



DATE: September 22, 2016

SUBJECT: Food Service Management RFP

DESCRIPTION:

The School is seeking to procure the services of a food service management company for the contract period of July 1, 2016 through June 30, 2017. This process requires a formal bid using the Pennsylvania Department of Education Division of Food and Nutrition's approved RFP template.

RECOMMENDATION:

Motion to approve the issuance of a Food Service Management Company RFP for the July 1, 2016 to June 30, 2017 contract term

Cost Reimbursable Request for Proposal Checklist

FOR SFA USE ONLY

Do not submit to the DFN or FSMC as part of the RFP

Cover Page

- ☒ Enter name of SFA
- ☒ Enter PEARS agreement number (AUN number)
- ☒ Enter beginning and ending school year

Agreement Page

- ☒ Enter the beginning school year
- ☒ Enter the end school year

General Information

- ☒ Section A – Enter name of the SFA
- ☒ Section C – Enter date, time and location of Pre-Bid Meeting
- ☒ Section D 1 – Enter SFA’s name and address of where proposals are to be sent to
- ☒ Section D 1 – Enter time and date that bids will be publically opened
- ☒ Section D 8 – Enter name, telephone number and email address of who to contact for additional information
- ☒ Section E – Select award criteria scoring method
- ☒ Section E – Insert percentage in scoring method
- ☒ Section E – Enter the amount of possible points in scoring method
- ☒ Section I – Enter contract terms (beginning and ending school year)
- ☒ Section Q – Indicate whether or not alternate menus and POCs will be considered
- ☒ Section Q – Enter additional information/requirements not included in standard contract

Standard Terms and Conditions

- ☒ Section 1 B – Check the boxes beside all the programs that apply to this contract
- ☒ Section 3 G – Enter position title of the person responsible for verifying household applications
- ☒ Section 4 I – Check boxes of activities FSMC will perform regarding donated foods
- ☒ Section 6 A – Choose the method for unused donated food
- ☒ Section 6 G – Enter the position title of the person responsible for monitoring donated foods
- ☒ Section 7 A 9 – Enter number of full feeding days (must be highest number of days listed on Attachment CR8)
- ☒ Section 11 B – Choose employee retention option
- ☒ Section 12 A – Enter position title of the person responsible for onsite reviews
- ☒ Section 14 J – Check box for selected equipment proposal
- ☒ Section 15 A – Check box for selected purchasing responsibilities
- ☒ Section 23 A – Enter the amount or percentage of Performance/Bid Bond
- ☒ Section 25 B – Enter the amounts of insurance coverage
- ☒ Section 26 B – Enter dates if SFA will be participating in SFSP. If not, enter “N/A” to “N/A”

Certification of Acknowledgement Sheet

- ☒ SFA Certification of Acknowledgement Sheet – Submit, but do not initial or sign until contract is approved by DFN
- ☒ FSMC Certification of Acknowledgement Sheet – Submit, but do not initial or sign until contract is approved by DFN

Appendices

- ☒ Appendix G through J – Submit, but do not sign until contract is awarded

NSLP Attachments

- ☒ Complete Attachment CR1 – Average Daily Participation (ADP) Worksheet
- ☒ Complete Attachment CR2 – Cost Responsibility Worksheet
- ☒ Complete Attachment CR3 – NSLP Projected Operating Costs Worksheet
- ☒ Complete Attachment CR6 – SFA Labor Worksheet (if applicable)
- ☒ Complete Attachment CR7 – SFA Fringe Benefits Worksheet (if applicable)
- ☒ Complete Attachment CR8 – Site Listing Worksheet

SFSP Attachment (if applicable)

- ☒ Complete Attachment SFSP1 – SFSP Projected Operating Costs Worksheet

CACFP Attachment (if applicable)

- ☒ Complete Attachment CACFP1 – CACFP Projected Operating Costs Worksheet

Menus (the menus must be developed by the SFA without the assistance of any FSMC bidding on the RFP)

- ☒ 21 Day Lunch Menu
- ☒ 21 Day Breakfast Menu (if applicable)
- ☒ 21 Day Afterschool Snack Program Menu (if applicable)
- ☒ 11 Day Summer Food Service Program Menu (if applicable)

EMAIL ALL THE ABOVE DOCUMENTS TO DFN AT RA-Fiscal@pa.gov FOR APPROVAL PRIOR TO ADVERTISING. PLEASE INCLUDE CONTACT INFORMATION IN THE BODY OF THE EMAIL. This is not mandatory but **highly** recommended.

AFTER DFN **APPROVES** THE RFP, YOU WILL RECEIVE AN EMAIL STATING THAT THE RFP HAS BEEN APPROVED AND YOU CAN PROCEED WITH ADVERTISING.

AFTER THE RFP HAS BEEN **AWARDED**, SEND OR EMAIL THE FOLLOWING TO DFN (also known as bid documents):

- ☐ Copy of at least 2 bid advertisements in 2 different major newspapers or trade papers
- ☐ Proof of minimum advertising period achieved (1 day a week for 3 weeks)
- ☐ Copy of an invoice from the winning FSMC displaying the method of documenting donated food, rebates and applicable credits to the SFA
- ☐ Copy of the sign-in sheet for bidders in attendance at the pre-bid meeting
- ☐ Copy of Solicitations (at a minimum, 5 vendors from PDE's list of vendors had to be solicited)
- ☐ Copy of FSMC's Proof of Insurance
- ☐ Copy of SFA's Bid Protest Procedures
- ☐ Completed FSMC Projected Operating Costs Worksheet – Attachment CR3
- ☐ Completed FSMC NSLP Labor and Fringe Benefits Worksheets – Attachments CR4, CR5
- ☐ Completed FSMC SFSP Worksheet – Attachment SFSP1 (if applicable)
- ☐ Completed FSMC CACFP Worksheet – Attachment CACFP1 (if applicable)
- ☐ FSMC's completed details and methodology of the Administrative and Management Fees
- ☐ FSMC's completed details and methodology of Guarantee to SFA (including all formulas and contingencies)

ONCE DFN REVIEWS AND APPROVES THE PROPOSED CONTRACT, THE SFA WILL RECEIVE A COVER LETTER ALONG WITH THE APPROVED PROPOSED CONTRACT. THE APPROVED PROPOSED CONTRACT HAS ONE OF DFN'S STAFF'S INITIALS ON EACH PAGE. THE SFA IS TO MAKE 2 COPIES OF THE DOCUMENT. **DO NOT REDUCE THE AMOUNT OF PAGES OR PRINT DOUBLE-SIDED.** SECURE SIGNATURES IN **BLUE INK ONLY** ON THE FOLLOWING DOCUMENTS FOR ALL THREE COPIES:

- ☐ Agreement Page – Signatures must be dated and attested to
- ☐ SFA Certification of Acknowledgement Sheet – Each statement is to be initialed, and the form signed and dated
- ☐ FSMC Certification of Acknowledgement Sheet – Each statement is to be initialed, and the form signed and dated
- ☐ Appendix G – Independent Price Determination Certificate (signature must be dated)
- ☐ Appendix H – Certification Regarding Debarment and Suspension (signature must be dated)
- ☐ Appendix I – Clean Air and Water Certificate (signatures must be dated)
- ☐ Appendix J page 1 – Certification Regarding Lobbying (signature must be dated)
- ☐ Appendix J page 2 – Disclosure of Lobbying Activities (must be signed and dated even if no activity)

- ☐ **MAIL ONE COPY OF THE SIGNED PROPOSED CONTRACT BACK TO DFN**
- ☐ **MAIL ONE COPY OF THE SIGNED PROPOSED CONTRACT TO FSMC**
- ☐ **KEEP ONE COPY OF THE SIGNED PROPOSED CONTRACT**
- ☐ **COMPLETE FACT SHEET AND CHECKLIST SUMMARY IN PEARS**

THE CONTRACT IS NOT CONSIDERED FULLY EXECUTED UNTIL DFN REVIEWS THE SIGNED PROPOSED CONTRACT AND APPROVES THE FACT SHEET



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
333 MARKET STREET
HARRISBURG, PA 17126-0333
www.education.pa.gov

Food Service Management Company (FSMC) Request for Proposal (RFP) and COST REIMBURSABLE Contract

Erie County Technical School
105252807

July 1, (2016) to June 30, (2017)

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

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

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410; (2) Fax: (202) 690-7442; or (3) Email: program.intake@usda.gov. This institution is an equal opportunity provider.

