



# Indiana Department of Education

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Dr. Katie Jenner, Secretary of Education

School and Community Nutrition Programs  
Indiana Government Center North, 9<sup>th</sup> Floor  
100 N Senate Ave  
Indianapolis, IN 46204  
<https://www.in.gov/doe/nutrition/>

## **Food Service Management Company (FSMC) Request for Proposals (RFP)**

**RFP Issued By:**

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July 1, \_\_\_\_\_ to June 30, \_\_\_\_\_

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, religion, sex, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

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 State or local Agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Mail Stop 9410, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

USDA is an equal opportunity provider, employer, and lender.

**General Information**

**A. Intent**

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

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

**B. Procurement Method**

All procurement transactions shall be conducted in a manner that provides maximum open and free competition consistent with Title 2 CFR 200. The SFA shall choose one of the following options.

- This contract will be a **Fixed Price Contract** to be bid as a total per-meal cost reimbursement consisting of three components: Direct Cost of Operation, Administrative Fee, and Management Fee
  
- This contract will be a **Cost-Reimbursable Contract** wherein the FSMC will be paid on the basis of the direct cost (food, labor and supplies) incurred plus a fixed fee (administrative and management fees). All program expenses not otherwise defined in the contract will be assumed by the FSMC under the Administrative Fee. Expenses that represent the administrative fee must be itemized. A management fee represents the profit to the FSMC. Categories for fixed fees are limited to the following:
  - Management Fee Per Meal
  - Administrative Fee Per Meal
  - Yearly Fixed Management Fee

**C. Pre-Bid Meeting**

A Pre-Bid Meeting will be held (see details below).

In Person     Virtual     Both

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 \_\_\_\_\_ at \_\_\_\_\_ located at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attendance is \_\_\_\_\_. Virtual meeting details and materials may be obtained by contacting \_\_\_\_\_ at \_\_\_\_\_ or \_\_\_\_\_.

A Pre-Bid Meeting will not be held.

**D. Bid Submission and Award**

1. Proposals are to be submitted to:

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Public opening of proposals will be on \_\_\_\_\_ at \_\_\_\_\_. Proposals will not be accepted after this date and time. Proposals are to be submitted in a sealed envelope marked Food Service Management Company Bid.

For Virtual Only: Public opening of proposals will be held virtually on \_\_\_\_\_ at \_\_\_\_\_. Proposals will not be accepted after this time. Proposals are to be submitted in a sealed envelope marked Food Service Management Company Bid or by emailing \_\_\_\_\_ with the subject line Food Service Management Company Bid. Virtual meeting details and materials may be obtained by contacting \_\_\_\_\_, at \_\_\_\_\_.

2. In accordance with Title 2 CFR 200.319 (b), the SFA must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.
3. SFAs are prohibited from entering into a contract with an 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.
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 the forms provided.
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 prior to approval of the Indiana Department of Education (IDOE) and the approved execution of the contract. Paying the FSMC from CNP funds is prohibited until the contract is signed by both parties and final approval is provided by IDOE.
8. If additional information is required, please contact

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**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 will be composed of at least three people representing the SFA. Each committee member evaluates proposals independently. The award criteria and the relative value assigned to each must be specified on the evaluation form (Attachment A) with Cost being the primary factor (assigned the greatest number of points compared to other factors).

#### **F. Bid Protests**

Any action which diminishes full and open 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 2 CFR 200.318, SFAs must in all instances disclose all information regarding a protest to IDOE.

The Corporation's bid protest procedures are as follows:

1. A bidder shall have \_\_\_\_\_ to file a protest with the \_\_\_\_\_ in accordance to the same procedures defined in the request for proposal. Failure to follow these steps will invalidate a protest.
2. The \_\_\_\_\_ will review the protest within \_\_\_\_\_ of receipt. The \_\_\_\_\_ will decide if the protest is valid and shall determine if it impacted the bid award process. The \_\_\_\_\_ will notify the \_\_\_\_\_ of a protest. The \_\_\_\_\_ will note that there was a protest in any decision to award a bid.

#### **G. Overly Responsive**

To ensure full and open competition, Offeror's proposal must not be overly responsive. If Offeror's proposal is deemed to be overly responsive, the proposal may not be considered for evaluation for the Awarded Contract. When responding to this RFP, Offeror must confine its proposal to the requirements of this RFP.

Examples of overly responsive proposals:

- Respondent offers a guarantee which was not requested in the original RFP;
- Respondent offers incentives over and beyond those required by the RFP document (such as scholarships or "free" equipment) to entice a SFA to select its proposal for the Awarded Contract, or;
- Respondent offers to provide discounts or supplement funding for Point of Sale (POS) equipment when POS equipment was not sought in the original RFP document. If such items were not required in the RFP document, then the offeror would be considered overly responsive.

#### **H. Captions**

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

#### **I. Contract Terms**

The contract shall be for a period of one year with the school year beginning on or about July 1, \_\_\_\_\_, and ending June 30, \_\_\_\_\_, 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 IDOE and signatures of both parties.

**J. Employees**

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

**K. Errors or Omissions**

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

**L. Final Contract**

The complete contract will include all documents included by the SFA in the RFP and the proposal submitted by the FSMC.

**M. Gifts from FSMC**

The SFA's officers, employees, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors nor potential contractors. 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 Meal Equivalent Factor;

- **Meal count computation.** Each reimbursable lunch and supper shall be considered one (1) meal/meal equivalent, each reimbursable breakfast shall be considered two-thirds (2/3) (.666) of a meal/meal equivalent, and one reimbursable snack shall be considered one-third (1/3) (.333) of a meal/meal equivalent.
- **A la Carte Meal Equivalent Factor.** For cash meal sales other than reimbursable meals, the number of meal equivalents shall be determined by dividing the total of all food sales except reimbursable meal and reimbursable snack sales, (including sales of adult meals, a la carte meals, snack bar, catering, vending, and any other function sales) by the Meal Equivalent Factor as determined by IDOE. For the purposes of the Contract, a la carte shall be inclusive of all foods and beverages sold to students that do not constitute a component of a reimbursable meal plus all foods and beverages sold to adults during any and all meal services provided within the scope of the Contract.

