatory

**Prohibited Items:**

1. No firm, corporation, or individual shall blacklist or require a letter of relinquishment or publish or cause to be published or blacklisted any employee, mechanic, or laborer, discharged from or voluntarily leaving the service of such company, corporation, or individual, with intent and for the purpose of preventing such employee, mechanic, or laborer from engaging in or securing similar or other employment from any other corporation, company, or individual.
2. FSMCs may not require any additional liability coverage, regardless of dollar value, beyond that which the SFA would require under procurements not involving a FSMC. This prohibition would be effective in any situation where the SFA conducts its own procurement or where the FSMC procures products on behalf of the SFA. Reference FNS Instruction 1998-SP-25.

## General Information

### A. Intent

This solicitation is for the purpose of entering into a contract for the operation of a food service program for Mahoning County Career and Technical Center, hereinafter referred to as the **School Food Authority (SFA)**.

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

B. Procurement shall be executed through proposal submission. All procurement transactions shall be conducted in a manner that provides maximum open and free competition consistent with 7 CFR 3016. The SFA must share with prospective proposers/offerors sufficient information to make this a meaningful RFP, including monthly claim reimbursements from the previous year and catering activities. **Please note:** catering activities are outside of the fee structure of this contract.

C. The SFA shall provide the RFP at least 10 working days prior to the pre-proposal meeting.

### D. Pre-proposal Meeting

A meeting with interested proposers/offerors to review the specifications, to clarify any questions, and for a walk-through of the facilities with school officials will be on April 12th, 2016 at 10:30am.

Location: MCCTC, attendance is **required**. Vendor presentations may or may not be scheduled at this time. Pre-proposal meetings need to take place during normal food service operation hours in order to provide contractors the optimal information needed to make a competitive proposal.

1. **Pre-Proposal Conference:** All FSMCs that intend to respond to this RFP are highly encouraged to attend the Pre-Proposal Conference.
2. **Questions For Pre-Proposal Conference:** Submit in writing questions regarding the RFP by 12 PM Noon CST on April 11, 2016 to Blaise Karlovic via 330-729-4050 or [blaise.karlovic@mahoningctc.com](mailto:blaise.karlovic@mahoningctc.com). SFA will acknowledge receipt of questions no later than 1:00 PM EST on April 11, 2016.
  - a. Questions submitted prior to the Pre-Proposal Conference will be answered at the Pre-Proposal Conference.
  - b. Questions from the floor at the Pre-Proposal Conference must also be presented in writing. These questions may or may not be answered at the Pre-Proposal Conference.
  - c. All questions will be answered in writing after the meeting and sent to all individuals that signed in at the Pre-Proposal Conference.
3. **Written communication** will override any verbal communication that takes place during the process between any FSMC and School.

### E. Proposal/Proposal Submission and Award

1. This sample contract is provided by the Ohio Department of Education, Office for Child Nutrition (hereinafter referred to as the ODE, OCN) for use by school food authorities (SFAs) initiating a cost reimbursable contract with a food service management company (FSMC). In accordance with 7 CFR 210.16, any changes made by the SFA or offeror to this prototype contract must be approved in writing by ODE, OCN before the contract is executed. In accordance with 7 CFR 210.19, all costs resulting from contracts that do not meet the requirements of Part 210 are unallowable nonprofit school food service account expenses. When the SFA fails to incorporate ODE, OCN required changes to solicitation or contract documents, all costs resulting from the subsequent contract award are unallowable charges to the nonprofit school food service account.

2. The SFA must submit the following procurement documents to the ODE, OCN and allow at least 15 business days for review and approval prior to executing the contract:
  - A. newspaper advertisement with date of publication;
  - B. list of proposers/offerors that received the solicitation/contract documents and all addenda issued (include date mailed/delivered);
  - C. a list of proposers/offerors in attendance at the pre-proposal meeting along with a written copy of all questions with answers posed from the meeting (provided to all potential proposers/offerors);
  - D. correspondence from proposers/offerors opting not to submit a proposal (or phone call documentation)
  - E. the sample contract, addendum requests, and attachments completed including the Proposal Criteria Analysis (developed by the SFA based on the Award Criteria on page 10). After written notification from the ODE, OCN that the SFA may proceed with the award, the SFA must provide an executed contract to the ODE, OCN.
3. 7 CFR 210.19 requires the ODE, OCN to annually review each contract between any SFA and FSMC to ensure compliance with program regulations. Regulations require the ODE, OCN's approval of each contract and renewal year amendment before the contract is executed.
4. Contracts between a SFA and FSMC shall be of duration no longer than one year with the option for yearly renewal not to exceed four additional years. The ODE, OCN is not a party to any contractual relationship between a SFA and a FSMC. The ODE, OCN is not obligated, liable, or responsible for any action or inaction taken by a SFA or FSMC based on this sample contract. The ODE, OCN's review of the contract is limited to assuring compliance with federal and state procurement requirements. The ODE, OCN does not review or judge the fairness, advisability, efficiency of fiscal implications of the contract.
5. The ODE, OCN is not a party to any contractual relationship between a SFA and a FSMC. The ODE, OCN is not obligated, liable, or responsible for any action or inaction taken by a SFA or FSMC based on this sample contract.
6. Proposals are to be submitted by 12:00pm eastern time on April 18th, 2016 to:

Name of Agency: Mahoning County Career and Technical Center  
Mailing Address: 7300 N. Palmyra Road  
Physical Address: Same as above  
City: Canfield  
State/Zip: Ohio, 44406
7. Proposals will not be accepted after this time. Proposal is to be submitted in an envelope marked **Food Service Management Proposal**. The SFA reserves the right to retain all proposals for a period of at least sixty (60) days.
8. Public opening will be at 12:00pm (EST) on April 18, 2016.
9. The SFA reserves the right to reject any or all proposals/proposals if deemed to be in the best interest of the SFA.
10. To be considered, each proposer/offeror must submit a complete response to this solicitation **using the forms provided**. No other documents submitted with the contract will affect the contract provisions, and there may be no modification to the contract language.
11. Award shall be made to the qualified and responsible proposer/offeror whose proposal/proposal is responsive to this solicitation. A responsible proposer/offeror is one whose financial, technical, and other resources indicate an ability to perform the services required by this solicitation.

12. Proposalders/offers or their authorized representatives are expected to fully inform themselves as to the conditions, requirements and specifications before submitting proposals/proposals; failure to do so will be at the proposer's/offers's own risk, and he or she cannot secure relief on the plea of error. The SFA is not liable for any cost incurred by the proposer/offers prior to the signing of a contract by all parties. Paying the FSMC from the Child Nutrition Program (CNP) funds is prohibited until the contract is signed.

If additional information is required, please contact (name of contact) Blaise Karlovic at 330-729-4111.

F. Late Proposals

1. Any proposal after the exact time specified for receipt in section E. Proposal Submission and Award will not be considered.

G. Awarded Contract

After the complete RFP/contract is approved by ODE, OCN, the contract must be signed by all local parties upon award. Changes or amendments are not valid unless approved in writing by ODE, OCN prior to contract execution.

## Standard Terms and Conditions

### I. Scope and Purpose

- A. **Duration of Contract.** This contract shall be for a period of up to one year, beginning on July 1, 2016, and ending on June 30, 2017, with up to four 1-year renewals with mutual agreement between the SFA and the FSMC. The effective date may not occur prior to the date on which the contract is signed.
- B. The FSMC shall operate in conformance with the SFAs Permanent Agreement/Policy Statement with ODE, OCN.