Any School Food Authority (SFA) selecting to use a FSMC must prepare a RFP utilizing this document which may not be re-typed or changed in any way. Addendums to the original or renewal year contract are not permitted. Should the SFA and FSMC enter into any addendum, the Division of Food and Nutrition (DFN) will not review the addendum and the language in this document prevails as binding. The standard form contract has open fields where additions can be made on the contract, itself, in lieu of attaching an addendum.

Division of Food and Nutrition Final Approval Date: ____/____/____

For DFN use only:

Agreement Page

This bidder certifies that he/she shall operate in accordance with all applicable State and Federal regulations.

This bidder certifies that all terms and conditions within the Bid Solicitation shall be considered a part of the contract as if incorporated therein.

This Agreement shall be in effect for one year starting July 1, **2016** through June 30, **2017** and may be renewed by mutual agreement for up to four additional one-year period(s).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representative the day and year.

Erie County Technical School

Enter SFA Here

Enter FSMC Here

Signature (**in blue ink only**) of Authorized Representative

Signature (**in blue ink only**) of Authorized Representative

Dr. Aldo Jackson

Printed Name of Authorized Representative

Printed Name of Authorized Representative

Director

Title

Title

Date Signed

Date Signed

Attest (**in blue ink only**)

Attest (**in blue ink only**)

For DFN use only:

General Information

A. Intent

This solicitation is for the purpose of entering into a contract for the operation of a food service program for **Erie County Technical School**, herein after referred to as the School Food Authority (SFA).

The bidder is herein referred to as the Food Service Management Company (FSMC). The contract will be between the SFA and FSMC.

B. Procurement Method

1. All procurement transactions shall be conducted in a manner that provides maximum open and free competition consistent with Title 2 CFR §200.318-200.326.
2. This contract will be a **Cost-Reimbursable** contract whereas the FSMC will be paid on the basis of the direct costs (food, labor, and supplies) incurred plus fixed fees (administrative and management fees). Expenses that represent the administrative fee must be itemized. A management fee represents the profit to the FSMC.
3. The value of commodities received must be itemized in the regular monthly billing to the SFA to document savings resulting from commodity receipt. The FSMC will ensure that its system of inventory management will not result in the SFA being charged for donated foods.
4. The SFA must determine the existence of the proper pass through value of the donated commodities; e.g., credits or reductions on the invoice in the month of receipt. The values are to be based on the values at the point the SFA receives the commodities from the Pennsylvania Department of Agriculture (PDA), and on USDA commodity prices pertinent to the time period, and shall be in the meal cost that is included in the bidder's proposal.

C. Pre-Bid Meeting

A meeting with interested bidders to review the specifications, to clarify any questions, and for a walk-through of the facilities with school officials will be held on **October 11, 2016 at 11:00 a.m. at 8500 Oliver Road, Erie, PA. Attendance is required.**

D. Bid Submission and Award

1. Proposals are to be submitted to:
Erie County Technical School
Attention: **Terri L. Birchard**
8500 Oliver Road
Erie, PA 16509

Public opening will be at 10:30 AM on October 18, 2016. Proposals will not be accepted after this time. Proposals are to be submitted in a sealed envelope marked Food Service Management Bid.

2. The SFA will not conduct the procurement process in a manner that uses statutorily or administratively imposed in-state or local geographic preferences in the evaluation of bids or proposals in accordance with Title 2 CFR §200.319(b).
3. SFAs are prohibited from entering into a contract with a FSMC that provides recommendations, develops or drafts specifications, requirements, statements of work, requests for proposals, contract terms and conditions, or other documents for use in conducting procurement.

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4. The SFA reserves the right to reject any or all bids, if deemed in the best interest of the SFA.
5. For consideration, each FSMC must submit a complete response to this solicitation using only the forms provided. No additional forms will be accepted as part of this contract. If any additional forms are used, they are not binding and DFN will not review or approve these forms.
6. The SFA will award the contract to the most qualified and responsible FSMC whose proposal is responsive to this solicitation. A responsible FSMC is one whose financial, technical and other resources indicate an ability to perform the services required by this solicitation.
7. FSMCs or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting proposals; failure to do so will be at the FSMC's own risk and cannot secure relief on the plea of error. The SFA is not liable for any cost incurred by the bidder prior to the Pennsylvania Department of Education (PDE) Division of Food and Nutrition's (DFN) final approval of the contract, as dated on the cover page and the signing of the contract by all parties. Paying the FSMC from Child Nutrition (CN) program funds (school food service account) is prohibited until the contract is signed by both parties and final approval is provided by DFN. **DFN approval must be initialed on each page of the contract prior to both parties signing of the contract.**
8. If additional information is required, please contact **Terri L. Birchard** at **(814) 464-8662** or at **tbirchard@ects.org**.

E. Award Criteria

The contract will be awarded to the responsible bidder whose proposal is most advantageous to the program with price and other factors considered. An evaluation committee must be comprised of at least three people. Each committee member evaluates proposals independently. **Select one** of the following scoring methods:

- ☒ **One Step Scoring Method:** The relative value assigned to each criterion must be specified and "Cost" must be the primary factor (assigned 51% or more of the points or assigned the greatest number of points compared to other factors). Once the technical and cost components have been evaluated and ranked, the SFA may negotiate both components with any bidder receiving an average of **80%** or more (criteria must be consistent with the RFP and cannot add or delete specifications/requirements. i.e. the scope cannot change). At the conclusion of the negotiations the proposals are rescored and the award is made to the bidder presenting the most advantageous proposal, with price used as the primary factor.

Cost	25
Service Capability	20
Financial Conditions/Stability, Business Practices	10
Accounting and Reporting Systems	10
Personnel Management	15
Experience and References	5
Promotion of the School Food Service Program	5
Involvement of Students, Staff and Patrons	10
Total points possible:	<u>100</u>

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- Two Step Scoring Method: Technical proposals are evaluated and ranked using the value assigned to each criterion before cost is considered. The SFA may negotiate with any bidder receiving an average of **Insert Percentage**% or more (criteria must be consistent with the RFP and cannot add or delete specification/requirements. i.e. the scope cannot change). At the conclusion of the negotiation the SFA requests bidders to submit best and final price. The award is made to the bidder submitting the lowest price.

Service Capability	Enter the amount of possible points
Financial Conditions/Stability, Business Practices	Enter the amount of possible points
Accounting and Reporting Systems	Enter the amount of possible points
Personnel Management	Enter the amount of possible points
Experience and References	Enter the amount of possible points
Promotion of the School Food Service Program	Enter the amount of possible points
Involvement of Students, Staff and Patrons	Enter the amount of possible points
Total points possible:	100

F. Bid Protests

Any action which diminishes open and free competition seriously undermines the integrity of the procurement process and may subject the SFA to bid protests. SFAs are responsible for properly responding to protests and concerns raised by potential contractors. SFAs must attach their bid protest procedures to their RFPs. Pursuant to CFR §200.318(k), SFAs must in all instances disclose all information regarding a protest to DFN.

G. Bonding Requirement

Bid Guarantee: The FSMC shall submit with its proposal, a bid guarantee for at least five percent (5%) of the total bid price in the form of a firm commitment such as a bid bond, postal money order, certified check, cashier's check, or irrevocable letter of credit. Bid guarantees other than bid bonds will be returned (a) to unsuccessful FSMCs as soon as practicable after the opening of bids; and (b) to the successful FSMC upon execution of such further contractual documents (i.e., insurance coverage) and bonds as required by the proposal.

H. Captions

Captions in all sections of this document are provided only as a convenience and shall not affect the interpretation of this instrument, and its attachments.

I. Contract Terms

The contract shall be for a period of one year with the school year beginning on or about July 1, **2016**, and ending June 30, **2017**, with up to four one-year renewals with mutual agreement between the SFA and the FSMC.

This contract cannot be effective prior to the date of final approval by DFN, as dated on the cover page, and signed by both parties.

J. Employees

Retention of the current food service employees is addressed in the Standard Terms and Conditions under subsection Employees.

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K. Errors or Omissions

The proposing FSMC shall not be allowed to take advantage of any errors or omissions in the RFP specifications. Where errors occur in the RFP specification, the FSMC shall promptly notify the contact person listed. Inconsistencies in the RFP specifications are to be reported prior to proposals being submitted. The SFA must communicate to all potential bidders.