The Meal Equivalent Factor will be calculated by IDOE each year. The fixed per meal equivalent rate for non-program food sales will be determined by the following;

<b>Year One Meal Equivalency Factor</b>	
a. Current School Year Severe Need	<u>\$4.62</u>
b. 9 Cents Lunch Rate	<u>\$0.09</u>
c. Current School Year USDA Foods Estimated Rate	<u>\$0.45</u>
<b>Meal Equivalency Factor Rate Equals the Sum of a + b + c</b>	<b><u>\$5.16</u></b>

**P. Payment and Fees**

All costs charged must be direct expenses and must have written documentation for the cost charged such as an invoice, timecard, receipt etc. Costs calculated based on percentages of FSMC revenue are not considered direct cost and are therefore unallowable. Direct costs are those that:

- Are exclusively attributable to the nonprofit school food service, and;
- Can be substantiated through written documentation such as timecards, invoices, receipts, etc.

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, USDA Foods handling and warehousing charges, travel as required to meet professional standards and intra-district mileage, uniforms, printing, taxes (excluding sales and personal property taxes) and licenses, and other expenses as contractually obligated herein.

Unallowable Costs. Interest, fines, penalties, and finance charges that may accrue under this contract are not allowable expenses to the nonprofit school food service account. The SFA will not pay unallowable expenses from the SFA’s nonprofit school food service account.

All costs resulting from contracts that do not meet the requirements of 7 CFR 210 are unallowable nonprofit school food service account expenses.

**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. An exclusive listing of changes that are material regarding the many procurement actions undertaken in CNPs cannot be provided. SFA should consult with legal counsel in making those determinations. However, IDOE 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.

Additional Information;

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## Standard Terms and Conditions

### A. Scope and Purpose

1. The FSMC shall operate in conformance with the SFA's Child Nutrition Programs (CNPs) Agreement with IDOE.
2. The SFA currently operates or is adding the programs indicated below with a checkmark. The FSMC, as an independent contractor, shall have the exclusive right to operate the CNPs, which includes all of the following checked programs:  

<input type="checkbox"/> National School Lunch Program (NSLP)	<input type="checkbox"/> Summer Food Service Program (SFSP)
<input type="checkbox"/> Child and Adult Care Food Program (CACFP)	<input type="checkbox"/> A la Carte
<input type="checkbox"/> School Breakfast Program (SBP)	<input type="checkbox"/> Afterschool Snack Program (ASSP)

Proposals must be inclusive of all of the SFA's programs selected above. The corresponding attachments for each checked program must be included in the RFP. The SFA reserves the right to expand the Federal CNP by adding additional programs, so long as both parties are in agreement and the expansion does not constitute a material change. Prior approval is required from the State Agency.

3. 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.
4. The food service provided shall be operated and maintained as a benefit to the SFA's students, faculty, and staff and not as a source of profit to the FSMC.
5. The FSMC shall comply with the rules, regulations, policies, and instructions of IDOE and USDA, including but not limited to, Title 7 CFR 210, 215, 220, 245, 250, and 2 CFR 200; and, if applicable, Title 7 CFR 225 (SFSP) and 7 CFR 226 (CACFP), as applicable, and any additions or amendments thereto.
6. 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.
7. Any profit or guaranteed return (a minimum amount of funds guaranteed to the SFA by the FSMC at the end of the school year food service operations) shall remain in the SFA's food service account and used for allowable food service expenses. 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 six (6) months operating expenses on hand as is required under 7 CFR 210.9(b)(2). Any Guaranteed Return proposed by the FSMC must be fully described in the methodology including the formula for determining the value. The methodology, inclusive of the formula/calculation, may not change in renewal years.
8. As required under 7 CFR 210.16(c) and 2 CFR 200.324 (c) 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.
9. The SFA shall be legally responsible for the conduct of the food service program and shall supervise the food service operations in such a manner as will ensure compliance with the rules and regulations of IDOE and the USDA regarding each of the Child Nutrition (CN) Programs covered by this contract.

10. The SFA shall retain control of the CN Program's food service account and overall financial responsibility for the CN Programs.
11. 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. These prices shall not be established by the FSMC.
12. 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 overhead and administrative expenses if applicable to providing such service. The total price will not exceed the actual cost plus \_\_\_\_\_ (the percent profit should not exceed 10%). USDA Foods shall not be used for these special functions unless the SFA's students will be primary beneficiaries. The Non-profit School Food Service Account shall not be charged for these additional food service requests outside of the School Nutrition Programs.
13. For fixed price per meal contracts, awarded on a per meal basis and with revenues from non-program foods sales converted into meal equivalents to which the fixed price cost is applied, the FSMC will annually provide information on food costs and revenues. The information must include food cost for reimbursable meals, food cost for non-program foods, revenue from non-program foods, and total revenue. Non-program foods include: a la carte; catering; vending; and student stores operated, or any other sales generated through the nonprofit school food service account not already described. This information is used to determine compliance with revenue from non-program foods at 7 CFR 210.14(f).
14. 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, state policies, or federal program regulations.
15. 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 Wellness Policy including the nutrition guidelines as required.
16. The vendor will make substitutions for food and/or beverage components for students with special dietary needs at no additional cost to the student. This includes, but is not limited to, food allergies and/or intolerances, texture modifications, carbohydrate counts, and calorie modifications. Substitutions shall be made on a case-by-case basis. To reduce and/or prevent the possibility of allergens being present in food or beverage items, the vendor is required to allow access to all ingredient and nutrition labeling for all products. If accommodations are not met within the meal pattern, these changes should be supported by a signed statement from a recognized medical authority. The SFA is responsible for obtaining and maintaining any documentation required for the SFA to claim program reimbursements.
17. 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 repayment. Detailed cost documentation must be submitted monthly to support what the SFA is charged for each cost, charge, or expense. Costs, charges, and expenses must be mutually agreeable to the SFA and the FSMC and be allowed by the State Agency (SA). Upon termination of the Agreement, all outstanding amounts shall immediately become due and payable.
18. The SFA is responsible for all contractual agreements entered into in connection with the CN Programs.

19. This contract shall be construed under the laws of the State of Indiana. Any action or proceeding arising out of this contract shall be heard in the appropriate courts of the State of Indiana.
20. The FSMC shall comply with the provisions of the bid specifications, which are hereby in all respects made a part of this contract.
21. No provision of this contract shall be assigned or subcontracted without prior written consent of the SFA and the State Agency.
22. No waiver of any default shall be construed to be or constitute a waiver of any subsequent claim.
23. 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.
24. 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.
25. The SFA shall be responsible for ensuring the resolution of program review and audit findings.
26. The contract must be reviewed and approved by IDOE prior to execution.