The SFA must check only the program(s) that will be applicable to the awarded contract. The programs listed below shall be the same as those listed in Attachment K. If a program is added later (i.e., a breakfast program), the appropriate procurement procedures must be followed. (Reference Item B on page 7.)

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

- C. The FSMC, as an independent contractor, shall have the exclusive right to operate the above program(s) at the sites specified by the SFA in Attachment J.
- D. The FSMC shall be an independent contractor and not an employee of the SFA. The employees of the FSMC are not employees of the SFA.

- E. The food service provided shall be operated and maintained as a benefit to the SFAs students, faculty, and staff.
- F. All income accruing as a result of payments by children and adults, federal reimbursements, and all other income from sources such as donations, special functions, catering, a la carte sales, vending, concessions, contract meals, grants, and loans shall be deposited daily in the SFAs nonprofit food service account. Any profit or guaranteed return shall remain in the SFAs nonprofit food service account. The SFA and the FSMC agree that this contract is neither a *cost-plus-a-percentage-of-income* nor a *cost-plus-a-percentage-of-cost* contract as required under United States Department of Agriculture (USDA) Regulations 7 CFR 210.16(c) and 7 CFR 3016.
- G. The SFA shall be legally responsible for the conduct of the food service program and shall supervise the food service operations in such manner as will ensure compliance with the rules and regulations of the ODE, OCN and USDA regarding each of the Child Nutrition Programs(CNPs) covered by this contract.
- H. The SFA shall retain control of the CNP nonprofit food service account and overall financial responsibility for the CNP.
- I. The SFA (**select one**) is a pricing program/ non-pricing program. If the SFA is a pricing program, the SFA shall establish all selling prices, including price adjustments, for all reimbursable and non-reimbursable meals/milk and a la carte sales (including vending, adult meals, contract meals, and catering) prices.
- J. The FSMC shall provide additional food service such as banquets, parties, and refreshments for meetings as requested by the SFA. USDA Foods shall not be used for these special functions unless the SFAs students will be primary beneficiaries.

The SFA may request of the FSMC additional food service programs; however, the SFA reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after the SFAs regularly scheduled lunch or breakfast periods, provided such is not prohibited by federal program regulations.

- K. The FSMC shall cooperate with the SFA in promoting nutrition education and coordinating the SFAs food service with classroom instruction.
- L. The FSMC shall comply with the rules, regulations, policies, and instructions of ODE, OCN and USDA and any additions or amendments thereto, including USDA regulations 7 CFR Parts 210, 220, 245, 250, 3016, 3017, 3018, 3019; 7 CFR Part 225 (SFSP), if applicable.
- M. **Allowable costs:** in accordance with applicable federal regulations, for all cost reimbursable contracts:

1. 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 FSMC or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA.
2. The FSMC must separately identify each cost submitted for payment to the SFA,
  - a. 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 food service account); or
  - b. the FSMC must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records management process have been established that maintain the visibility and transparency of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification.
3. The FSMC'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.
4. The FSMC must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the SFA for payment and individually identify the amount as a discount, rebate or in case of other

applicable credits, the nature of the credit. The SFA will require the FSMC to report this information on a (**select one**) monthly, quarterly, annually basis. The FSMC 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.

5. The FSMC must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the SFA, ODE, OCN, or USDA.
6. No expenditure may be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the FSMC's actual, net allowable costs.
  - A. The FSMC shall provide staff to manage the food service operations and supervise all employees.
  - B. Procurement/Payment Terms/Method: The FSMC shall invoice SFA at the end of each month for amounts due based on on-site records. The SFA shall make payments within 30 business days of the invoiced date. Upon termination of the Agreement, all outstanding amounts shall immediately become due and payable.

Once the contract is approved by ODE, OCN, any further changes or amendments to this contract must be approved by ODE, OCN prior to execution.

The SFA must determine and receive the full value of USDA Foods; i.e., credits or reductions. The FSMC is responsible for reporting this monthly to the SFA. Adjustments will be accomplished on the (**select one**) monthly invoice from the FSMC/an annual adjustment as determined by the SFA. The method of determining the donated food values that will be used in crediting in accordance with 7 CFR 250.51(c) and as stated in section V. USDA Foods, letter D of this document, or the actual donated food values must be included in the proposal and contract documents.

Cost reimbursable contracts may be subject to an annual escalator provision as stipulated in this contract by the SFA. Adjustment factors may include changes in federal reimbursement rates, changes in third-party cost or price indexes.

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

**Annual Escalator Adjustment Factor: Negotiable**

**Award Criteria:** (The SFA may use its own criteria as long as the most heavily weighted factor is cost).

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

<b>Weight</b>	<b>Criteria</b>
30 points	Cost
15 points	Experience, References
10 points	Innovation
10 points	Involvement of Students, Staff, and Patrons
10 points	Menu and Portion Sizes if the 21-day cycle menu is developed by the FSMC. ( <b>SFA shall delete this criterion if the SFA developed the menu(s)</b> )

15 points

On-site Manager

10 points

Promotion of the School Food Service Program

**TOTAL:** 100 points

C. The FSMC shall make substitutions in the food components of the meal pattern for students with disabilities when their disability restricts their diet as stated in the students' *Individual Educational Plans (IEPs)* or 504 Plans. A licensed physician's statement must accompany any school meal accommodation requirements for students with disabilities.

Students with conditions not meeting the definition of disability but who are unable to consume regular meals because of medical or other special dietary needs will also be accommodated (or not accommodated) per the district decision. Substitutions shall be made on a case-by-case basis when supported by a statement of the need for substitutes that includes recommended alternative foods, unless otherwise exempted by USDA. Such statement shall be signed by a medical doctor or a recognized medical authority.

There will be no additional charge to the student for meals of which substitutions have been accommodated per this section of the contract.

D. The SFA will make the final determination of the opening and closing dates of all sites, if applicable.

E. Gifts from FSMC: The SFAs officers, employees, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors nor potential contractors.

F. Qualified FSMC must have at least 10 years of onsite management of school food service programs.

## ii. Designation of Program Expenses to be completed by SFA

A. The FSMC guarantees to the SFA that the FSMC shall be responsible for the expenses as checked under Column I. The FSMC shall be responsible for negotiating/paying all employee fringe benefits, employee expenses, and accrued vacation and sick pay for staff on their payroll. The FSMC shall factor these expenses into the fees that will be billed to the SFA.

B. The SFA shall pay directly for the expenses as checked under Column II. Any expenses that will be not applicable to the contract shall be marked with N/A.

DESCRIPTION	COLUMN I (FSMC)	COLUMN II (SFA)
<b>LABOR:</b>		
Managers and/or Supervisors	X	
Full and Part-time Workers		X
Monitors		X
<b>EMPLOYEE BENEFITS:</b>		
Life Insurance	X	X
Medical/Dental Insurance	X	X
Retirement Plans	X	X
Social Security	X	X
Vacation	X	X

Sick Leave	X	X
Holiday Pay	X	X
Uniforms	NA	NA
Tuition Reimbursement	NA	NA
Labor Relations	NA	NA
Unemployment Compensation	X	X
Workers Compensation	X	X
Processing and Payment of Payroll	X	X
<b>FOOD:</b>		
USDA Foods		
Handling and Processing Charges	X	
Direct Diversion Charges	X	
Commercial Distribution Charges	X	
<b>OTHER EXPENSES:</b>		
Accounting		
Bank Charges		X
Data Processing		X
Recordkeeping		X
Processing and Payment of Invoices	X	X
Equipment – Major		
Original Purchase		X
Routine Maintenance		X
Major Repairs		X
Replacement		X
Equipment-Expendable (trays, tableware, glassware, utensils)	X	X
Original Purchase		X
Replacement		X
Cleaning/Janitorial Supplies	X	X
Insurance		
Liability Insurance	X	X
Insurance on Supplies/Inventory	X	X
Laundry and Linen		X
Office Materials	X	X
Paper/Disposable Supplies	X	X
Pest Control		X
Postage	X	X
Printing	X	X
Product Testing	X	
Promotional Materials	X	
Taxes and License	X	X
Telephone	X	X
Local		X
Long Distance		X

Expenses incurred to maintain the point of service count (i.e. the cost of tickets, tokens, and/or computer point of service system)		X
Training	X	
Transportation of meals	X	X
Trash Removal		X
From Kitchen		X
From School Premises		X
Travel	X	X
Required	X	X
Requested	X	X
Utilities		X
Vehicles	X	X

III.