L. Final Contract

The complete contract includes all documents included by the SFA in the RFP and the proposal submitted by the FSMC. No additional addendums may be added.

M. Gifts from FSMC

The SFA's officers, employees, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from FSMCs nor potential FSMCs. To the extent permissible under State law, rules, or regulations, such standards shall provide for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards.

N. Late Bids

The SFA will not consider any bid received after the exact time specified for receipt.

O. Meal Equivalents

For the purpose of making the meal count computation, the number of meals served to children shall be determined by actual counts of reimbursable meals. The FSMC and SFA shall determine a la carte meal equivalents by dividing the a la carte revenue by the per meal sum of the Federal and State free meal reimbursement plus the per meal value of USDA entitlement and bonus donated foods. A la carte revenue shall include adult meals and a la carte sales to students and adults. If applicable, include revenue from vending machine sales as part of the a la carte revenue.

P. Payment and Fees

The following definitions are provided to clarify what are allowable direct costs:

- **Food:** limited to those items purchased for use in the preparation and service of student, adult, and a la carte meals as specified under terms and conditions.
- **Labor:** limited to on-site employees responsible for the management, preparation, service, and clean-up of meals.
- **Miscellaneous Expenses:** paper supplies, equipment rental, cleaning materials, commodity handling and warehousing charges, travel as required for effective program management, uniforms, printing, taxes and licenses, insurance, and as contractually obligated herein. All expenses must be allowable and directly allocable to the food service operation.

Q. Additional Information

The SFA may add any additional items that need to be covered in the RFP/original contract below. The SFA may not add additional items to the Renewal Year Contracts without rebidding unless the item constitutes an immaterial change from the original contract. PDE cannot provide an exclusive listing of which changes are material regarding the many procurement actions undertaken in CN programs. SFA should consult with legal counsel in making those determinations. However, PDE views a change as material when, had the new term been in the solicitation and original contract, it could have affected how the bidder and other competitors responded to the RFP.

For DFN use only:

Any FSMC that submits a proposal for items or activities not requested by the SFA as specified in the RFP shall not be considered in the scoring process. The FSMC may be considered overly responsive and the proposal may not be accepted.

If the services of the FSMC are to begin after the start of the school year and the beginning contract term date is later than July 1 (i.e. January 1), enter the beginning contract term date under this section and include that date in the advertisement and solicitation. It must also be addressed at the walk-through. The ending contract term date will always be June 30.

Do not repeat any items/specifications outlined under General Information (A-P) or the Standard Terms & Conditions (1-28).

This proposal and contract are based on the SFA's 21 day menu. Please check a box below indicating whether or not additional proposals/worksheets will be considered.

☒ **Yes** ☐ **No (choose one)**, the SFA will consider alternate menus when submitted with the proposal along with the applicable financial worksheet (POC) that demonstrate the cost associated with implementation of the alternate menu.

1) The desired initial start date will be November 1, 2016

2) All questions or requests for additional information regarding this RFP must be submitted via email to BOTH of the following email addresses on or before October 15, 2016 - tbirchard@ects.org and ajackson@ects.org

3) Please supply five (5) references, three (3) of which must be from Pennsylvania public high schools of comparable size and scope of work

4) Please include a sample bill including payment terms

5) The SFA may increase or decrease the selling prices for breakfast, lunch, or a la carte annually as it deems reasonable. All bids should use the selling prices for breakfast, lunch and a la carte as are provided in the RFP

6) The SFA's enrollment varies from year to year based on home district enrollments. As such, the SFA reserves the right to open or close programs or to reconfigure additional programs in the future

7) The FSMC will be working in conjunction with the SFA's high school Culinary Arts educational program in a dual-purpose work area which serves both educational and food service functions

8) The FSMC will provide an opportunity for the SFA's programs to be able to purchase food, cleaning, and paper supplies and must ensure there is a clearly defined invoice and separation of inventory for these purchases

9) The FSMC must be knowledgeable and have experience with PrimeroEdge software

10) A performance bond will not be required

11) The SFA has break times in both the AM and PM sessions and service must be provided for these break times

12) The SFA does NOT permit pictures to be taken on school grounds

13) After the initial mandatory walk-through the SFA will not host any additional walk-throughs

14) The SFA has three part-time employees who work approximately 75 hours per week in total, with two employees scheduled per day

15) The SFA will permit equipment suggestions but will retain final approval rights

16) The SFA contracts with a third-party vendor to oversee the three vending machines

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Standard Terms and Conditions

1. Scope and Purpose

A. The FSMC shall operate in conformance with the SFA's Policy/Agreement with PDE, PDE-3528.

B. The SFA currently operates the programs indicated below with a checkmark:

- | | |
|--|--|
| ☒ National School Lunch Program (NSLP) | ☒ School Breakfast Program (SBP) |
| ☒ Provision 1, 2, 3 or Community Eligibility (CEP) | ☒ Summer Food Service Program (SFSP) |
| ☒ Child and Adult Care Food Program (CACFP – all programs) | ☒ Afterschool Snack Program (ASP) |
| ☒ Seamless Summer Option (SSO) | ☒ Special Milk Program (SMP) |
| ☒ A la Carte | ☒ Vending |

Proposals must be inclusive of all of the SFA's current programs. However, the SFA reserves the right to expand the federal CN program to provide the availability of food resources to children and students that can be served through these programs so long as both parties are in agreement and prior approval is obtained by the State Agency or it is documented in Section Q.

C. 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.

D. The food service provided shall be operated and maintained as a resource to the SFA's students, faculty, and staff and not as a source of profit to the FSMC.

E. The FSMC shall comply with the rules, regulations, policies, and instructions of PDE and USDA, and any additions or amendments thereto, including but not limited to, Title 7 CFR parts 210, 215, 220, 245, 250, 3017, and 3018; Title 2 CFR part 200; and Title 7 CFR parts 225 (SFSP) and 226 (CACFP), as applicable.

F. All income accruing as a result of payments by children and adults, federal and state reimbursements, and all other income from sources such as donations, special functions, grants, loans, etc., shall be deposited in the SFA's food service account. Any profit or guaranteed return shall remain in the SFA's food service account. The guaranteed return can be no less frequent than yearly. This is a non-profit program and, as such, the SFA's food service account should retain a maximum balance of three (3) months operating expenses on hand as is required under 7 CFR §210.9(b)(2).

G. 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 7 CFR §210.16(c) and 2 CFR §200.323(d).

H. 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 PDE and the USDA regarding each of the CN programs covered by this contract. The SFA shall not relinquish any prohibited responsibilities to the FSMC.

I. The SFA shall retain control of the CN program's food service account and overall financial responsibility for the CN programs.

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- J. The SFA shall establish all selling prices, including price adjustments, for all reimbursable and non-reimbursable meals/milk and a la carte (including vending, adult meals, contract meals, and catering) prices. (Exception: Non-pricing programs need not establish a selling price for reimbursable meals/milk.) These prices shall not be established by the FSMC. However, the FSMC may provide recommendations.
- K. The FSMC shall provide additional school-related food service, such as banquets, parties, refreshments for meetings, etc., as requested by the SFA. The SFA or requesting organizations will be billed for the actual cost of food, supplies and labor, and the FSMC's administrative expenses if applicable to providing such service. USDA commodities shall not be used for these special functions unless the SFA's students will be primary beneficiaries.
- L. Any Guaranteed Return proposed by the FSMC must be fully described including the methodology of the formula for determining the value. The methodology, inclusive of the formula/calculation, may not change in renewal years. The documentation supporting the Guaranteed Return is to be submitted with the Projected Operating Cost worksheet (Attachment CR3).
- M. The SFA reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after the SFA's regularly scheduled lunch or breakfast periods, provided such is not prohibited by Local Wellness Policies and state or federal program regulations.
- N. The FSMC shall cooperate with the SFA in promoting nutrition education and coordinating the SFA's food service with classroom instruction. The FSMC shall comply with the Local Wellness Policy including the nutrition guidelines as required.
- O. The FSMC shall make substitutions in the food components of the meal pattern for students with disabilities when their disability restricts their diet, and those non-disabled students who are unable to consume regular lunch because of medical or other special dietary needs. Substitutions shall be made on a case-by-case basis when supported by a Medical Statement with the required information. There will be no additional charge to the student for such substitutions.
- P. Payment Terms/Method: The FSMC shall invoice the 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. The payment of interest and late fees from the school food service account funds is prohibited. Under 7 CFR §210.21(f)(iv), the FSMC is required to identify the amount of each discount, rebate, and other applicable credits on bills and invoices presented to the SFA for payment. Detailed (itemized) cost documentation must be submitted monthly to support what the SFA is charged for each cost, charge, or expense. This documentation must be retained on-site by the SFA. Costs, charges, and expenses must be mutually agreeable to the SFA and the FSMC and be allowed by federal regulations. Upon termination of the Agreement, all outstanding amounts shall immediately become due and payable.
- Q. The SFA is responsible for all contractual agreements the SFA enters into in connection with the CN programs.
- R. This contract shall be construed under the laws of the Commonwealth of Pennsylvania. Any action or proceeding arising out of this contract shall be heard in the appropriate courts of the Commonwealth of Pennsylvania.
- S. The FSMC shall comply with the provisions of the bid specifications, which are hereby in all respects made a part of this contract.