**B. Signature Authority**

1. The SFA shall retain signature authority for the agreement with IDOE to participate in the CN Programs, including but not limited to the Permanent Agreement with IDOE, CN Annual Financial Report, the Verification Summary Report, USDA Foods Surveys, the on-line submission of the sponsor application/site information and other reports.
2. The SFA shall retain signature authority for the Monthly Claim for Reimbursement in the CNPWeb.
3. 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.

**C. Free and Reduced-Price Meals Policy**

1. The SFA shall be responsible for the establishment and maintenance of the free and reduced price meals' eligibility roster.
2. 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 IDOE, 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.
3. 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.
4. The SFA shall be responsible for obtaining the Direct Certification List, 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.

5. 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.
6. The SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free and reduced-price meals and free milk.
7. 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 \_\_\_\_\_ is responsible for completing the verification process.

**D. USDA Donated Foods**

1. The SFA shall retain title to all USDA donated foods.
2. The FSMC is prohibited from entering into any processing contracts utilizing USDA donated foods on behalf of the SFA. All refunds received from state approved processors must be retained by the nonprofit school food service account.
3. 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.
4. 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 USDA Foods; however, the final determination as to the acceptance of USDA Foods must be made by the SFA. The FSMC must integrate all the SFA's USDA Foods inventories at the state assigned warehouse, processors and/or DoD program into all menus. This shall begin within one month after contract execution. The FSMC must keep these menus on record for reference and be able to provide them to IDOE as requested. Failure to utilize the SFA's USDA Foods will result in the removal of USDA Foods from the SFA's inventory, and an administrative fee in the amount of \$5.40 per case will be charged to the FSMC. The SFA will receive a reduction in claims, then the total amount recovered must then be credited to the SFA in a future invoice from the FSMC to offset the loss to the SFA.
5. The FSMC will use all donated cheese, fruits, vegetables, poultry, ground beef and 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.
6. 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 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.
7. 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.
8. The USDA Foods values are to be based on the values at the point the SFA receives the USDA Foods from the State distributing agency and based on the USDA Commodity Value Listing pertinent to the time period. This information is available from the Indiana Department of Education, School and Community Nutrition Division.

9. 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 recipient agency, and in accordance with 7 CFR 250.58(a);
  - Storage and inventory management of donated foods, in accordance with 7 CFR 250.52; and
  - Payment of processing fees or submittal of refund requests to a processor on behalf of the recipient agency, or remittance of refunds for the value of donated foods in processed end products to the recipient agency, in accordance with the requirements in subpart C of 7 CFR 250.
10. Per 7 CFR 250.35(d), USDA Food inventories at processors cannot be in excess of a six-month supply, based on the processor's average monthly usage, unless a higher level has been approved by the State Distributing Agency (SDA) on the basis of a written justification.

**E. Crediting For and Use of Donated Foods**

1. 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).
2. The FSMC must credit the SFA for the value of donated foods contained in processed end products if the FSMC is required to:
  - a. procure processed end products on behalf of the SFA, or
  - b. act as an intermediary in passing donated food value in processed end products on to the SFA.
3. The SFA must determine the method by which crediting of USDA Foods and any rebates 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 no less than a monthly basis. SFA must check an option below:
  - Fixed-price contract: FSMC must subtract from SFA's monthly bill/invoice the market value of all USDA-donated USDA donated foods received from the USDA for use in the SFA's USDA nutrition programs.
  - Cost-reimbursable contract: FSMC must itemize, in a separate line item in the regular monthly billing to SFA, the savings resulting from use of donated USDA based on the market value of all USDA-donated USDA donated foods received from the USDA for use in the SFA's USDA nutrition programs.
  - Other crediting method as outlined in General Information section Q. Additional Information.
4. The FSMC must use the most recent 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.
5. Following 7 CFR 210.21(f)(iv), invoices must clearly display all applicable credits to the SFA.

**F. Inventory, Storage and Record Retention of USDA Donated Foods**

1. When this contract or subsequent renewals terminates, the FSMC must return all unused donated ground beef, pork and processed end products and, at the SFA's discretion, return other unused USDA foods.

2. The FSMC will comply with the storage and inventory requirements for donated foods, in accordance with 7 CFR 250.14 and 7 CFR 250.52.
3. The SFA, the State Auditor, IDOE, 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.
4. The FSMC will maintain records to document its compliance with requirements relating to donated foods, in accordance with 7 CFR 250.54(b).
5. The SFA must maintain the following records relating to the use of donated foods:
  - a. The donated foods and processed end products received from the USDA for use in the SFA's USDA nutrition programs.
  - b. 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 250.51(a), the value of donated foods contained in processed end products.
  - c. The actual donated food values used in crediting.
6. The FSMC must maintain the following records relating to the use of donated foods:
  - a. The donated foods and processed end products received from, or on behalf of, the SFA, for use in the SFA's food service.
  - b. 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.
  - c. The FSMC must maintain documentation of its procurement of processed end products on behalf of the SFA, as applicable.
7. The SFA must ensure that the FSMC is in compliance with the requirements of the inventory, storage and record retention of USDA Donated Foods through its monitoring of the food service operation, as required in 7 CFR 210, 225, 250, and 252, as applicable. The \_\_\_\_\_ is responsible for this monitoring process.
8. 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.
9. The FSMC must provide an annual account of all USDA Foods and their location. The annual count must be conducted during annual end of year inventory.

#### **G. Renewal Assumptions**

1. 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, whichever is mutually agreed upon. The distinction between a minor change and a material change cannot be qualified for every action undertaken in the CNPs. 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.
  - a. The SFA reserves the right to expand the Federal CNPs 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 from the IDOE School and Community Nutrition (SCN).

- b. 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.
  - c. Legislation, regulations, and reimbursement rates that create changes in the school lunch program shall be enforced on their effective date.
  - d. Usable USDA Foods of adequate quality and variety required for the menu cycle, valued at an amount as set forth by USDA per meal pattern for the contract year will continue to be available.
  - e. The government reimbursement rates in effect shall remain materially consistent throughout the year.
  - f. Meal components and quantities required by any of the programs selected in letter A, under 1 (Scope and Purpose) of the Standard Terms and Conditions remain consistent with prior years.
  - g. Service hours, service requirements, and type or number of facilities selling food and/or beverages on SFA's premise shall remain materially consistent throughout the contract term and any subsequent contract renewal years.
  - h. The state or federal minimum wage rate and taxes in effect shall remain materially consistent throughout the year.
  - i. The projected number of full feeding days is: \_\_\_\_\_ and shall remain materially consistent in renewal years.
  - j. SFA revenue credited to the food service program shall include all state and federal amounts received specifically for CN operations.
2. **Contract Cost Increase:** In the event of a renewal of the awarded Contract, the Administrative and Management Fees shall be adjusted by the lower of either a cap of three (3) percent or a percentage equal to the minimum percentage increase in the Consumer Price Index (CPI) Food Away From Home, Midwest Region, for the month of December of the current contracted School Year. This is applicable to both the Administrative and Management Fees in both Cost Reimbursable and Fixed Price contracts. The addition of new line items to the budget is not allowable in renewal years. The SFA and FSMC risk a lapse in contract if IDOE timelines are not adhered to.
  3. All contract renewals shall be for a period of one year, with mutual agreement between the SFA and the FSMC. Renewal contracts cannot be effective prior to the final approval date by IDOE and signed by both parties. Failure to have renewal contracts fully signed and executed prior to the contract expiration will lapse this contract and may require the SFA to re-bid the contract.
  4. Renewal year contracts are contingent upon fulfillment of all contract provisions.