## Signature Authority

- A. The SFA shall retain signature authority for the application/agreement, free and reduced-price policy statement, and programs indicated in Section I, Item B on page 8 and the monthly claim for reimbursement. (Reference 7 CFR 210.9(a) and (b) and 7 CFR 210.16(a)(5))

## iv. Free and Reduced Price Meals Policy

- A. The SFA shall be responsible for the establishment and maintenance of the free and reduced price meals eligibility roster. The SFA is ultimately responsible in assuring the accuracy of the free and reduced price meals eligibility roster.
- B. The FSMC shall implement an *accurate point of service* count using the counting system submitted by the SFA in its application to participate in the Child Nutrition Program and approved by ODE, OCN in the annual contract between the SFA and ODE, OCN for the programs listed in Section I, Item B on page 8, as required under USDA regulations. Such a counting system must eliminate the potential for the overt identification of free and reduced price eligible students under USDA Regulation 7 CFR 245.8.
- C. The SFA shall be responsible for the development and distribution of the parent letter and Application for Free and Reduced Price Meals, Direct Certification and determination of eligibility for free or reduced price meals. The FSMC may act as an agent for the SFA related to these responsibilities.
- D. The SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free or reduced price meals.
- E. The SFA shall be responsible for verifying Applications for Free and Reduced Price Meals as required by USDA regulations. The FSMC may act as an agent for the SFA related to verification of applications.

## v. USDA Foods

- A. Any USDA Foods received (when the foods arrive at the school kitchen, SFA storage facility, or FSMC storage facility in either raw form or in processed end products) by the SFA and made available to the FSMC must accrue solely to the benefit of the SFAs nonprofit school food service and SFSP programs, if applicable, and shall be fully utilized therein. The FSMC shall have records available to substantiate that the full value of all USDA Foods is used solely for the benefit of the SFA.

Year-end reconciliation shall be conducted by the SFA to ensure and verify correct and proper credit has been received for the full value of all USDA Foods used by the FSMC during the fiscal year. The SFA reserves the right to conduct USDA donated food credit audits throughout the year to ensure compliance with federal regulations 7 CFR 210 and 7 CFR 250.

- B. The SFA shall retain title to all USDA Foods and the selected FSMC will conduct all activities relating to USDA Foods for which it is responsible in accordance with 7 CFR Parts 210, 220, 225, 226, and 250 as applicable.
- C. Selected FSMC is prohibited from entering into any processing contracts utilizing USDA-Foods on behalf of the SFA. Selected FSMC agrees that any procurement and/or utilization of end products by selected FSMC on behalf of the SFA will be in compliance with the requirements in subpart C of 7 CFR Part 250 and with the provisions of SFA's processing agreements.
- D. Based on actual bulk USDA Foods received, it may be necessary for the FSMC to make adjustments to the SFA at the end of the school year. The SFA is responsible for assuring adjustments are made. The SFA must receive all discounts or rebates for USDA Food purchases made on its behalf. All refunds received from processors must be retained by the nonprofit SFA account.

The FSMC must credit the SFA for the value of all USDA Foods received for use in the SFAs meal service in the school year or fiscal year (including both entitlement and bonus foods), and including the value of USDA Foods contained in processed end products, in accordance with the contingencies in 7 CFR 250.51(a). The USDA Foods will be credited using entitlement value or fair market.

The FSMC shall provide the method and frequency by which crediting will occur, and the means of documentation to be utilized to verify that the value of all USDA Foods has been credited;

The FSMC shall be responsible for activities related to USDA Foods in accordance with 7 CFR 250.50(d), and must assure that such activities are performed in accordance with the applicable requirements in 7 CFR part 250;

The FSMC will use all USDA Foods ground beef and ground pork products, and all processed end products, without substitution, in the SFAs food service;

The FSMC will use all other USDA Foods, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the USDA Foods, in the SFAs food service;

The procurement of processed end products on behalf of the SFA, as applicable, will ensure compliance with the requirements in subpart C of 7 CFR part 250 and with the provisions of distributing or SFA processing agreements, and will ensure crediting of the SFA for the value of USDA Foods contained in such end products at the processing agreement value;

The FSMC will not itself enter into the processing agreement with the processor required in subpart C of 7 CFR part 250;

The FSMC will comply with the storage and inventory requirements for USDA Foods;

The distributing agency, subdistributing agency, or SFA, the Comptroller General, the Department of Agriculture, or their duly authorized representatives, may perform onsite reviews of the FSMCs food service operation, including the review of records, to ensure compliance with the requirements for the management and use of USDA Foods;

The FSMC will maintain records to document its compliance with requirements relating to USDA Foods, in accordance with 7 CFR 250.54(b);

Extensions or renewals of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to USDA Foods.

The FSMC will ensure that its system of inventory management will not result in the SFA being charged for USDA Foods.

- E. The FSMC shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA Foods.
- F. The FSMC shall accept and use USDA Foods in as large quantities as may be efficiently utilized in the SFAs nonprofit food service, subject to approval of the SFA. The SFA shall consult with the FSMC in the selection of USDA Foods; however, the final determination as to the acceptance of USDA Foods must be made by the SFA.
- G. The FSMC is required to maintain accurate and complete records with respect to the receipt, use/disposition, storage, and inventory of USDA Foods. Failure by the FSMC to maintain the required records under this contract shall be considered prima facie evidence of improper distribution or loss of USDA Foods.

## VI. **Food Safety**

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

## VII. **Meals**

- A. The FSMC shall serve meals on such days and at such times as requested by the SFA
- B. The SFA shall retain control of the quality, extent, and general nature of the food service.
- C. The FSMC shall offer free, reduced price, and full price reimbursable meals to all eligible children participating in the programs indicated in Section I, Item B on page 8.
- D. In order for the FSMC to offer a la carte sales food service, the FSMC must offer free, reduced price, and full price reimbursable meals to all eligible children.
- E. The FSMC shall provide meals that meet the National School Lunch Program/ School Breakfast Program (NSLP/SBP) Meal Pattern requirements. Specifications of the National School Lunch Program and School Breakfast Program meal requirements are found on page 57 of this document.
- F. The FSMC shall promote efforts to increase participation in the child nutrition programs.
- F. The FSMC shall provide the specified types of service in the schools/sites listed in the Attachment J, which is a part of this contract.
- G. The FSMC shall sell on the premises only those foods and beverages authorized by the SFA and only at the times and places designated by the SFA.
- H. No payment will be made to the FSMC for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the SFA for each food component in the meal pattern, or do not otherwise meet the requirements of this contract.
- I. Adult meal charges must be established in accordance with FCS Instruction 782-5, Pricing of Adult Meals in the National School Lunch and School Breakfast Programs. Pricing must include overall cost of the lunch including the value of any USDA Foods used to prepare meals.