For DFN use only:

- T. No provision of this contract shall be assigned or subcontracted without prior written consent of the SFA.
- U. No waiver of any default shall be construed to be or constitute a waiver of any subsequent claim.
- V. This contract constitutes the entire contract between the SFA and the FSMC.
- W. 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.
- X. 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 bid specifications.
- Y. The SFA shall be responsible for ensuring the resolution of program review and audit findings.
- Z. This contract must be reviewed and approved by DFN prior to execution, as noted in the final approval on the cover page.

2. Signature Authority

- A. The SFA shall retain signature authority for the policy/agreement, PDE-3528, to participate in the CN programs, including but not limited to the School Nutrition Financial Form, the Verification Report, and the on-line submission of the sponsor application/site information and other reports, and requests to PDE to amend the application.
- B. The SFA shall retain signature authority for the Monthly Claim for Reimbursement in the CN Program Electronic Application and Reimbursement System (CN PEARS).
- C. The SFA is responsible for reviewing the data and signing the Edit Check Worksheet(s) prior to the submission of the monthly Claim for Reimbursement.
- D. The FSMC may not be given access to CN PEARS, COMPASS, or the PrimeroEdge Student Eligibility System.

3. 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. This may not be delegated to the FSMC.
- B. The FSMC shall implement an accurate point of service meal/milk count using the meal counting system submitted by the SFA in their application to participate in the CN programs and approved by DFN, as required under Title 7 CFR §210.8. Such meal/milk counting system must eliminate the potential for the overt identification of free and reduced price eligible students under Title 7 CFR §245.8 and prevent erroneous meal counts. The FSMC is responsible for ensuring students are not being claimed for meals when they were not in attendance at the time of the meal or did not receive a reimbursable meal. The SFA must have a system in place to monitor this.
- C. The SFA shall be responsible for the completion, distribution, and collection of the parent letter and household application for free and reduced price meals and/or free milk. This may not be delegated to the FSMC.

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- D. The SFA shall be responsible for obtaining the Direct Certification List from COMPASS or PrimeroEdge (as applicable), as required throughout the school year, for use to determine eligibility for free meals without obtaining a household application for free and reduced price meals and/or free milk from parent/guardian. This may not be delegated to the FSMC.
- E. The SFA shall be responsible for the determination of eligibility for free and reduced price meals and free milk and will not disclose confidential information to the FSMC, as required under Title 7 CFR §210.16(a). The SFA will provide the FSMC with a list of children. This list must be updated by the SFA when changes occur in a student's eligibility status. These activities may not be delegated to the FSMC.
- F. The SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free and reduced price meals and free milk. This may not be delegated to the FSMC.
- G. The SFA shall be responsible for verifying household applications for free and reduced price meals and follow-up activities as required by federal regulations. **The Business Manager** is responsible for completing the verification process. This may not be delegated to the FSMC.

4. USDA Donated Foods

- A. The SFA shall retain title to all USDA donated foods.
- B. The FSMC is prohibited from entering into any processing contracts utilizing USDA donated foods on behalf of the SFA. All refunds received from processors must be retained by the nonprofit school food service account.
- C. The FSMC shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to, USDA donated foods.
- D. The FSMC shall select, accept and use USDA donated foods in as large quantities as may be efficiently utilized in the SFA's nonprofit food service, subject to approval of the SFA. The SFA shall consult with the FSMC in the selection of commodities; however, the final determination as to the acceptance of commodities must be made by the SFA.
- E. The FSMC will use all donated ground beef and ground pork products, and all processed end products, in the SFA's food service. The FSMC will use all other donated foods, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the SFA's food service.
- F. The FSMC must assure that 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 recipient agency processing agreements, and will ensure crediting of the SFA for the value of donated foods contained in such end products at the processing agreement value.
- G. The FSMC shall have records available to substantiate that the full value of all USDA donated foods is used solely for the benefit of the SFA.
- H. The values are to be based on the values at the point the SFA receives the commodities from the State distributing agency and based on the USDA Commodity Value Listing pertinent to the time period. This information is available from the PDA's Bureau of Food Distribution.

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- I. The FSMC shall perform the following activities in accordance with 7 CFR §250.50(d): (check all that apply)

- ☒ Preparing and serving meals using donated foods.
- ☒ Ordering or selection of donated foods (in coordination with the SFA).
- ☒ Storage and inventory management of donated foods.
- ☒ Payment of processing fees or submittal of refund requests to a processor on behalf of the SFA, or remittance of refunds for the value of donated foods in processed end products to the SFA.

5. Crediting For and Use of Donated Foods

- A. The FSMC must credit the SFA for the value of all donated foods received for use in the SFA's meal service in the school year (including both entitlement and bonus foods).
- B. The FSMC must credit the SFA for the value of donated foods contained in processed end products if the FSMC is required to:
 - 1. Procure processed end products on behalf of the SFA, or
 - 2. Act as an intermediary in passing donated food value in processed end products on to the SFA.
- C. The SFA must determine the method by which crediting will occur and the means of documentation to be utilized to verify that the value of all donated foods has been credited. All crediting must be done on no less than a monthly basis.
- D. The FSMC must use the November USDA Commodity Value Listing for determining the donated food values to be used in crediting, in accordance with 7 CFR §250.51(c), or the actual donated food values. All forms of crediting must provide clear documentation of the value received from the donated foods.
- E. Following 7 CFR §210.21(f)(iv), invoices must clearly display all applicable credits to the SFA.

6. Inventory, Storage and Record Retention of USDA Donated Foods

- A. When this contract or subsequent renewals terminates, the FSMC must return all unused donated ground beef, donated ground pork and processed end products. At the termination of the contract, the SFA **will retain all** other unused donated foods.
- B. The FSMC will comply with the storage and inventory requirements for donated foods.
- C. The SFA, the Comptroller General, PDA, PDE, USDA, or their duly authorized representatives, may perform on-site reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of donated foods.
- D. The FSMC will maintain records to document its compliance with requirements relating to donated foods, in accordance with 7 CFR §250.45(b).
- E. The SFA must maintain the following records relating to the use of donated foods:
 - 1. The donated foods and processed end products received and provided to the FSMC for use in the SFA's food service.

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2. Documentation that the FSMC has credited the SFA for the value of all donated foods received for use in the SFA's food service in the school year, including, in accordance with the requirements in 7 CFR §250.51(a), the value of donated foods contained in processed end products.
3. The actual donated food values used in crediting.

F. The FSMC must maintain the following records relating to the use of donated foods:

1. The donated foods and processed end products received from, or on behalf of, the SFA, for use in the SFA's food service.
2. The FSMC must show documentation that it has credited the SFA for the value of all donated foods received for use in the SFA's food service in the school year, including, in accordance with the requirements in 7 CFR §250.51(a), the value of donated foods contained in processed end products.
3. The FSMC must maintain documentation of its procurement of processed end products on behalf of the SFA, as applicable.

G. The SFA must ensure that the FSMC is in compliance with the requirements of this part through its monitoring of the food service operation, as required in 7 CFR Parts 210, 225, or 226, as applicable. **The Business Manager** is responsible for this monitoring process.

H. The SFA must conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA's food service in the school year.

7. **Renewal Assumptions**

A. 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, this contract (1) may be terminated at the end of the current term or (2) continue under the same terms as written if the material change is outlined in section Q on page 7 and approval is granted by DFN, whichever is mutually agreed upon.

The distinction between a minor change and a material change cannot be qualified for every action undertaken in the CN programs. However, at a minimum, a change is material when, had the new term been in the solicitation and original contract, it could have affected how the bidder and other competitors responded to the RFP.