## **H. Health Certifications**

1. 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.

2. 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) (2).
3. 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 7 CFR 210.13.
4. 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 7 CFR 210.13.
5. The SFA will ensure the immediate correction of any problems found because of a health inspection. Corrections will be made by either SFA or FSMC as determined by the SFA.

**I. Meals**

1. The FSMC shall serve meals on such days and at such times as requested by the SFA.
2. The SFA shall retain control of the quality, extent, and general nature of the food service and the prices to be charged to the children for meals.
3. The FSMC shall offer free, reduced price and paid reimbursable meals to all eligible children participating in the CN Programs.
4. 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.
5. The FSMC shall provide meals in the CN Programs that meet the requirements as established in 7 CFR 210, including but not limited to 7 CFR 210.10.
6. The FSMC shall provide the specified types of service in the schools/sites listed in Section 1 of the Standard Terms and Conditions, letter B.
7. The FSMC shall promote maximum participation in the CN Programs.
8. The FSMC shall sell on the premises only those foods and beverages authorized by the SFA and only at the times and locations designated by the SFA.
9. 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.

**J. Books, Records and Reports**

1. The FSMC shall maintain such records (supported by invoices, receipts or other evidence) as the SFA will need to meet monthly reporting responsibilities, and shall submit monthly operating statements in a format approved by the SFA no later than the tenth (10<sup>th</sup>) calendar day succeeding the month in which services were rendered. Participation records shall be submitted no later than the fifth (5<sup>th</sup>) 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.

2. 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.
3. The FSMC shall provide the SFA with a year-end statement.
4. 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.
5. The SFA and the FSMC must provide all documents as necessary for the independent auditor to conduct the SFA's single audit.
6. 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 five (5) 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.
7. If audit findings regarding the FSMC's records have not been resolved within the five-year period, the records must be retained beyond the five-year period for as long as required for the resolution of issues raised by the audit. (Reference 7 CFR 210.9(b)(17) and 2 CFR 200.334(a)).
8. 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. SFA should complete the IDOE Termination Checklist at the end of the contract period and termination of the contract. On termination of the contract, the Selected FSMC and the SFA will take a similar inventory. If the value of the ending inventory is greater than the beginning inventory, the difference shall be added to the Selected FSMC's Cost of Business and if lesser, the difference shall be subtracted from the Selected FSMC's Cost of Business. It is understood that all usable food, supplies, and USDA Foods on the SFA's premises are the property of the SFA and not on loan from the Selected FSMC. The Selected FSMC shall never remove any usable food, supplies, or USDA Foods from SFA premises, regardless of ownership, without authorization from SFA. Any missing usable food, supplies, or USDA Foods will be deducted from the Selected FSMC invoice. Any remaining balance will be billed to the Selected FSMC. Supplies include but are not limited to the following: manuals of any kind, menus, small wares, equipment, and office supplies of any kind, furniture, and records of any kind.
9. The SFA is responsible for ensuring resolution of program review and audit findings.

**K. Employees**

1. The SFA reserves the right to interview and approve the on-site food service manager/director.
2. 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 (the school will keep and pay current employees)
  - Employees will be retained by the FSMC (the FSMC will keep and pay current employees)
  - Employees will be retained by both the SFA and FSMC (a combination of the above)
  - Employees will not be retained (the current employees will not be retained)
3. If the SFA wants its employees to be retained by the FSMC, the Labor and Fringe worksheet portion of the Site, Labor and ADP Worksheet must be completed by the SFA. This will help the FSMC calculate the amount that will be included in the Projected Expenses portion of the Budget Worksheet under "Direct Labor and Benefits" (which is completed by the FSMC for submission with their proposal).

4. 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.
5. 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.
6. 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.
7. 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.
8. Staffing patterns, except for the site manager, shall be mutually agreed upon by the SFA and FSMC.
9. The FSMC shall not hire employees in excess of the number required for efficient operation of the SFA's USDA nutrition programs.
10. The SFA shall provide sanitary toilet and hand washing facilities for the employees of the FSMC.
11. 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.
12. 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.
13. 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, fire and safety devices in the kitchen and cafeteria areas.
14. The use of student workers or students enrolled in vocational classes in the food service shall be mutually agreed upon.
15. The FSMC shall provide proof that each prospective employee working with children has had an Expanded Criminal History Background Check and Federal Criminal History Record Check before employment or not later than three months after the individual's employment. (I.C. 20-26-5-10; I.C. 10-13-3-36.)

#### **L. Professional Development**

The SFA director must ensure that FSMC employees providing services for the school meal programs have the required annual training. The SFA director may work with the FSMC to identify appropriate training resources and opportunities, such as those listed at the professional standards website at [Professional Standards for School Nutrition Professionals](#). The FSMC must provide documentation to SFA showing annual training hours and topics completed by the employees. The FSMC contract must include the professional standards requirements. The SFA and FSMC must ensure food service staff meet the hiring standards set forth in the Professional Standards requirements.