## VIII. **Books and Records**

- A. The FSMC shall maintain such records (supported by invoices, receipts, or other evidence) as the SFA will need to meet monthly reporting responsibilities and shall submit monthly operating statements in a format approved by the SFA no later than the tenth calendar day succeeding the month in which services were rendered. Participation records, including claim information by eligibility category, shall be submitted no later than the fifth working day succeeding the month in which services were rendered. The SFA shall perform edit checks on the participation records provided by the FSMC prior to the preparation and submission of the claim for reimbursement.

- B. The FSMC shall maintain records at the SFA to support all allowable expenses appearing on the monthly operating statement. These records shall be kept in an orderly fashion according to expense categories.
- C. The FSMC shall provide the SFA with a year-end statement.
- D. Books and records of the FSMC pertaining to the contract shall be made available, upon demand, in an easily accessible manner for a period of three years after the final claim for reimbursement for the fiscal year to which they pertain. The books and records shall be made available for audit, examination, excerpts, and transcriptions by 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 three-year record retention period, the records must be retained beyond the three-year period for as long as required for the resolution of the issues raised by the audit. (Reference 7 CFR 210.9(b)(17), 7 CFR 3016.36(l)(10), and 7 CFR 3019.48(d))
- E. The FSMC shall not remove federally required records from SFA premises upon contract termination.

**ix. Employees**

- A. The SFA must designate if **CURRENT** SFA employees, including site and area managers as well as any other staff, will be retained by the SFA or be subject to employment by the FSMC. This must agree with the information reported on Attachment A and Attachment B on pages 32 and 33.

Employee retained by:      SFA (See Attachment A)

FSMC

(See Attachment B)

Both

SFA and FSMC

- B. The FSMC shall provide the SFA with a schedule of employees, positions, assigned locations, salaries, and hours to be worked as part of the proposal on Attachment B on page 33. Specific locations and assignments will be provided to the SFA two full calendar weeks prior to the commencement of operation.
- C. The SFA shall have final approval regarding the hiring of the FSMC's site manager.
- D. The FSMC shall comply with all wage and hours of employment requirements of federal and state laws. The FSMC shall be responsible for supervising and training personnel, including SFA-employed staff. Supervision activities include employee and labor relations, personnel development, and hiring and termination of FSMC management staff, except the site manager. The FSMC shall also be responsible for the hiring and termination of non-management staff who are employees of the FSMC.
- E. The FSMC shall provide Workers' Compensation coverage for all its employees.
- F. The FSMC shall instruct its employees to abide by the policies, rules, and regulations with respect to use of SFAs premises as established by the SFA and which are furnished in writing to the FSMC.
- G. Staffing patterns, except for the site manager, shall be mutually agreed upon.
- H. The SFA shall provide sanitary toilet and hand washing facilities for the employees of the FSMC.

- I. The SFA may request in writing the removal of any employee of the FSMC who violates health requirements or conducts himself or herself in a manner that is detrimental to the well-being of the students, provided such request is not in violation of any federal, state, or local employment laws.
- J. In the event of the removal or suspension of any such employee, the FSMC shall immediately restructure the food service staff without disruption of service.
- K. All SFA and/or FSMC personnel assigned to the food service operation in each school shall be instructed in the use of all emergency valves, switches, and fire safety devices in the kitchen and cafeteria areas.
- L. The SFA will require the FSMC to perform a criminal background check on any of the FSMC employee that will be working at the SFA and disclose results to the SFA.

## x. **Monitoring**

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

## xi. **Use of Advisory Group/Menus**

- A. The SFA shall establish and the FSMC shall participate in the formation, establishment, and periodic meetings of the SFA advisory board composed of student, teachers, and parents to assist in menu planning. (Reference 7 CFR 210.16(a)(8))
- B. Check the appropriate box below.
  - The FSMC will complete menu cycles for all programs.
  - The SFA will complete menu cycles for all programs.
- C. The FSMC must comply with the 21-day menu cycle and specifications (Attachment L & M) developed by the SFA for the NSLP. The FSMC must also comply with the menu cycles as specified by the SFA for the SBP (Attachment N), ASCSP (Attachment O), and SFSP (Attachment P). If the FSMC developed the menus, the FSMC must comply with the agreed upon menus included in the proposal document for the first 21 days. Any changes made by the FSMC after the first initial menu cycle for the NSLP, SBP, ASCSP, and/or SFSP may be made only with the approval of the SFA. The SFA shall approve the menus no later than two weeks prior to service. (Reference 7 CFR 210.16(b)(1)).

## xii. **Use of Facilities, Inventory, Equipment, and Storage**

- A. The SFA will make available, without any cost or charge to the FSMC, area(s) of the premises agreeable to both parties in which the FSMC shall render its services.
- B. The SFA may request of the FSMC additional food service programs; however, the SFA reserves the right, at its sole discretion, to sell or dispense food or beverages, provided such use does not interfere with the operation of the CNP. Any additional food service that is a material change to the contract and/or involves a total cost of \$150,000 or more must be approved by ODE, OCN and be competitively procured.
- C. Prior to the start of initial operations, the FSMC and the SFA will take a beginning inventory of all usable food, supplies, and USDA Foods on the premises. The FSMC will utilize such inventory at a value determined by invoice. On termination of the Contract, the FSMC and the SFA will take a similar inventory. If the value of the ending inventory is greater than the beginning inventory, the difference shall be added to the FSMCs Cost of Business and if lesser, the difference shall be subtracted from the FSMCs Cost of Business.
- D. The FSMC shall maintain the inventory of silverware, chinaware, kitchen utensils, and other operating items necessary for the food service operation and at the inventory level as specified by the SFA.
- E. The SFA will replace expendable equipment and replace, repair, and maintain nonexpendable equipment except when damages result from the use of less than reasonable care by the employees of the FSMC
- F. The FSMC shall maintain adequate storage procedures, inventory, and control of USDA Foods in conformance with the SFAs agreement with ODE, OCN.
- G. The FSMC shall provide the SFA with one set of keys for all food service areas secured with locks.
- H. The SFA shall furnish and install any equipment and/or make any structural changes needed to comply with federal, state, or local laws, ordinances, rules, and regulations.
- I. The SFA shall be responsible for any losses, including USDA Foods, which may arise due to equipment malfunction or loss of electrical power not within the control of the FSMC.
- J. All food preparation and serving equipment owned by the SFA shall remain on the premises of the SFA.
- K. The SFA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the SFA premises.
- L. The FSMC shall notify the SFA of any equipment belonging to the FSMC on the SFA premises within 10 days of its placement on SFA premises.
- M. The SFA shall have access, with or without notice, to all of the SFAs facilities used by the FSMC for the purposes of inspection and audit.
- N. The FSMC shall not use the SFAs facilities to produce food, meals, or services for other organizations without the approval of the SFA. If such usage is mutually acceptable, there shall be a signed agreement which stipulates the fees to be paid by the FSMC to the SFA for such facility usage.
- O. The FSMC shall surrender to the SFA, upon termination of the contract, all equipment and furnishings in good repair and condition, reasonable wear and tear expected.

### **xiii. Purchases**

- A. If the FSMC is procuring goods or services which are being charged to the SFA under the contract (i.e. equipment), the FSMC is acting as an agent for the SFA and must follow the same procurement rules under which the SFA must operate and that the FSMC may not serve as a vendor. Any rebates, discounts, or

commissions associated in any manner with purchases must be returned to the nonprofit school food service account. Only net costs may be charged to the SFA.