Services or features contingent on multi-year contracts are not allowable, for example equipment installation may not be stipulated for contract renewal years.

1. The SFA reserves the right to expand the federal CN programs in order to provide availability of food resources to children and students that can be served through these programs so long as both parties are in agreement and prior approval is obtained by DFN.
2. The SFA's policies, practices, and service requirements shall remain materially consistent throughout the contract term and any subsequent contract renewals.

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.

3. Legislation, regulations, and reimbursement rates that create changes in the CN program shall be enforced on their effective date.

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4. Usable commodities 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.
 5. The government reimbursement rates in effect shall remain materially consistent throughout the year.
 6. Meal components and quantities required by any of the programs selected in letter B, under 1 (Scope and Purpose) of the Standard Terms and Conditions remain consistent with prior years.
 7. Service hours, service requirements, and type or number of facilities selling food and/or beverages on SFA's premises shall remain materially consistent throughout the contract term and any subsequent contract renewal years.
 8. The state or federal minimum wage rate and taxes in effect shall remain materially consistent throughout the year.
 9. The projected number of full feeding days is: **180** and shall remain materially consistent in renewal years.
 10. SFA revenue credited to the food service program shall include all state and federal amounts received specifically for CN operations.
- B. Contract Cost Increase: The SFA may negotiate at the end of each one year contract period for a cost increase. If there is an increase in the Administrative and Management Fees, it cannot exceed the annual percentage increase of the Consumer Price Index (CPI) for All Urban Consumers for the preceding year. The addition of new line items to the budget is not allowable in renewal years. The CPI can be used as a gauge for proposed increases to operating costs. However, the SFA must be able to justify approval for operating costs exceeding the CPI.
- C. All contract renewals shall be for a period of one year beginning July 1 and ending June 30, with mutual agreement between the SFA and the FSMC. Renewal contracts cannot be effective prior to the final approval date by DFN and signed by both parties. Failure to have renewal contracts fully executed prior to July 1, will lapse this contract and require the SFA to re-bid the contract.
- D. Renewal year contracts are contingent upon fulfillment of all contract provisions. If DFN determines during an Administrative Review, audit, etc., that the FSMC is not meeting contractual obligations and is responsible for noncompliance of program regulations, DFN may decline to approve a renewal contract until it can be demonstrated that the FSMC is capable of meeting contractual obligations and being in compliance with program regulations.

8. Health Certifications

- A. The SFA shall maintain all applicable health certifications on 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 durations of the contract as required under Title 7 CFR §210.16(c).
- C. The FSMC shall adhere to the Food Safety Plan implemented by the SFA for all preparation and service of school meals, using a Hazard Analysis and Critical Control Point (HACCP) system as required under Public Law 108-265.
- D. The FSMC agrees to allow at least two health inspections to be conducted by the Health Department at every site involved in school meal preparation and/or service as required by Public Law 108-265.

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- E. The SFA shall immediately correct any problems found as a result of a health inspection. The FSMC must support and cooperate with the necessary corrections.

9. 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 paid reimbursable meals to all eligible children participating in the CN programs.
- D. In order for the FSMC to offer a la carte food service, the FSMC must offer free, reduced price and paid reimbursable meals to all eligible children.
- E. The FSMC shall provide meals in the CN programs that meet the requirements as established in 7 CFR Part 210.
- F. The FSMC shall provide the specified types of service in the schools/sites listed in Section 1, letter B.
- G. The FSMC shall promote maximum participation in the CN programs. Proposal shall include plan for FSMC to increase participation, if applicable, and any cost that will be incurred as a result of the plan. Any guarantee dependent on participation must identify the change to the guarantee based upon participation factors.
- H. 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.
- I. 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 the contract.

10. Books and Records and Reports

- A. The FSMC shall maintain and provide to the SFA, on a monthly basis, detailed (itemized) documented cost records (supported by invoices, receipts, etc.). This documentation must be retained on-site by the SFA. The FSMC is required to identify the amount of each discount, rebate, and other applicable credits. All costs must be fully supported, mutually agreeable to the SFA and the FSMC and be allowed by federal regulations. The FSMC shall submit the detailed monthly documentation no later than the tenth (10th) calendar day succeeding the month in which services were rendered. Participation records shall be submitted no later than the fifth (5th) 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 on-line of the Claim for Reimbursement. The SFA shall reconcile Edit Check worksheets and daily/monthly meal counts against student attendance records and daily transaction worksheets/logs.
- B. The FSMC shall maintain records at the SFA to support all expenses and revenue appearing on the monthly operating statement attributable to the SFA. These records shall be kept at the SFA in an orderly fashion according to expense categories. This includes, but is not limited to invoices, receipts, and timesheets to support all expenses charged to the SFA.
- C. The FSMC shall provide the SFA with a year-end statement.

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- D. The SFA shall conduct an internal audit of food, labor and other large expense items quarterly, as well as performing random audits on smaller expense categories. This includes, but is not limited to conducting inventory counts and analyzing and reconciling invoices, receipts and time sheets.
- E. Should the SFA have any concern as to the FSMC's compliance of regulatory rules due to internal audits, monitoring, or an Administrative Review conducted by PDE, the SFA shall have the right to request an audit of the FSMC and the selection of the auditor(s) to perform the audit. The FSMC will be responsible for bearing the costs that occur as a result of this audit.
- F. The SFA and the FSMC must provide all documents as necessary for the independent auditor to conduct the SFA's single audit.
- G. Books and records of the FSMC pertaining to the CN program operations shall be made available, upon demand, in an easily accessible manner for a period of three (3) years from the end of the contract term (including extensions) to which they pertain, for audit, examination, excerpts and transcriptions by the SFA and/or any state or federal representatives and auditors.
- H. If audit findings regarding the FSMC's records have not been resolved within the three-year period, the records must be retained beyond the three-year period for as long as required for the resolution of issues raised by the audit. (Reference 2 CFR §200.333).
- I. The FSMC shall not remove federally required records from the SFA premises. Upon contract termination, the FSMC must leave copies of the records at the SFA premises.
- J. The SFA is responsible for ensuring resolution of program review and audit findings.

11. Employees

- A. The SFA reserves the right to interview and approve the on-site food service manager/director.
- B. The SFA must designate if the 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. Employees **will be retained by the SFA.**
- C. The SFA must have a written code of conduct for all employees, which the FSMC must uphold for all employees working with the food program. (Reference 2 CFR §200.318(c)).
- D. If the SFA wants the SFA employees to be subject to employment by the FSMC, the Labor and Fringe worksheets, labeled Attachment CR4 and CR5 shall be submitted in accordance with Section 10B. The total amount shall equal the Projected Operating Cost line item worksheet's total, labeled Attachment CR3, for the expense item "Direct Labor and Benefits".
- E. 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. Specific locations and assignments will be provided to the SFA two full calendar weeks prior to the commencement of operation.
- F. The FSMC must provide time sheets indicating the pro-ration of shared employees. These time sheets must be submitted monthly with each invoice that is submitted for payment. The time sheets need to clearly indicate all locations that a pro-rated employee works and the percent of time that this employee worked in each location.

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- G. 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 for the site manager. The FSMC shall also be responsible for the hiring and termination of non-management staff who are employees of the FSMC.
- H. The SFA and FSMC must ensure that all food service employees meet and continue to meet all of the Professional Standards Requirements. All trainings must be documented in PrimeroEdge Teamwork.
- I. The FSMC shall maintain its own personnel and fringe benefits policies for its employees. A copy of these policies must be submitted with all proposal documents. These policies are subject to review by the SFA.
- J. Staffing patterns shall be mutually agreed upon.
- K. The FSMC shall not hire employees in excess of the number required for efficient operation.
- L. The SFA shall provide sanitary toilet and hand washing facilities for the employees of the FSMC.
- M. The SFA may request in writing the removal of any employee of the FSMC who violates health requirements or conducts himself/herself in a manner that is detrimental to the well-being of the students.
- N. In the event of the absence, termination, removal or suspension of any such employee, the FSMC shall immediately restructure the food service staff without disruption of service.
- O. 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 and safety devices in the kitchen and cafeteria areas.
- P. The use of student workers or students enrolled in vocational classes in the food service shall be mutually agreed upon.
- Q. The FSMC shall provide proof that each prospective employee working with children has had a Pennsylvania State Criminal History Background Check and a Federal Criminal History Record that is not more than one (1) year old. (Section 111 of the Public School Code. See Act 48 of 2003 Section 111 for specific convictions that this applies to.)
- R. The FSMC shall provide proof that each prospective employee working with children has had the required number of hours of approved child abuse recognition and reporting training. (Act 31 of 2014)

12. **Monitoring**

- A. The SFA shall monitor the food service operation of the FSMC through periodic on-site visits to ensure that the food service is in conformance with USDA program regulations per 7 CFR §210.16. A prototype check list (PDE002a) for monitoring can be found on PEARS/Applications/Download Forms under section SNP-Forms. Further, if there is more than one 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. **The Business Manager** is responsible for performing all on-site reviews.
- B. The records necessary for the SFA to complete the required monitoring activities must be maintained on-site by the FSMC under this contract, and must be made available to the Auditor General, USDA, PDE, PDA, and the SFA upon request for the purpose of auditing, examination, and review.