## **M. Hiring Standards**

1. The SFA that chooses to outsource management of some or all food service operations to another company or co-op, such as a FSMC, Vendor, or Educational Services Center, are required by USDA to meet the following criteria:
  - a. The SFA must maintain oversight and responsibility for planning, administering, implementing, monitoring, and evaluating the school meal programs. This means the FSD must be hired by the SFA, not the FSMC, company, or co-op.
  - b. Even if the company or co-op appoints a person to oversee food service director duties, the role of FSD must still also remain with the SFA. The USDA hiring standards and annual training requirements are applicable to this role.
  - c. If the school nutrition director duties are equally shared between multiple people, then all individuals must meet the FSD hiring standards. This means that while the SFA must appoint an FSD who meets the hiring standards, the company or co-op might also appoint someone to manage the FSD duties. This person is also required to meet USDA hiring standards and the training requirements.
  - d. Qualified FSDs, whether hired by the SFA or the company/co-op, must regularly provide on-site assistance and monitoring of all sites under the sponsor. Regular monitoring means on site at least for a measurable portion of each week to ensure food safety, meal pattern and meal count documentation is maintained.
2. All SFAs will be expected to have a SFA appointed or employed food service director (SFA staff not FSMC staff) on site who meets the requirements as outlined above.
3. For more information about hiring standards and training requirements check out the following resources from USDA:
  - [Professional Standards Summary of Updates Flyer](#)
  - [SP-05-2020 Questions & Answers Regarding Professional Standards for State and Local School Nutrition Program Personnel](#)

## **N. Monitoring**

1. 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. 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 \_\_\_\_\_ is responsible for performing all on-site reviews.
2. 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 State Board of Accounts (SBOA), USDA, IDOE, and the SFA upon request for the purpose of auditing, examination, and review.

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

The SFA is responsible for the formation and establishment of an advisory board composed of students, teachers, and parents to participate in periodic meetings and assist in menu planning. The FSMC shall participate in these periodic meetings as deemed appropriate by the SFA.

**P. Cycle Menu**

The FSMC must submit a sample 21-day menu for the programs checked in Section 2 of the Standard Terms and Conditions, letter A, of this contract (the exception to this would be the SFSP which only requires a 21-day menu). Any changes made by the FSMC to the cycle menu must be approved by the SFA. The SFA shall approve menus no later than two weeks prior to service.

**Q. Use of Facilities, Inventory, Equipment & Storage**

1. 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.
2. 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 School Nutrition Programs, as long as they meet applicable nutritional and service requirements according to program regulations.
3. Equipment Purchases – All equipment purchases required for food service operations must be separately procured outside of the awarded FSMC contract and follow Federal and State procurement requirements. Any equipment purchase recommendations submitted by a FSMC cannot be used to evaluate their response to the RFP.
4. If Program equipment breaks down, a contract provision needs to establish the dollar value of equipment that the district will cover either per year or over the life of the contract. The district needs to include a provision for the repair and replacement of food preparation and serving equipment as equipment repair and replacement can occur at any time. It is imperative that the district understand its operational needs which includes the age and condition of the kitchen equipment and establish a dollar value for replacement that is communicated in the solicitation and contract. Districts are reminded that equipment, defined at 2 CFR 200.33, means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds \$10,000.
5. The FSMC and the SFA shall inventory the equipment and USDA Foods owned by the SFA at the beginning of the school year, including but not limited to, silverware, trays, chinaware, glassware, and/or kitchen utensils.
6. The FSMC shall maintain the inventory 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.
7. 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.
8. The FSMC shall maintain adequate storage procedures, inventory, and control of USDA donated foods in conformance with the SFA's agreement with IDOE.
9. The FSMC shall provide the SFA with one set of keys for all food service areas secured with locks.
10. The SFA shall provide the FSMC with local telephone service.
11. 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.
12. 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.

13. All food preparation and serving equipment owned by the SFA shall remain on the premises of the SFA.
14. The SFA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the SFA premises.
15. 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. The terms of any agreements need to be developed in writing and signed by all parties involved.
16. 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.
17. 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.
18. The SFA, on the termination or expiration of the contract, shall conduct a physical inventory of all equipment and USDA Foods owned by the SFA.
19. The FSMC shall surrender to the SFA upon termination of the contract, all equipment, and furnishings in good repair and condition that were purchased using school food service funds.

#### **R. Purchases**

1. 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.
  - For a cost-reimbursable contract: The FSMC invoices 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 (if the FSMC invoices the SFA for supplies as purchased, rather than as used).
  - For a cost-reimbursable contract: The FSMC invoices the SFA for food when used. The SFA will buy the ending inventory from the FSMC if the FSMC invoices for food when used.
  - For a fixed-price contract: The FSMC will buy the beginning inventory exclusive of USDA Foods, from the SFA (not applicable in a cost reimbursable contract since the FSMC should only be charging for new purchases).
2. The 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.
3. Under 7 CFR 210.21(f), for cost reimbursable contracts:
  - a. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA;

- b.
    - The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or
    - The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;
  - c. The contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;
  - d. The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually; (An example of the invoice/bill must be included with the proposal);
  - e. The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and
  - f. The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the SFA, IDOE, or USDA.
  - g. No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include the requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.
4. 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 to apply a geographic preference when procuring unprocessed locally grown and locally raised agricultural products.

## **S. Invoices**

1. The FSMC must submit a monthly reconciliation to the SFA comparing the invoice and revenue against the projected revenue and expenses.
2. IDOE may randomly request SFAs to submit copies of invoices for compliance with the above items.
3. The payment of interest and late fees from the school service account funds is prohibited.

**T. Buy American**

1. The FSMC shall comply with the Buy American provision for contracts that involve the purchase of food, 7 CFR 210.21(d) and USDA Memo SP 32-2019, Buy American and the Agriculture Improvement Act of 2018.
2. The FSMC shall purchase, to the maximum extent practicable, domestic USDA Foods or products which are either an agricultural USDA Foods 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.
3. The FSMC shall certify the percentage of U.S. content in the products supplied to the SFA.
4. The SFA must review vendor purchase records to ensure compliance with the Buy American provision.

**U. Sanitation**

1. The FSMC shall place garbage and trash in the containers in the designated areas as specified by the SFA.
2. The SFA shall remove all garbage and trash from the designated areas.
3. The FSMC shall clean the kitchen and dining room areas as indicated in the Division of Responsibilities Worksheet, Attachment D.
4. 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.
5. The FSMC shall comply with all local and state sanitation requirements in the preparation of food.

**V. Licenses, Fees and Taxes**

1. The FSMC shall be responsible for paying all applicable taxes and fees, including but not limited to, excise tax, state and local income tax, payroll and withholding taxes for FSMC employees; the FSMC shall hold the SFA harmless for all claims arising from payment of such taxes and fees.
2. The FSMC shall obtain and post all licenses and permits as required by federal, state, and/or local law.
3. The FSMC shall comply with all SFA building rules and regulations.

**W. 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 basis of race, color, national origin, age, sex, or disability.

**X. Emergency Closing**

1. The SFA shall notify the FSMC of any interruption in utility service of which it has knowledge.
2. 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.