- B. Any purchase of food must meet the specification listed in Attachment L page 43.

#### **xiv. Sanitation**

- A. The FSMC shall place garbage and trash in containers in designated areas as specified by the SFA.
- B. The SFA shall remove all garbage and trash from the designated areas.
- C. The FSMC shall clean the kitchen and dining room areas as indicated in Attachment J.
- D. The FSMC shall operate and care for all equipment and food service areas in a clean, safe, and healthy condition in accordance the standards acceptable to the SFA and comply with all applicable laws, ordinances, regulations, and rules of federal, state, and local authorities, including laws related to recycling.
- E. The SFA shall clean ducts and hoods above the filter line.
- F. The FSMC shall comply with all local and state sanitation requirements in the preparation of food.

#### **xv. Licenses, Fees, and Taxes**

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

#### **xvi. Nondiscrimination**

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

#### **xvii. Emergency Closing**

- A. The SFA shall notify the FSMC of any interruption in utility service of which it has knowledge.
- B. The SFA shall notify the FSMC of any delay in the beginning of the school day or the closing of school(s) due to snow or other emergency conditions.

#### **xviii. Terms and Termination**

- A. The SFA or the FSMC may terminate the contract for cause by giving 60 days written notice. (Reference 7 CFR 210.16(d))
- B. At any time, because of circumstances beyond the control of the SFA as well as the FSMC, the FSMC or the SFA may terminate the contract by giving 60 days written notice to the other party. **(The SFA must determine the number of days. The maximum number of days must not exceed 60).**

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

## **xix. Nonperformance by FSMC**

- A. 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.
- B. The FSMC shall pay the SFA the full amount of any meal overclaims which are attributable to the FSMC's negligence, including those overclaims based on reviews or audit findings that occurred during the effective dates of original and renewal contracts.
- C. In the event either party commits a material breach, the non-breaching party may terminate this agreement for cause by giving 60 days written notice. If the breach is remedied prior to the proposed termination date, the non-breaching party may elect to continue this agreement.
- D. Notwithstanding the breaching provision above, the SFA may immediately terminate this contract with written notice to FSMC for breach/neglect as determined by the SFA when considering such items 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 ODE, OCN to the settlement and satisfaction of all contractual and administrative issues arising from the transaction. Such authority includes, but is not limited to: source evaluation, protests, disputes, claims, or other matters of contractual nature. Matters concerning violations of the law will be referred to local, state, or federal authority that has proper jurisdiction.

## **xx. Certification**

- A. The FSMC shall comply with the mandatory standards and policies relating to energy efficiency that are contained in the state energy plan issued in compliance with the Energy Policy and Conservation Act (P.L.94-163, 89 Stat. 871).
- B. The FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (the Act), 40 U.S.C. §§327-330, as supplemented by Department of Labor regulation, 29 CFR Part 5. Under Section 103 of the Act, the FSMC shall be required to compute the wages of every laborer on the basis of a standard workday of eight hours, and a standard work week of 40 hours. Work in excess of the standard workday or standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or 40 hours in any work week.
- C. The FSMC shall comply with Executive Order 11246, entitled *Equal Employment Opportunity*, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, 41 CFR Part 60.
- D. The FSMC shall comply with the following civil rights laws, as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, *Civil Rights Compliance and Enforcement in School Nutrition Programs*.
- E. The FSMC shall comply with the *Buy American Provision* for contracts that involve the purchase of food, USDA Regulation 7 CFR Part 250.23 and 210.21.

1. The FSMC shall purchase, to the maximum extent practicable, domestic commodities or products which are either an agricultural commodity produced in the United States (U.S.) or a food product processed in the U.S. substantially using agricultural commodities produced in the U.S.
  2. The FSMC shall certify the percentage of U.S. content in the products supplied to the SFA.
  3. The SFA reserves the right to review vendor purchase records to ensure compliance with the Buy American provision.
- F. The FSMC has signed the *Certification of Independent Price Determination*, Attachment R, which was attached as an addendum to the FSMC's proposal/proposal and which is incorporated herein by reference and made a part of this contract.
  - G. The FSMC has signed the *Certification Regarding Disbarment, Suspension, Ineligibility, and Voluntary Exclusion*, Attachment S, which was attached as an addendum to the FSMC's proposal/proposal and which is incorporated and made a part of this contract. This is required of contracts of \$25,000 or more. (Reference 7 CFR §3017.
  - H. The FSMC shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Air Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15).
  - I. The FSMC has signed the Lobbying Certification, Attachment T, which was attached as an addendum to the FSMC's proposal/proposal and which is incorporated and made a part of this contract. If applicable, the FSMC has also completed and submitted Standard Form-LLL, *Disclosure Form to Report Lobbying*, (Attachment U), or will complete and submit as required in accordance with its instructions included in Attachment U.
  - J. The FSMC shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C.874) as supplemented in Department of Labor regulations (29 CFR Part 3).
  - K. The FSMC shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
  - L. The FSMC shall comply with all other pertinent state and federal laws.

## xxi. **Miscellaneous**

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

## xxii. Insurance

- A. The FSMC shall maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the state of Ohio. A Certificate of Insurance of the FSMC's insurance coverage indicating these amounts must be submitted at the time of the award. The information below must be completed by the SFA.
- B. Comprehensive General Liability – includes coverage for:
1. Premises – Operations
  2. Products – Completed Operations
  3. Contractual Insurance
  4. Broad Form Property Damage
  5. Independent Contractors
  6. Personal Injury
- \$1,000,000.00 Combined Single Limit
- C. Automobile Liability: \$1,000,000.00 Combined Single Unit
- D. Workers' Compensation-Statutory; Employer's Liability: \$500,000.00
- E. Excess Umbrella Liability: \$3,000,000.00 Combined Single Unit
- F. The SFA shall be named as additional insured on General Liability, Automobile, and Excess Umbrella. The FSMC must provide a waiver of subrogation in favor of the SFA for General Liability, Automobile, Workers' Compensation, and Excess Umbrella.
- G. 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. SFA may ask for proof of such direction in the form letter from the insurance company.

## xxiii. Optional Requirements to Be Included (To be completed by the SFA)

- A. The following provisions **will** apply to FSMC investment (to be completed by the SFA):
1. The FSMC **may** purchase equipment for the food service program. If yes, the equipment purchase may be up to but may not exceed \$10,000.00. The FSMC shall be subject to the same procurement requirements to which the SFA is subject in any procurement action and may not serve as a vendor when procuring on behalf of the school food service. The SFA shall repay at the rate specified when the equipment was purchased, which shall be charged to the SFA as an operating expense of the food service program. Ownership of the investment will vest in the SFA upon full payment of the purchase price to the FSMC. Upon such payment, the FSMC shall deliver a bill of sale evidencing transfer of title to the equipment to the SFA.
  2. If the contract expires or is terminated prior to the complete repayment of the investment, the SFA shall, on the expiration date, or within five days after receipt by either party of any notice of termination under this Agreement, either (SFA must mark appropriate box):
    - a.  Reimburse the FSMC the unpaid portion of the investment

**OR**

- b.  Deliver the equipment or other items funded by the investment to the FSMC

**OR**

- c.  Lease purchase the equipment or other items funded by the investment from the FSMC and continue to pay the FSMC a monthly payment in the amount specified when the equipment was purchased until the balance of the investment is repaid. In this event, the SFAs obligation under the Lease Purchase Agreement with the FSMC shall be subject to the SFAs ratification of the rental agreement for each ensuing fiscal year.