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13. Menus/Advisory Boards

- A. The FSMC must comply with the 21-day menu developed by the SFA for the programs checked in section 1, letter B of this contract, and is included in the RFP (the exception to this would be the SFSP which only requires an 11-day menu). Minor changes made by the FSMC after the first 21-day cycle must be approved by the SFA. The SFA shall approve menus no later than two weeks prior to service. Major changes to the menu are not allowable unless included as part of the RFP process and acceptable by the SFA as indicated in section Q on page 7. FSMC proposals must identify if they plan to change the 21 day menu included in the RFP, as indicated by the SFA in section Q. If so, the FSMC must identify how it will change the menu and the financial impact to revenues and expenses.
- B. The SFA is responsible for the formation and establishment of an advisory board composed of students, teachers, and parents to assist in menu planning and periodic meetings. The FSMC shall participate in these periodic meetings as deemed appropriate by the SFA.

14. Use of Facilities, Inventory, Equipment & 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 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 CN programs.
- C. The FSMC and the SFA shall inventory the equipment and commodities owned by the SFA at the beginning of the school year, including but not limited to, silverware, trays, chinaware, glassware, and/or kitchen utensils.
- D. The FSMC shall maintain the inventory of silverware, trays, chinaware, glassware, kitchen utensils, and other operating items necessary for the food service operation at the inventory level as specified by the SFA.
- E. The SFA will replace expendable equipment and replace, repair and maintain non-expendable 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 donated foods in conformance with the SFA's agreement with PDA.
- G. The FSMC shall provide the SFA with one set of keys for all food service areas secured with locks.
- H. The SFA shall provide the FSMC with local telephone service.
- I. 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.
- J. Check one of the following regarding equipment:
 - ☒ SFA is allowing FSMC to propose equipment necessary for implementation or enhancement of operation. Any equipment not included in FSMC proposal may not be charged, directly or indirectly, to the SFA throughout the duration of the contract.
 - ☐ SFA is not requesting FSMC to propose purchase of equipment. FSMC may not propose purchase of equipment in proposal and equipment may not be charged, directly or indirectly, to the SFA throughout the duration of the contract.

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- K. The SFA shall be responsible for any losses, including USDA donated foods, which may arise due to equipment malfunction or loss or electrical power not within the control of the FSMC.
- L. All food preparation and serving equipment owned by the SFA shall remain on the premises of the SFA.
- M. The SFA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the SFA premises.
- N. The FSMC shall notify the SFA of any equipment belonging to the FSMC on SFA premises within 10 days of its placement on SFA premises.
- O. The SFA shall have access, with or without notice, to all of the SFA's facilities used by the FSMC for purposes of inspection and audit.
- P. The FSMC shall not use the SFA's 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.
- Q. The SFA, on the termination or expiration of the contract, shall conduct a physical inventory of all equipment and commodities owned by the SFA.
- R. The FSMC shall surrender to the SFA upon termination of the contract, all equipment, and furnishings in good repair and condition.

15. **Purchases**

- A. If the FSMC is procuring goods or services which are being charged to the SFA under the contract, 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. Check one of the below options:
 - ☐ The SFA will do all purchasing for the non-profit school food service.
 - ☒ The FSMC bills the SFA for foods when purchased. At the option of the SFA, the FSMC will purchase back unused supplies from the SFA at the termination of the contract in order to prevent overbuying.
 - ☐ The FSMC bills the SFA for food when used. At the option of the SFA, the SFA will buy the ending inventory from the FSMC.
- B. This contract shall not prevent the SFA from participating in food co-ops or purchasing food from vendors with whom the FSMC normally does not do business.
- C. Under 7 CFR §210.21(f)(i):
 - 1. Only allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor; to the extent, those credits are allocable to the allowable portion of the costs billed to the SFA.
 - 2. The contractor must separately identify for each cost submitted for payment to the SFA the amount of each cost that is allowable and unallowable.
 - 3. Proprietary information, such as brand name, may be redacted, provided sufficient information is provided for SFA to reconcile monthly billing invoice against supporting documentation.

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4. The contractor must individually identify the amount of each discount, rebate and other applicable credits on all bills and invoices presented to the SFA. In the case of other applicable credits, the nature of the credit must be identified.
 5. The contractor must identify, on the final invoice of the school year, the method by which it will report discounts, rebates and other applicable credits allocable to the contract that cannot be reported prior to the conclusion of the contract.
 6. The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation to the SFA and, upon request, to DFN, or USDA.
- D. No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.
- E. P.L. 110-246, Section 4302 of the Richard B. Russell National School Lunch Act (NSLA), allows SFAs to purchase unprocessed locally grown and locally raised agricultural products. NSLA allows SFAs, if they choose to do so, to apply a geographic preference when procuring unprocessed locally grown and locally raised agricultural products. The SFA may just apply a preference, they cannot make this a requirement.

16. Invoices

- A. Invoices must be itemized by cost categories such as food, including commodities, labor, supplies, rebates, discounts, credits, etc.
- B. **An example of the invoice, identifying commodities (USDA entitlement balances), discounts, rebates and credits must be included with the proposal.**
- C. The FSMC must submit a monthly reconciliation to the SFA comparing the invoice and revenue against the projected revenue and expenses. (Used in the Projected Operating Costs of proposal.)
- D. DFN may randomly request SFAs to submit copies of invoices for compliance with the above items.
- E. The payment of interest and late fees from the school food service account fund is prohibited.

17. Buy American

- A. 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.
- B. The FSMC shall certify the percentage of U.S. content in the products supplied to the SFA.
- C. The SFA reserves the right to review vendor purchase records to ensure compliance with the Buy American provision.

18. Sanitation

- A. The FSMC shall place garbage and trash in the containers in the designated areas as specified by the SFA.
- B. The SFA shall remove all garbage and trash from the designated areas.

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- C. The FSMC shall clean the kitchen and dining room areas as indicated in the Cost Responsibility Worksheet (Attachment CR2).
- D. The FSMC shall operate and care for all equipment and food service areas in a clean, safe, and healthy condition in accordance with 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 FSMC shall comply with all local and state sanitation requirements in the preparation of food.

19. 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.

20. Non-Discrimination

Both the SFA and the FSMC agree that no child who participates in any of the CN programs will be discriminated against on the bases of race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by U.S. Department of Agriculture.

21. 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 situations.

22. Term and Termination

- A. The SFA or the FSMC may terminate the contract for cause by giving 60 days written notice.
- B. At any time, because of circumstances beyond the control of the FSMC, the FSMC or the SFA may terminate the contract by giving 10 days written notice to the other party.
- C. Neither the FSMC nor the SFA shall be responsible for any losses resulting should the fulfillment of the terms of the contract be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, 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 they were unable to prevent.

23. Nonperformance by the FSMC

- A. The FSMC is required to provide a Performance Bond in the amount of **\$ 0.00** (dollar amount or percentage of the total bid price) as a guarantee of performance of all terms outlined under this contract. The amount/percentage should not be unreasonable in that it would prevent free and open competition. The Performance Bond provides the SFA recourse in the event that contractual obligations are not satisfactorily performed.

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- B. 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.
- C. The FSMC shall reimburse the SFA the full amount of any meal over-claims which are attributable to the FSMC's negligence, including those over-claims based on review or audit findings that occurred during the effective dates of the original and renewal contracts.