**Y. Term and Termination**

1. The SFA or the FSMC may terminate the contract with or without cause by giving 60 days written notice.
2. 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.

**Z. Nonperformance by the FSMC**

1. 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.
2. 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.

**AA. Certifications**

1. The FSMC shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
2. The FSMC shall comply with Department of Labor regulations, 41 CFR, Part 60.
3. 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 15, 15a and 15b; the Americans with Disabilities Act; the FNS Instruction 113-6, Civil Rights Compliance and Enforcement in School Nutrition Programs.
4. The FSMC shall sign the Certification of Independent Price Determination, Appendix A, which shall be attached as an addendum to the FSMC's proposal and will be made a part of the contract if awarded.
5. The FSMC shall sign the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Appendix B, which shall be attached as an addendum to the FSMC's proposal and will be made a part of the contract if awarded (2 CFR 200.213). 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 is being taken to debar the vendor from contracting activities.

6. The FSMC shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 FSMC Guidance for SFAs – May 2016 U.S.C. 1251-1387), as amended— Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q), and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
7. The FSMC shall sign the Lobbying Certification, Appendix D, which was attached as an addendum to the FSMC’s proposal and will be made a part of the contract if awarded. If applicable, the FSMC has also completed and submitted Standard Form-LLL, Disclosure Form to Report Lobbying, Appendix E.
8. E-Verify Requirement –

The FSMC warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with IC 22-5-1.7-11.

IC 22-5-1.7-11 Contractors with public contract for services required to use E-Verify program; business entities that receive certain grants required to use E-Verify program

Sec. 11. (a) This subsection applies only to a public contract for services entered into or renewed after June 30, 2011. A state agency or political subdivision may not enter into or renew a public contract for services with a contractor unless:

(1) the public contract contains:

(A) a provision requiring the contractor to enroll in and verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program; and

(B) a provision that provides that a contractor is not required to verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program if the E-Verify program no longer exists; and

(2) the contractor signs an affidavit affirming that the contractor does not knowingly employ an unauthorized alien.

(b) A state agency or political subdivision may not award a grant of more than one thousand dollars (\$1,000) to a business entity unless the business entity:

(1) signs a sworn affidavit that affirms that the business entity has enrolled and is participating in the E-Verify program;

(2) provides documentation to the state agency or political subdivision that the business entity has enrolled and is participating in the E-Verify program; and

(3) signs an affidavit affirming that the business entity does not knowingly employ an unauthorized alien.

**BB. Insurance**

1. 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 Indiana. FSMC shall not charge insurance premiums based on a calculated rate or percentage of cost. A Certificate of Insurance of the FSMC's insurance coverage indicating these amounts must be submitted upon award of a contract.

2. At all times under this agreement, the FSMC shall have in effect, 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.
  - a. General Liability – \$ \_\_\_\_\_
  - b. Workman's Compensation – \$ \_\_\_\_\_
  - c. Vehicle Insurance – \$ \_\_\_\_\_
3. 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.
4. 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.
5. 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.

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

1. 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. 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.
2. 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 including copyrights.



## Attachment B (to be included for contracts operating the Summer Food Service Program)

### SFSP and/or SSO (See letter B under Section 1 (Scope and Purpose) of the Standard Terms and Conditions for verification of participation)

1. The FSMC shall offer free meals to all eligible children participating in the SFSP and/or the SSO, if the SFA has selected to participate in the program(s). A flat price per meal cost must be submitted as part of this RFP for the SFSP. The FSMC will operate the SFSP and/or the SSO including the preparation, record keeping, and delivery of meals. The SFA shall be responsible for determining eligibility for all SFSP and/or the SSO sites. The SFA as a SFSP and/or the SSO sponsor is responsible for conducting and documenting the required site visits of all sites for pre-approval and during operation of the program;
2. The SFSP or SSO will operate from \_\_\_\_\_ to \_\_\_\_\_;
3. Special Provisions for Summer Food Service Program (SFSP);
4. All meals prepared by a FSMC shall be unitized, with or without milk or juice, unless the State agency has approved, pursuant to 7 CFR 225.6(1)(3), a request for exceptions to the unitizing requirement for certain components of a meal;
5. A FSMC entering into a contract with a sponsor under the Program shall not subcontract for the total meal, with or without milk, or for the assembly of the meal;
6. The sponsor shall provide to the food service management company a list of State agency approved food service sites, along with the approved level for the number of meals which may be claimed for reimbursement for each site, established under 7 CFR 225.6(h)(2), and shall notify the food service management company of all sites which have been approved, cancelled, or terminated subsequent to the submission of the initial approved site list and of any changes in the approved level of meal service for a site. Such notification shall be provided within the time limits mutually agreed upon in the contract;
7. The FSMC shall maintain such records (supported by invoices, receipts, or other evidence) as the sponsor will need to meet its responsibilities under 7 CFR 225, and shall submit all required reports to the sponsor promptly at the end of each month, unless more frequent reports are required by the sponsor;
8. The FSMC must have State or local health certification for the facility in which it proposes to prepare meals for use in the Program. It must ensure that health and sanitation requirements are met at all times. In addition, the FSMC must ensure that meals are inspected periodically to determine bacteria levels present in the meals and that the bacteria levels found to be present in the meals conform to the standards set by local health authorities. The results of the inspections must be submitted promptly to the sponsor and to the State agency;
9. The meals served under the contract shall conform to the cycle menus and meal quality standards and food specifications approved by the State agency and upon which the bid was based. SFSP meals must be nutritious, appetizing and meet the minimum meal pattern requirements (see 7 CFR 225.16 (d)). Careful menu planning is necessary to meet this goal. For minimum food specifications and model meal quality standards, see the Meal Pattern & Menu Planning section of the SFSP website [Meal Pattern & Menu Planning](#);

Breakfast - A reimbursable breakfast must contain three components:

- Fluid milk (unflavored or flavored; whole, reduced-fat, low-fat, or fat-free milk);
- Vegetables and/or fruits; and
- Grains/Breads.
- Meats and meat alternates may also be served as an optional item

Lunch or Supper - A reimbursable lunch or supper must contain four components:

- Fluid milk (unflavored or flavored; whole, reduced-fat, low-fat, or fat-free milk);
- Two or more kinds of vegetables and/or fruits, (or a combination of both);

- Grains/Breads; and
- Meats and meat alternates.

Snack - A reimbursable snack must contain two of the four listed components:

- Fluid milk (unflavored or flavored; whole, reduced-fat, low-fat, or fat-free);
- Vegetables and/or fruits\*;
- Grains/Breads;
- Meats and meat alternates.