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

C. The SFA and the FSMC shall work together to ensure a financially sound operation.

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

- The SFAs policies, practices, and service requirements shall remain materially consistent throughout the contract term and any subsequent contract renewals.
- Legislation, regulations, and reimbursement rates that create changes in the school lunch program shall remain materially consistent throughout the year.
- Usable USDA Foods, of adequate quality and variety required for the menu cycle, valued at an amount as set forth by USDA per pattern meal for the contract year will continue to be available.
- The government reimbursement rates in effect shall remain materially consistent throughout the year.
- Meal components and quantities required by the National School Lunch Act (NSLA) or the NSLP remain consistent with prior years.
- Service hours, service requirements, and type or number of facilities selling food and/or beverages on SFAs premises shall remain materially consistent throughout the year.
- The state or federal minimum wage rate and taxes in effect shall remain materially consistent throughout the year.
- The projected number of full feeding days is: **178**.
- SFA revenue credited to the nonprofit food service program shall include all state and federal amounts received specifically for child nutrition operations.

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

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

- A. During the term of the Agreement, 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 (both owned by and licensed by the FSMC), and similar compilations regularly used in FSMC's business operations (trade secrets). The SFA shall not disclose any of the FSMC's trade secrets or other confidential information, directly or indirectly, during or after the term of the Agreement. The SFA shall not photocopy or otherwise duplicate any such material without the prior written consent of the FSMC. All trade secrets and other confidential information shall remain the exclusive property of the FSMC and shall be returned to the FSMC immediately upon termination of the Agreement. The SFA shall not use any confusingly similar names, marks, systems, insignia, symbols, procedures, and methods. Without limiting the foregoing and except for software provided by the SFA, the SFA specifically agrees that all software associated with the operation of the food service, including without limitation, menu systems, food production systems, accounting systems, and other software, are owned by or licensed to the FSMC and not the SFA. Furthermore, the SFAs access or use of such software shall not create any right, title interest, or copyright in such software and the SFA shall not retain such software beyond the termination of the Agreement. In the event of any breach of this provision, the FSMC shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. This provision shall survive the termination of the Agreement.
- B. Any discovery, invention, software, or programs paid for by the SFA shall be the property of the SFA to which ODE, OCN and USDA shall have unrestricted rights including copyrights.

## **XXV.**

## SFSP

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

A. ~~The SFA shall be responsible for determining eligibility of all SFSP sites.~~

B. ~~Bonding requirements:~~

1. ~~Proposal guarantee (when the SFSP portion of the proposal exceeds \$150,000):~~

~~Proposer/offeror shall submit with his or her proposal a proposal guarantee in the amount of \$\_\_\_\_\_ (**no less than 5 percent or more than 10 percent of the total proposal price**); which shall be in the form of a firm commitment such as a proposal bond, postal money order, certified check, cashier's check, or irrevocable letter of credit. Proposal guarantees, other than proposal bonds will be returned (a) to unsuccessful proposers/offerors as soon as practicable after the opening of proposal/proposals and (b) to the successful proposer/offeror upon execution of such further contractual documents (i.e., insurance coverage) and bonds as may be required by the proposal.~~

2. ~~Performance guarantee (when the SFSP portion of the contract exceeds \$150,000):~~

~~The FSMC must obtain a performance bond in the amount of \$\_\_\_\_\_ (**not less than 10 percent nor more than 25 percent of the value of the contract**) which shall be in the form of a firm commitment such as a proposal bond postal money order, certified check, cashier's check, or irrevocable letter of credit. The performance bond must be furnished within 10 days of the contracts award. : Performance bonds for the successful proposer/offeror shall be held for the duration of the contract.~~

C. ~~The SFA shall immediately correct any problems found as a result of a health inspection and shall submit written documentation of the corrective action implemented within two weeks of the citation.~~

D. ~~The FSMC must comply with the cycle menu developed by the SFA for the SFSP (Attachment P) and include it in the RFP. The SFA shall approve any changes in the menus no later than two weeks prior to service after the initial cycle has been used.~~

**PROJECTED OPERATIONS – REVENUE**  
**FOR PROGRAMS AND SITES TO BE CONTRACTED**  
 (To be completed by SFA)  
**IN-SCHOOL REVENUE**

Based on 178 Days of Service

Breakfast:	<b>Meals</b>		<b>Price</b>		<b>Total</b>
Elementary Full Price	# _____	X	_____	=	\$ _____
Secondary Full Price	# 3916	X	1.50	=	\$ 5,874.00
Reduced Price	# 2848	X	.30	=	\$ 854.40
Adult	# _____	X	_____	=	\$ _____
Subtotal Breakfast					\$ 6,728.40
Lunches:					
Elementary Full Price	# _____	X	_____	=	\$ _____
Secondary Full Price	# 11,748	X	2.60	=	\$ 30,544.80
Reduced Price	# 6,942	X	.40	=	\$ 2,776.80
Adult	# _____	X	_____	=	\$ _____
Subtotal Lunches					\$ 33,321.60
After School Care Snack Program:					
Full Price	# _____	X	_____	=	\$ _____
Reduced Price	# _____	X	_____	=	\$ _____
Adult	# _____	X	_____	=	\$ _____
Subtotal Snack					\$ _____
Special Functions (Catering)	# _____	X	_____	=	\$ _____
A la Carte, if applicable					\$ 79,792.06
Concession Revenue, if applicable					\$ _____
Vending Machine Sales Total Revenue					\$ _____
Contract Meals					\$ _____

Non-Reimbursable Meals

\$ \_\_\_\_\_

**TOTAL IN-SCHOOL REVENUE =**

**\$ 119,842.06**

**PROJECTED OPERATIONS - REVENUE, PAGE 2**

**(To be completed by SFA)  
FEDERAL REIMBURSEMENT**

**Based on 178 Days of Service**

Breakfast:	Meals		Price		Total
Free	# 24,920	X	1.99	=	\$ 49,590.80
Free, Severe Need	# _____	X	_____	=	\$ _____
Reduced Price	# 2848	X	1.69	=	\$ 4,813.12
Reduced Price Severe Need	# _____	X	_____	=	\$ _____
Full Price	# 3916	X	.29	=	\$ 1,135.64
<b>Total Breakfast</b>					<b>\$ 55,539.56</b>
Lunch:					
Free	# 38,270	X	3.09	=	\$ 118,254.30
Reduced Price	# 6,942	X	2.69	=	\$ 18,673.98
Full Price	# 11,748	X	.31	=	\$ 3,641.88
<b>Total Lunch</b>					<b>\$ 140,570.16</b>
After-School Care Snack Program:					
Free	# _____	X	_____	=	\$ _____
Reduced Price	# _____	X	_____	=	\$ _____
Full Price	# _____	X	_____	=	\$ _____
<b>Total Snacks</b>					<b>\$ _____</b>
Summer Food Service, If applicable:					
Breakfast	# _____	X	_____	=	\$ _____
Lunch/Supper	# _____	X	_____	=	\$ _____
Snacks	# _____	X	_____	=	\$ _____

Total SFSP		\$ _____
HHFKA \$.06		\$ 3,417.60
<b>199,527.32</b>	<b>TOTAL FEDERAL REIMBURSEMENT</b>	<b>\$</b>

**PROJECTED OPERATIONS - REVENUE, PAGE 3**  
 (To be completed by SFA)

<b>TOTAL IN-SCHOOL REVENUE</b>	<b>=</b>	<b>\$ 119,842.06</b>
<b>TOTAL FEDERAL REIMBURSEMENT</b>	<b>=</b>	<b>\$ 199,527.32</b>
<b>TOTAL STATE REIMBURSEMENT</b>	<b>=</b>	<b>\$ _____</b>
<b>State Match*</b>		<b>\$ _____</b>
<b>State Breakfast Match\$</b>		<b>_____</b>
<b>(if applicable)</b>		
<b>TOTAL REVENUE</b>	<b>=</b>	<b>\$ _____</b>

\* Complete using the most recent program reimbursement received from ODE, OCN.