24. Certifications

- A. The FSMC shall comply with the mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).
- B. The FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C. §327-330, as supplemented by the Department of Labor regulations, 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 workweek of 40 hours. Work in excess of the standard workday or standard workweek is permissible, provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or forty hours in any work week.
- C. The FSMC shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, 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; the FNS Instruction 113-6, 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, Title 7 CFR §210.21(d).
- F. The FSMC shall sign (in blue ink) the Certification of Independent Price Determination, Appendix G, which was attached as an addendum to the FSMC's proposal and which is incorporated herein by reference and made part of this contract.
- G. The FSMC shall sign (in blue ink) the Certification Regarding Debarment and Suspension, Appendix H, which was attached as an addendum to the FSMC's proposal and which is incorporated and made a part of this contract. (Reference 7 CFR §3017) This certification assures the SFA that the FSMC has not been debarred from entering into contracts with the Federal Government or any other entity receiving Federal funds, or suspended from entering contracts during a time when the vendor is being investigated for a legal action which is being taken to debar the vendor from contracting activities.
- 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), and shall sign (in blue ink) the Clean Air and Water Certificate, Appendix I, which was attached as an addendum to the FSMC's proposal and which is incorporated and made a part of this contract

For DFN use only:

- I. The FSMC shall sign (in **blue** ink) the Lobbying Certification, Appendix J page 1, which was attached as an addendum to the FSMC's 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 of Lobbying Activities, Appendix J pages 2 and 3. If no lobbying activity occurred, the FSMC is still required to sign (in **blue** ink) the Disclosure of Lobbying Activities, Appendix J page 2.

25. Insurance

- A. The FSMC is required to be insured adequately to support the terms of the contract. 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 Pennsylvania. A Certificate of Insurance of the FSMC's insurance coverage indicating these amounts must be submitted at the time of award.
- B. The FSMC shall have in effect during all times under this agreement, comprehensive general liability insurance, including products and completed operations liability, contractual liability, and independent contractor's liability coverage and personal injury. Minimum coverage shall be \$1,000,000 per incident/per person.
 1. General Liability – **\$1,000,000**
 2. Workman's Compensation – **\$1,000,000**
 3. Vehicle Insurance – **\$1,000,000**
- C. The SFA shall be named as additional insured on the General Liability and Automobile insurance policy. The FSMC must provide a waiver of subrogation in favor of the SFA for General Liability, Automobile, and Worker's Compensation.
- D. In addition, the FSMC shall provide fire and theft insurance at its own expense to cover any risk created by fire and/or theft to its property located on the premises of the SFA. The FSMC further agrees to provide all necessary fire and/or theft insurance to cover clothes, garments and other articles owned by their employees.
- E. 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.

26. SFSP (See letter B under 1 (Scope and Purpose) of the Standard Terms and Conditions for verification of participation)

- A. The SFA shall offer free meals to all eligible children participating in the SFSP. If the FSMC will operate the SFSP (including the preparation, record keeping, and delivery of meals), a **flat price per meal cost** must be submitted as part of this RFP for the SFSP (Attachment SFSP1). In accordance with 7 CFR §225.15 the SFA cannot contract out the management responsibilities of the SFSP. The SFA shall be responsible for ensuring that the food service operation conforms to all program requirements outlined in 7 CFR Part 225. The SFA shall be responsible for determining eligibility for all SFSP sites. The SFA as a SFSP sponsor is responsible for conducting and documenting the required site visits of all sites for pre-approval and during operation of the program.
- B. The SFSP will operate from **N/A** to **N/A**.

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27. CACFP (See letter B under 1 (Scope and Purpose) of the Standard Terms and Conditions for verification of participation)

The SFA shall offer meals to all eligible children and adults participating in the CACFP, respectively. If the FSMC will operate the CACFP (including the preparation, record keeping, and delivery of meals), a **flat price per meal cost** must be submitted as part of this RFP for the CACFP (Attachment CACFP1). In accordance with 7 CFR §226.15 the SFA cannot contract out the management responsibilities of the CACFP. The SFA shall be responsible for ensuring that the food service operation conforms to all program requirements outlined in 7 CFR Part 226.

28. 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 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 SFA's 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 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 the State Agency and USDA shall have unrestricted rights.

For DFN use only:

SFA Certification of Acknowledgement

Please initial below next to each statement certifying that you have read and fully understand the contents of this contract.

- A. I certify that I, **Enter Name Here**, on behalf of **Enter SFA Here**, have read and fully understand the contents of this contract. I understand that the SFA must maintain oversight of the food service operations and that these responsibilities will not be delegated to the FSMC. I also understand that the SFA is responsible for closely monitoring the FSMC contract and the FSMC's daily activities.

Initial Here: _____

- B. I certify that I have chosen a **Cost Reimbursable contract**, and will follow the according procedures.

Initial Here: _____

- C. I certify that I will not enter into an agreement with an FSMC that has a real or apparent conflict of interest. This includes FSMCs that provide recommendations, develop or draft specifications, requirements, statements of work, requests for proposals, contract terms and conditions, or other documents for use in conducting procurement.

Initial Here: _____

- D. I certify that I, nor any employees (including School Board members) of **Enter SFA Here**, will not solicit or accept donations, gratuities, nor favors from current or potential FSMCs (i.e. gifts, golf outings, meals, etc.).

Initial Here: _____

- E. I certify that I will appropriately and in a timely manner respond to all bid protests and concerns raised by potential contractors.

Initial Here: _____

- F. I certify that **Enter SFA Here** has a written Code of Conduct that addresses conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts, and will make sure all employees are aware of said standards.

Initial Here: _____

- G. I have read and understand what the allowable costs are for all of the applicable CN programs.

Initial Here: _____

- H. I certify that **Enter SFA Here** and **Enter FSMC Here** shall not employ the same people.

Initial Here: _____

For DFN use only:

- I. I certify that **Enter SFA Here** will 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 PDE and the USDA regarding each of the CN programs covered by this contract.

Initial Here: _____

- J. I certify that all food service employees and those responsible for the oversight of the contract and FSMC's operations meet the minimum Professional Standards requirements.

Initial Here: _____

- K. I certify that **Enter SFA Here** shall retain control of the CN programs' food service account, signature authority, and overall financial responsibility for the CN programs. This includes access to the PEARS account, COMPASS or PrimeroEdge Student Eligibility System.

Initial Here: _____

- L. I certify that CN programs are the responsibility of **Enter SFA Here** and **Enter SFA Here** is responsible for all contractual agreements entered into in connection with the CN programs.

Initial Here: _____

- M. I certify that **Enter SFA Here** will be responsible for determining student eligibility for all applicable programs and that **Enter FSMC Here** will have no involvement in the process.

Initial Here: _____

- N. I certify that **Enter SFA Here** will retain all records for the current year plus the three prior years.

Initial Here: _____

- O. I certify that all food will be in compliance with the current meal standards and Local Wellness Policy.

Initial Here: _____

- P. I certify that **Enter SFA Here** will monitor **Enter FSMC Here** in order to ensure compliance with USDA regulations.

Initial Here: _____

- Q. I certify that **Enter SFA Here** will create an advisory board composed of students, teachers, and parents to assist in menu planning.

Initial Here: _____

For DFN use only:

R. I certify that **Enter SFA Here** will not delegate any of the above responsibilities to the FSMC.

Initial Here: _____

S. I hereby certify that neither **Enter SFA Here** nor its principals/authorized representatives is presently debarred, suspended, proposed for debarment, declared ineligible, disqualified, or voluntarily excluded from participation in this transaction by any Federal/State department or agency.

Initial Here: _____

T. I further certify that neither **Enter SFA Here** nor any of its principals /authorized representatives has a reported criminal background that would affect the receipt of Federal funds.

Initial Here: _____

I certify under penalty of perjury that the information on these forms is true and correct, and that I will immediately report to the state agency any changes that occur to the information submitted. I understand that this information is being given in connection with receipt of federal funds. The state agency may verify information; and the deliberate misrepresentation of information will subject me to prosecution under applicable federal and state criminal statutes.

On behalf of **Enter SFA Here**, I hereby agree to comply with all state and federal laws and regulations governing the CN programs administered by the state agency. In accordance with Federal law and USDA policy, **Enter SFA Here** does not discriminate on the bases of race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA. I will ensure that all monthly claims for reimbursement are true and correct and that records are available to support these claims.

Name Printed: _____

Title: _____

Signature: _____
(in blue ink only)

Date: _____

For DFN use only:

FSMC Certification of Acknowledgement

Please initial below next to each statement certifying that you have read and fully understand the contents of this contract.

- A. I certify that I, **Enter Name Here**, on behalf of **Enter FSMC Here**, have read and fully understand the contents of this contract.