\*Juice may not be served when milk is served as the only other component of a snack.

For more detailed information on meal pattern requirements, including minimum serving amounts, see the SFSP Meal Pattern requirements at <https://www.fns.usda.gov/summer/sunmeals/mealpatterns>. Information on how foods credit towards the meal patterns is included in the Summer Meals Nutrition Guide, <https://www.fns.usda.gov/sfsp/nutrition-guide>.

10. The books and records of the FSMC pertaining to the sponsor's food service operation shall be available for inspection and audit by representatives of the State agency, the Department and the U.S. Government Accountability Office at any reasonable time and place for a period of 5 years from the date of receipt of final payment under the contract, except that, if audit or investigation findings have not been resolved, such records shall be retained until all issues raised by the audit or investigation have been resolved;
11. The sponsor and the food service management company shall operate in accordance with current Program regulations;
12. The FSMC shall be paid by the sponsor for all meals delivered in accordance with the contract and 7 CFR 225. However, neither the Department nor the State agency assumes any liability for payment of differences between the number of meals delivered by the food service management company and the number of meals served by the sponsor that are eligible for reimbursement;
13. Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;
14. Increases and decreases in the number of meals ordered shall be made by the sponsor, as needed, within a prior notice period mutually agreed upon;
15. All meals served under the Program shall meet the requirements of 7 CFR 225.16;
16. In cases of nonperformance or noncompliance on the part of the FSMC, the company shall pay the sponsor for any excess costs which the sponsor may incur by obtaining meals from another source;
17. If the State agency requires the sponsor to establish a special account for the deposit of operating costs payments in accordance with the conditions set forth in 7 CFR 225.6(f), the contract shall so specify;
18. The FSMC shall submit records of all costs incurred in the sponsor's food service operation in sufficient time to allow the sponsor to prepare and submit the claim for reimbursement to meet the 60-day submission deadline; and
19. The FSMC shall comply with the appropriate bonding requirements, as set forth in 7 CFR 225.15(m)(5) through (7)
  - a. Each FSMC which submits a bid exceeding the simplified acquisition threshold in 2 CFR part 200, as applicable, shall obtain a bid bond in an amount not less than 5 percent nor more than 10 percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid;
  - b. Each FSMC which enters into a food service contract exceeding the small purchase threshold in 2 CFR part 200, as applicable, with a sponsor shall obtain a performance bond in an amount not less than 10 percent nor more than 25 percent of the value of the contract for which the bid is made, as determined by the State agency. Any FSMC which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds the simplified

acquisition threshold in 2 CFR part 200, as applicable. Sponsors shall require the FSMC to furnish a copy of the performance bond within ten days of the awarding of the contract;

- c. No sponsor or State agency shall allow FSMCs to post any “alternative” forms of bid or performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts.

## **Attachment C (to be included for contracts operating the Child and Adult Care Food Program)**

Services and products rendered as a result of the Awarded Contract must comply with the regulations listed below along with any additional rules, regulations, policies, and instructions of IDOE and USDA pertaining to the Child and Adult Food Program (CACFP), including but not limited to, 7 CFR 226 (CACFP regulations) and 2 CFR 200 (Uniform Guidance for Federal Award, as applicable, and any additions or amendments thereto. Below are required stipulations for contracts awarded by institutions operating the CACFP, 7 CFR 226.6(i)(1-11):

- (1) The institution shall provide the FSMC with a list of the State agency approved child care centers, day care homes, adult day care centers, and outside-school-hours care centers to be furnished meals by the food service management company, and the number of meals, by type, to be delivered to each location;
- (2) The FSMC shall maintain such records (supported by invoices, receipts or other evidence) as the institution will need to meet its responsibilities under this part, and shall promptly submit invoices and delivery reports to the institution no less frequently than monthly;
- (3) The FSMC shall have Federal, State or local health certification for the plant in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the State agency may require the food service management company to provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being prepared. These bacteria levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals prepared or served by other establishments in the locality. Results of these inspections shall be submitted to the institution and to the State agency;
- (4) The meals served under the contract shall conform to the cycle menus upon which the bid was based, and to menu changes agreed upon by the institution and food service management company;
- (5) The books and records of the FSMC pertaining to the institution's food service operation shall be available for inspection and audit by representatives of the State agency, of the Department, and of the U.S. General Accounting Office at any reasonable time and place, for a period of 3 5 years from the date of receipt of final payment under the contract, or in cases where an audit requested by the State agency or the Department remains unresolved, until such time as the audit is resolved;
- (6) The FSMC shall operate in accordance with current CACFP regulations;
- (7) The FSMC shall not be paid for meals which are delivered outside of the agreed upon delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements contained in the contract;
- (8) Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;
- (9) Increases and decreases in the number of meal orders may be made by the institution, as needed, within a prior notice period mutually agreed upon in the contract;
- (10) All meals served under the CACFP shall meet the requirements of 7 CFR 226.20;
- (11) All breakfasts, lunches, and suppers delivered for service in outside-school-hours care centers shall be unitized, with or without milk, unless the State agency determines that unitization would impair the effectiveness of food service operations. For meals delivered to child care centers and day care homes, the State agency may require unitization, with or without milk, of all breakfasts, lunches, and suppers only if the State agency has evidence which indicates that this requirement is necessary to ensure compliance with 7 CFR 226.20.

Attachment D

FSMC RFP Division of Responsibilities for Food Service Program

<b>COSTS:</b> Check the box for those that will be the responsibility of the FSMC and those costs that will be the responsibility of the SFA.	<b>FSMC</b>	<b>SFA</b>	<b>N/A</b>
<b>Food Cost (food, condiments, beverages)</b>			
Food Purchasing			
Processing of Invoices			
Payment of Invoices			
Donated Food Inventory Control			
Storage/Delivery Charges of Donated Foods			
Delivery of Donated Foods between school buildings			
<b>Labor Cost</b>			
Payment of Managers, and/or Supervisors			
Payment of Hourly Wage Employees			
Payroll Taxes of all Employees			
Preparation of all Employee Payroll			
Processing of all Employee Payroll			
FICA			
Retirement for Contractor's Employees			
Unemployment Insurance for Contractor's Employees			
Workers' Compensation for Contractor's Employees			
Health Insurance for Contractor's Employees			
Life Insurance and Disability for Contractor's Employees			
Holidays for Contractor's Employees			
Labor Charges for Supervision of Outside Groups using Facilities			
Student Labor (IF Any)			
<b>Other Purchased Services</b>			
Telephone, local service			
Telephone, long distance			
Utilities (heat, power, water)			
Extermination			
Laundry			
Removal of Trash and Garbage from Kitchen			
Removal of Trash and Garbage from Premises			
Other:			
<b>Supplies</b>			
Disposable Service ware			
Cleaning Supplies			
Paper Supplies			
Uniforms			
Menu Paper			
Menu Printing			
Promotional Materials			
Nutrition Education and Materials			
Office Supplies			
Postage			