**PROJECTED OPERATIONS – EXPENDITURES**  
**FOR PROGRAMS AND SITES TO BE CONTRACTED (To Be Completed by FSMC)**  
**Based on \_\_\_\_\_ Days of Operations**

**Food and Milk**

Enter the amounts of food and milk purchased and received.

USDA donated food Value

Bonus USDA donated food Value

USDA donated food Processing and Handling Charges

\$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_  
 \$ \_\_\_\_\_

**Direct Labor and Benefits**

Enter the gross amount paid for salaries to food service workers. Include employee benefits such as health insurance, retirement funds, and matching social security.

\$ \_\_\_\_\_

**Other Direct**

Enter the cost for nonfood items such as paper goods, supplies, equipment repairs (less than \$2,500 per repair), equipment, rental, and extermination. (Only enter if applicable to the FSMC)

\$ \_\_\_\_\_

**Expendable Equipment**

Enter the amount of each piece of equipment with an acquisition cost less than \$2,500.

\$ \_\_\_\_\_

**Nonexpendable Equipment**

Enter the annual depreciated amount of each piece of equipment with an acquisition cost of \$2,500 or more.

\$ \_\_\_\_\_

**Non-reimbursable Expenses**

Enter all expenditures that are not an allowable cost for reimbursement purposes (i.e., bank charge of bounced checks, lost purchased foods, lost USDA Foods, etc.).

\$ \_\_\_\_\_

**A la Carte Sales (If not included above)**

Enter total expenditures related to extra sales (i.e., food, labor, supplies).

\$ \_\_\_\_\_

**Special Functions (Catering)**

Enter total expenditures related to special functions (i.e. food, labor, supplies, equipment repair, etc.)

\$ \_\_\_\_\_

**Vended Meals (Contract Meals) (If not included above)**

Enter total expenditures related to the preparation and delivery of contract meals (i.e., food, labor, supplies, etc.).

\$ \_\_\_\_\_

**Vending/Concessions**

Enter total expenditures related to concession sales (i.e., food, labor, supplies, equipment repair, etc).

\$ \_\_\_\_\_

\$ \_\_\_\_\_

**Other**

\$ \_\_\_\_\_

**Subtotal Expenditures:**

\$ \_\_\_\_\_

**Less USDA Foods Value**

(\$ \_\_\_\_\_)

**Less Rebate, Discounts,  
Credits, if applicable**

(\$ \_\_\_\_\_)

**Less USDA Foods Specific  
Rebates, Discounts and  
Credits**

(\$ \_\_\_\_\_)

**Total Expenditures:**

\$ \_\_\_\_\_

## PROJECTED OPERATIONS - EXPENDITURES, PAGE 2

A. Total Revenue \$ \_\_\_\_\_ (from page 27)

B. Total Operational Expenditures \$ \_\_\_\_\_ (from page 28)

C. FSMC Fixed Fee \$ \_\_\_\_\_

D. Estimated Rebates, Discounts and Applicable Credits \$ \_\_\_\_\_

\$ \_\_\_\_\_

Profit or Loss (A-B-C+D) \$ \_\_\_\_\_

## AGREEMENT PAGE

The undersigned hereby offers to provide the services of an FSMC as specified in this proposal for the period of (contract beginning date) and ending (contract ending date).

I understand that the SFA reserves the right to reject any or all proposals, and that this proposal may not be withdrawn during a period of sixty (60) days from the time of opening of the proposal.

Furthermore, I certify that, consistent with section "1." subsection "R" of this RFP, I have not exchanged any gratuities, favors, nor anything of monetary value with the SFA and that this proposal is made without prior understanding, agreement, or connection with any other offeror submitting a proposal for the same type of service, and is in all respects fair and without collusion or fraud. I agree to abide to all term and conditions of this RFP and certify that I am authorized to sign the RFP for the offeror.

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

\_\_\_\_\_  
SIGNATURE (Of authorized representative): \_\_\_\_\_ Date: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
PHONE: \_\_\_\_\_  
FAX NUMBER: \_\_\_\_\_  
E-MAIL: \_\_\_\_\_

(SFA will complete section below this line)

### **Awarding of the Contract:**

SFA by signing below is awarding the contract for this RFP to the offeror of this proposal, herein referred to as "selected FSMC". This proposal, all sections of the proposal, all terms and conditions, addendums, including any additional addendums mutually agreed to by both the SFA and offeror will be incorporated in to this awarded contract.

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

\_\_\_\_\_  
SIGNATURE (Of authorized representative): \_\_\_\_\_ Date: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

## LIST OF CONTRACT FORMS

**TITLE**

**ATTACHMENT**

Labor Work Sheet, SFA Employees	Attachment A
Labor Work Sheet, FSMC Employees	Attachment B
Fringe Benefit Cost Sheet, SFA Employees	Attachment C
Fringe Benefit Cost Sheet, FSMC Employees	Attachment D
SFA Specifications on Average Daily Participation for Lunch	Attachment E
SFA Specifications on Average Daily Participation for Breakfast	Attachment F
SFA Specifications on Average Daily Participation for After School Snacks	Attachment G
SFA Specifications on Average Daily Participation for the Special Milk Program	Attachment H
SFA Specifications on Average Daily Participation for SFSP	Attachment I
SFA Site/Building Listing General Data	Attachment J
SFA Site/Building Listing of Service to Be Provided	Attachment K
Minimum Food Specifications	Attachment L
Lunch Menus	Attachment M
Breakfast Menus	Attachment N
After-School Care Snack Menus	Attachment O
Summer Food Service Program Menus	Attachment P
Holiday Schedule	Attachment Q
Independent Price Determination Certificate	Attachment R
Suspension and Debarment Certification	Attachment S
Lobbying Certification	Attachment T
Disclosure of Lobbying Activities	Attachment U











\*Do not include Special Functions









## MINIMUM FOOD SPECIFICATIONS

To be completed by SFA. ODE, OCN does not approve, evaluate, or endorse specifications. Examples may include the following listed below.

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

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

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

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

Fruits and Vegetables

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

Baked Products

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

Staple Groceries

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

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

Attachment M

## **SAMPLE 21- DAY CYCLE LUNCH MENU**

Attach a sample 21-day cycle lunch menu prepared by the SFA. This menu must be used for the first 21-day cycle of the new school year.

SEE ATTACHED LUNCH MENU

## **SAMPLE 21 DAY CYCLE BREAKFAST MENU**

Attach a sample 21 day cycle breakfast menu prepared by the SFA. This menu must be used for the first 21 day cycle of the new school year.

SEE ATTACHED BREAKFAST MENU

**SAMPLE \_\_\_\_\_ DAY CYCLE SNACK MENU**

Attach a sample \_\_\_\_\_ day cycle snack menu prepared by the SFA. This menu must be used for the first \_\_\_\_\_ day cycle of the new school year.

**~~SAMPLE CYCLE SUMMER FOOD SERVICE PROGRAM (SFSP) MENU~~**

Attach a sample cycle SFSP menu prepared by the SFA. This menu must be used for the 1<sup>st</sup> \_\_\_\_\_ day cycle of the SFSP.