Initial Here: _____

- B. I certify that I, nor any of the employees of **Enter FSMC Here**, have not received any solicitations from any **Enter SFA Here** employee. In addition, I certify that no gifts, donations, or anything of monetary value (i.e. golf outings, meals, etc.) have been provided.

Initial Here: _____

- C. I certify that employees of **Enter FSMC Here** will be trained to understand and comply with all necessary trainings including the current written Code of Conduct authored by **Enter SFA Here**.

Initial Here: _____

- D. I certify that all of **Enter FSMC Here** food service employees meet the minimum Professional Standards requirements.

Initial Here: _____

- E. I certify that **Enter SFA Here** and **Enter FSMC Here** will not employ the same people.

Initial Here: _____

- F. I certify that **Enter SFA Here** will be legally responsible for the conduct of the food service program, and shall have access to all necessary documents, which will be maintained onsite, including but not limited to all contracts with vendors so that they may supervise the food service operations in such manner as will ensure compliance with the rules and regulations of PDE and the USDA regarding each of the CN programs covered by this contract.

Initial Here: _____

- G. I certify that **Enter FSMC Here** will not have control of the CN programs' food service account, signature authority, and overall financial responsibility for the CN programs. This includes access to the PEARS account, COMPASS or the PrimeroEdge Student Eligibility System.

Initial Here: _____

For DFN use only:

H. I certify that **Enter SFA Here** will be responsible for determining student eligibility for all applicable programs and that **Enter FSMC Here** will have no involvement in the process.

Initial Here: _____

I. I certify that **Enter FSMC Here** will follow the 21 day menu for the first 21 days of service, without change.

Initial Here: _____

J. I certify that all food will be in compliance with the current meal standards and Local Wellness Policy.

Initial Here: _____

K. I hereby certify that neither **Enter FSMC Here** nor its principals/authorized representatives is presently debarred, suspended, proposed for debarment, declared ineligible, disqualified, or voluntarily excluded from participation in this transaction by any Federal/State department or agency.

Initial Here: _____

L. I further certify that neither **Enter FSMC Here** nor any of its principals /authorized representatives has a reported criminal background that would affect the involvement in CN programs.

Initial Here: _____

I certify under penalty of perjury that the information on these forms is true and correct, and that I will immediately report to the SFA any changes that occur to the information submitted. I understand that this information is being given in connection with receipt of federal funds. The state agency may verify information; and the deliberate misrepresentation of information will subject me to prosecution under applicable federal and state criminal statutes.

On behalf of **Enter FSMC Here**, I hereby agree to comply with all state and federal laws and regulations governing the CN programs administered by the state agency. In accordance with Federal law and USDA policy, **Enter FSMC Here** does not discriminate on the bases of race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Name Printed: _____

Title: _____

Signature: _____
(in blue ink only)

Date: _____

For DFN use only:

Sample Minimum Food Specifications

These are minimum specifications. The SFA is encouraged to provide more details that align with the 21 day menu.

Meat/Seafood

All meats, meat products, poultry, poultry products, and fish must be government inspected.

- Beef, lamb, and veal shall be USDA Grade Choice or better.
- Pork shall be U.S. No. 1 or U.S. No. 2.
- Poultry shall be U.S. Government Grade A.
- Seafood to be top grade, frozen fish must be a nationally distributed brand, packed under continuous inspection of USDA.

Dairy Products

All dairy products must be Government Inspected.

- Fresh eggs shall be USDA Grade A or equivalent, 100% candled.
- Frozen eggs must be USDA inspected.
- Milk shall be 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 pudding 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.

For DFN use only:

Appendix G

Independent Price Determination Certificate

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

Enter FSMC Here

Enter SFA Here

(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 by the offeror and will not knowingly be disclosed by the offeror 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 or to any competitor; and
- (3) No attempt has been made or will be made by the offeror to induce any person or firm to submit or not to submit, an offer for the purpose of restricting competition.

(B) Each person signing this offer on behalf of the Food Service Management Company 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 so 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 Food Service Management Company, its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

Signature (**in blue ink only**) of FSMC's
Authorized Representative

Title

Date

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 to above.

Signature (**in blue ink only**) of SFA's
Authorized Representative

Title

Date

NOTE: ACCEPTING A BIDDER'S OFFER DOES NOT CONSTITUTE AWARD OF THE CONTRACT.

For DFN use only:

Appendix H

Certification Regarding Debarment and Suspension

This certification is required by the regulations implementing Executive Order 12549 and 12689, “Debarment and Suspension” (2 CFR 180).

- (1) The prospective participant certifies, by submission of this proposal, that neither it nor its principals is 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 participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Enter FSMC Here

Names(s) and Title(s) of Authorized Representative(s) of the FSMC

Signature(s) (in blue ink only)

Date

For DFN use only:

Appendix I

Clean Air and Water Certificate

Applicable if the contract exceeds \$100,000 or the Contracting Officer has determined that the orders under an indefinite quantity contract in any one year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (41 U.S.C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(d)) and is listed by the Environmental Protection Agency (EPA) or the contract is not otherwise exempt. Both the School Food Authority (SFA) and Food Service Management Company (offeror) shall execute this Certificate.

Enter FSMC Here

Enter SFA Here

THE FOOD SERVICE MANAGEMENT COMPANY AGREES AS FOLLOWS:

- A. To comply with all the requirements of Section 114 of the Clean Air Act, as amended (41 U.S.C. 1857, et seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports and information as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.
- B. That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.
- C. To use his/her best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed.
- D. To insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph.

THE TERMS IN THIS CLAUSE HAVE THE FOLLOWING MEANINGS:

- A. The term "Air Act" means the Clean Air Act, as amended (41 U.S.C. 1957 et seq., as amended by Public Law 91-604).
- B. The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).
- C. The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1957c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).
- D. The term "Clean Water Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342) or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).
- E. The term "Compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an Air or Water Pollution Control Agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.
- F. The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location or sites of operations, owned, leased or supervised by the Food Service Management Company.

Signature (in blue ink only) of FSMC's Authorized Representative

Title

Date

Signature (in blue ink only) of SFA's Authorized Representative

Title

Date

For DFN use only:

CERTIFICATION REGARDING LOBBYING

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds.

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

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

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

Name/Address of FSMC

Name/Title of Submitting Official

Signature (in blue ink only)

Date

For DFN use only:

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: _____ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance		2. Status of Federal Action: _____ a. bid/offer/ application b. initial award c. post-award		3. Report Type: _____ a. initial filing b. material change For Material Change Only: Year _____ Quarter _____ Date of Last Report _____	
4. Name and Address of Reporting Entity: Prime Subawardee Tier, if known: Congressional District, if known:		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:			
6. Federal Department/Agency:		7. Federal Program Name/Description: CFDA Number, if applicable: _____			
8. Federal Action Number, if known:		9. Award Amount, if known: \$ _____			
10. a. Name and Address of Lobbying Entity: (last name, first name, MI) 10. b. Individuals Performing Services (including address if different from No. 10,a.) (Attach Continuation Sheet(s) SF-LLL-A If Necessary) (if individual, last name, first name, middle)					
11. Amount of Payment (check all that apply): \$ _____ Actual Planned \$ _____		13. Type of payment (check all that apply): ____ a. retainer ____ b. one-time fee ____ c. commission ____ d. contingent fee ____ e. deferred ____ f. other; specify:			
12. Form of Payment (check all that apply): ____ a. cash ____ b. in-kind; specify: Nature _____ Actual _____					
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or member(s) contracted for Payment indicated in Item 11: (Attach Continuation Sheet(s) SF-LLL-A, if necessary)					
15. Are Continuation Sheet(s) SF-LLL-A Attached:		Yes _____ (Number _____)		No _____	
16. Information requested through this form is authorized by Title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		Signature: (in blue ink only) _____ Print Name: _____ Title: _____ Telephone: _____ Date: _____			

For DFN use only:

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET SF-LLL-A**

Reporting Entity: _____
Page _____ **of** _____

For DFN use only:

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

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 to 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 of SF-LLL-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 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 Federal 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 1st 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 known. 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, Invitation for Bid (IFB) 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 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 names of the individual(s) performing services, and include full address if different from 10(a). 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 that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check all that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check all 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 date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached. List number of sheets if yes.
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 existing 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 this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget. Paperwork Reduction Project (0348-00046), Washington, DC 20503.

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