<b>Equipment and Facilities</b>			
Repair of Equipment (Normal wear and tear)			
Routine Cleaning of Cafeteria Walls and Floors			
Routine Cleaning of Kitchen Walls and Floors			
Periodic Waxing and Buffing of Floors			
Sanitation and Proper Use of Equipment			
Daily Cleaning of Cafeteria Tables and Chairs			
<b>Other</b>			
NSLP Free/Reduced Application Distribution			
NSLP Free/Reduced Application Approval			
NSLP Free/Reduced Application Verification			
Records Supporting Reimbursement Claims			
Point-of-Sale Accountability			
Receipt of Federal & State Reimbursement			
Pricing of NSLP Meals, Paid lunch equity calculations conducted according to 7 CFR 210.14(e)			
Collection and Deposit of Daily Cash Receipts			
Menu Development			
Menu Distribution			
Pricing of A la Carte Offerings			
Inter-SFA Delivery to Satellite Areas			
Vehicle Lease or Purchase			
Vehicle Maintenance			
Vehicle Fuel and Oil			
Vehicle Taxes			
Vehicle Insurance			
Vehicle Licenses			
Vehicle Registration			
Depreciation			
Audit fees			
Licenses/Permits			
Promotions			
Mileage			
Employee Physicals			
Sales Tax			
Performance Bond (if applicable)			
Liability Insurance			
Miscellaneous			
Other:			
Other:			
Other:			

Employees of FSMC are not allowed to access CNPweb to file claims, complete reports, conduct Direct Certification, or revise applications. More details can be found in Policy 2025-02 linked [here](#).

**Appendix A**

**Independent Price Determination Certificate**

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

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

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

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

- (1) The prices in this offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed 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 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 of SFA's Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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

**Appendix B**



**Indiana Department of Education**

Dr. Katie Jenner, Secretary of Education

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

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 2 CFR 200.213 and 2 CFR 417. Copies of the regulations may be obtained by contacting the Indiana Department of Education.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS)

- (1) The prospective lower tier 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 lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Organization Name

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

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Signature(s)

---

Date

## Appendix B (cont)

### Instructions for Certification

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

**Appendix C**

**Clean Air and Water Certificate**

Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act, as amended (33 USC 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Both the School Food Authority (SFA) and Food Service Management Company (offeror) shall execute this Certificate.

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

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

**THE FOOD SERVICE MANAGEMENT COMPANY AGREES AS FOLLOWS:**

- A. To comply with all the requirements of the Clean Air Act, as amended (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), respectively, relating to inspection, monitoring, entry, reports and information, 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 Environmental Protection Agency 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 (42 U.S.C. 7401-7671q).
- 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 and any an applicable implementation plan or procedure as described in section 7410 of the Air Act (42 U.S.C. 7401-7671q).
- D. The term "Clean Air 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 1342 of the Water Act (33 U.S.C. 1342) or by local government to ensure compliance with pretreatment regulations as required by Section 1317 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. 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 of FSMC's Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of SFA's Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Appendix D**

**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 Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

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**Name/Address of Organization (FSMC)**

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**Name/Title of Submitting Official**

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**Signature**

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**Date**

**Appendix D (cont)**

**DISCLOSURE OF LOBBYING ACTIVITIES**

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

<b>1. Type of Federal Action:</b> _____ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. Status of Federal Action:</b> _____ a. bid/offer/ application b. initial award c. post-award	<b>3. Report Type:</b> _____ a. initial filing b. material change  <b>For Material Change Only:</b> Year _____ Quarter _____ Date of Last Report _____
<b>4. Name and Address of Reporting Entity:</b> Prime  Subawardee  Tier, if known:  Congressional District, if known:	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>   Congressional District, if known:	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable:	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Entity:</b> (last name, first name, MI)    (Attach Continuation Sheet(s) SF-LLL-A If Necessary) (if individual, last name, first name, middle)		
<b>10. b. Individuals Performing Services</b> (including address if different from No. 10.a.)    (Attach Continuation Sheet(s) SF-LLL-A If Necessary) (if individual, last name, first name, middle)		
<b>11. Amount of Payment</b> (check all that apply): \$ _____ Actual      \$ _____ Planned	<b>13. Type of payment</b> (check all that apply): ___ a. retainer ___ b. one-time fee ___ c. commission ___ d. contingent fee ___ e. deferred ___ f. other; specify:	
<b>12. Form of Payment</b> (check all that apply): ___ a. cash ___ b. in-kind; specify: Nature _____ Actual _____		
<b>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:</b>    (Attach Continuation Sheet(s) SF-LLL-A, if necessary)		
<b>15. Are Continuation Sheet(s) SF-LLL-A Attached:</b> Yes _____ (Number _____)      No _____		
<b>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.</b>		<b>Signature:</b> _____ <b>Print Name:</b> _____ <b>Title:</b> _____ <b>Telephone:</b> _____ <b>Date:</b> _____

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

Reporting Entity: \_\_\_\_\_  
Page \_\_\_\_\_ of \_\_\_\_\_

## Appendix D (cont)

### 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.
11. (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).
12. 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.
13. Check all that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
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.

The Vendor/Contractor hereby agrees that it will comply with:

**USDA Assurance of Civil Rights Compliance**

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C 2000d et seq.);
- ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
- iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
- v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
- vi. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
- vii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);
- viii. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.
- ix. The USDA non-discrimination statement that 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, religion, sex, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

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

**Indiana Assurance of Civil Rights Compliance**

This assurance is provided pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this assurance may be regarded as a material breach of this Agreement, but nothing in this assurance shall be construed to imply or establish an employment relationship between the State Agency and any applicant or employee of the Sponsor or any subcontractor. Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Sponsor covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or

applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Sponsor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

**SCHOOL FOOD AUTHORITY:**

**FOOD SERVICE MANAGEMENT COMPANY:**

\_\_\_\_\_  
Name of SFA

\_\_\_\_\_  
Name of FSMC

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

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Typed Name of Authorized Representative

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Typed Name of Authorized Representative

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Title

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Title

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Date

\_\_\_\_\_  
Date

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.