## **HOLIDAY SCHEDULE**

Holiday Schedule to be inserted here by SFA.

SEE ATTACHED SCHOOL CALENDAR

## INDEPENDENT PRICE DETERMINATION CERTIFICATE

Both the School Food Authority (SFA) and the Food Service Management Company (Offeror) shall execute this Independent Price Determination Certificate.

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

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

- A. By submission of this offer, the Offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:
  - 1. The prices in this offer have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or with any competitor.
  - 2. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed to the Offeror and will not knowingly be disclosed by the Offeror (to whom?) prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other Offeror for the purpose of restricting competition.
  - 3. No attempt has been made or will be made by the Offeror to induce any person or firm to submit or not submit an offer for the purpose of restricting competition.
  
- B. Each person signing this offer on behalf of the Offeror certifies that:
  - 1. He or she is the person in the Offeror's organization responsible within the organization for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to A.1 through A.3 above; or
  - 2. He or she is not the person in other Offeror's organization responsible within the organization for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate in any action contrary to A.1 through A.3 above, and as their agent does hereby certify; and he or she has not participated, and will not participate, in any action contrary to A.1 through A.3 above.

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

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

\_\_\_\_\_  
Title

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

---

Signature of School Food Authority's  
Date  
Authorized Representative

Title

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

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

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion -  
Lower-Tier Transaction**

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

**(Before completing certification, read instructions on next page.)**

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 Titles of Authorized Representative(s)

\_\_\_\_\_  
Signatures

\_\_\_\_\_  
Date

## INSTRUCTIONS FOR SUSPENSION DEBARMENT CERTIFICATION

1. By signing and submitting this form, the prospective lower-tier participant is providing the certification set out on the previous page 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 whom 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 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 the undersigned shall complete and submit Standard Form LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

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Name/Address of Organization

---

Name/Title of Submitting Official

---

Signature

---

Date



available for public inspection. Any person who fails to file the required disclosures shall be subject to a civil penalty of no less than \$10,000 and no more than \$100,000 for each such failure.

**Telephone Number:** \_\_\_\_\_

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

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## **INSTRUCTIONS FOR COMPLETION OF DISCLOSURE OF LOBBYING ACTIVITIES FORM**

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

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

Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

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

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

***Unallowable SFA-FSMC Contract Document Provisions***

The following indicate problem areas that have been identified in some SFA-FSMC contract documents. The contract documents must be thoroughly checked, regardless of the procurement method used, to ensure that these areas have not been included, in any form. Mark an (X) in each block that indicates no such provisions are in your document(s), unless specified below.

- 1. Cost Plus a Percentage of Cost/Income – cost plus a percentage of cost/income to the FSMC, however represented.
- 2. Duplicate Fees – fee structures that permit a FSMC to bill management fees and charge the same costs as cost-reimbursable expenses.
- 3. Purchasing – if the SFA does the purchasing, clauses that limit the selection of vendors to only FSMC-approved vendors.
- 4. Acceleration Clause – provisions (multi-year) that require full payment (e.g., program equipment purchases) if the contract is not renegotiated.
- 5. Interest Payments – interest payments to the contractor, however represented, including interest payments for equipment purchases.
- 6. Guaranteed Return – “guaranteed return” provisions unless the “return” remains in the nonprofit food service account. “Returns” cannot be contingent upon multi-year contract duration.
- 7. Delegation of SFA Responsibilities – FSMC responsibility for any of the functions that must be retained by the SFA (signature authority on the Permanent Agreement and claims, etc.)
- 8. Automatic Renewal – provisions which automatically renew the contract.
- 9. Processing Contracts – contract document language that permits the FSMC to subcontract USDA Foods for further processing.

For the item(s) above not checked (X), indicated item number(s) with corresponding page number(s) of document(s) where provision(s) appears.

Item Number(s)	Page Number(s)
_____	_____
_____	_____
_____	_____

I, the undersigned, hereby confirm that the above language is not included in the contract documents with named FSMC.

SFA reviewer: \_\_\_\_\_  
Signature Date

FSMC reviewer: \_\_\_\_\_  
Signature Date

Final Rule Nutrition Standards in the National School Lunch and School Breakfast Programs – Jan. 2012

	Breakfast Meal Pattern			Lunch Meal Pattern		
	Grades K-5 <sup>a</sup>	Grades 6-8 <sup>a</sup>	Grades 9-12 <sup>a</sup>	Grades K-5	Grades 6-8	Grades 9-12
Meal Pattern	Amount of Food <sup>b</sup> Per Week (Minimum Per Day)					
Fruits (cups) <sup>c,d</sup>	5 (1) <sup>e</sup>	5 (1) <sup>e</sup>	5 (1) <sup>e</sup>	2½ (½)	2½ (½)	5 (1)
Vegetables (cups) <sup>c,d</sup>	0	0	0	3¾ (¾)	3¾ (¾)	5 (1)
Dark green <sup>f</sup>	0	0	0	½	½	½
Red/Orange <sup>f</sup>	0	0	0	¾	¾	1 ¼
Beans/Peas (Legumes) <sup>f</sup>	0	0	0	½	½	½
Starchy <sup>f</sup>	0	0	0	½	½	½
Other <sup>f,g</sup>	0	0	0	½	½	¾
Additional Veg to Reach Total <sup>h</sup>	0	0	0	1	1	1 ½
Grains (oz eq) <sup>i</sup>	7-10 (1) <sup>j</sup>	8-10 (1) <sup>j</sup>	9-10 (1) <sup>j</sup>	8-9 (1)	8-10 (1)	10-12 (2)
Meats/Meat Alternates (oz eq) <sup>k</sup>	0	0	0	8-10 (1)	9-10 (1)	10-12 (2)
Fluid milk (cups) <sup>l</sup>	5 (1)	5 (1)	5 (1)	5 (1)	5 (1)	5 (1)
<b>Other Specifications: Daily Amount Based on the Average for a 5-Day Week</b>						
Min-max calories (kcal) <sup>m,n,o</sup>	350-500	400-550	450-600	550-650	600-700	750-850
Saturated fat (% of total calories) <sup>n,o</sup>	< 10	< 10	< 10	< 10	< 10	< 10
Sodium (mg) <sup>n, p</sup>	≤ 430	≤ 470	≤ 500	≤ 640	≤ 710	≤ 740
<u>Trans</u> fat <sup>n,o</sup>	Nutrition label or manufacturer specifications must indicate zero grams of <u>trans</u> fat per serving.					



<sup>a</sup>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).

<sup>b</sup>Food items included in each food group and subgroup and amount equivalents. Minimum creditable serving is  $\frac{1}{8}$  cup.

<sup>c</sup>One quarter-cup of dried fruit counts as  $\frac{1}{2}$  cup of fruit; 1 cup of leafy greens counts as  $\frac{1}{2}$  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.

<sup>d</sup>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).

<sup>e</sup>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).

<sup>f</sup>Larger amounts of these vegetables may be served.

<sup>g</sup>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).

<sup>h</sup>Any vegetable subgroup may be offered to meet the total weekly vegetable requirement.

<sup>i</sup>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).

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

<sup>k</sup>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.

<sup>l</sup>Fluid milk must be low-fat (1 percent milk fat or less, unflavored) or fat-free (unflavored or flavored).

<sup>m</sup>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).

<sup>n</sup>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.

<sup>o</sup>In the SBP, calories and trans fat specifications take effect beginning July 1, 2013 (SY 2013-2014).

<sup>p</sup>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 breakfast.