

**FOOD SERVICE
MANAGEMENT COMPANY**

**REQUEST FOR PROPOSAL
AND CONTRACT**

**New Mexico Public Education Department
Student Nutrition Bureau**

School District _____

County/ District _____

School Year 2011-2012

In accordance with federal law and the United States Department of Agriculture (USDA) Policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (800) 795-3272 or (202) 720-6382 (TTY). USDA is an equal opportunity provider and employer.

GENERAL INFORMATION

A. Intent

This solicitation is for the purpose of entering into a contract for the operation of a food service program for _____, hereinafter referred to as the *School Food Authority (SFA)* or *District*.

The bidder/offer or Food Service Management Company (FSMC) will be referred to as the *FSMC*, and the Contract will be between the FSMC and the SFA.

The successful FSMC shall conduct the food service program in a manner that best fulfills the following program objectives of the SFA:

1. To provide appealing and nutritionally sound reimbursable meals according to the programs selected on **page 10** for students as economically as possible.
2. Increase participation at all levels of the program by improving food quality at the service point, by upgrading equipment and facilities, by seeking student and parent input, by successful menu variation and planning, by use of excellent marketing technique, and with a strong emphasis on public relations.
3. Provide a management staff and structure to ensure that the District's school food program is one of consistent top quality and of positive regard by students, staff, and the public.
4. Establish a formal structure to routinely and continuously gather input from food service employees to ensure the most effective and efficient operation possible.
5. Establish and conduct management and staff training programs that will ensure staff development, proper supervision, and consistent quality control, both in production and service.
6. Continue to operate a school food service program that is self-sufficient and does not require any subsidy from regular school funds.

B. Procurement method

_____ (List which method will be used: Small Purchase Procedures (for contracts of \$100,000 or less) or Competitive Proposal (for contracts of more than \$100,000). All procurement transaction shall be contracted in a manner that provides maximum open and free competition consistent with 7 CFR §3016.)

The SFA must decide if the contract will be a **Fixed-Price** or a **Cost Reimbursable (cost + fee)** Contract. Each option is described on **page 4**. The page 4 that indicates the SFA's choice should be included in the request for proposal (RFP). The other page (also numbered 4) should be discarded and not included in the RFP.

FIXED-PRICE BID

(Competitive Proposal) Fixed-Price Bid—the FSMC will be paid at a fixed rate per meal/lunch equivalent. The SFA must determine the existence of the proper pass-through value of the donated commodities; i.e., credits or reductions on the invoice in the month of utilization. The values are to be based on the values at the point the SFA receives the commodities from the Department of Human Services (DHS) and on the USDA commodity prices pertinent to the time period and shall include both the basic commodities allocation as well as any bonus commodities.

The fixed price must include all labor (including bonuses, if any) and expenses as shown below. They may not be charged back to the SFA in any other manner.

- a. Menu development specific to the operation
- b. Nutrition materials and program expense
- c. Design services specific to the operation
- d. Education programs via assembly programs, schoolroom programs, parent/teacher meetings, and school food advisory committee meetings
- e. Personal representation, visitation, and coverage on a regular basis by a principle of FSMC
- f. All accounting
- g. All payroll costs and documentation
- h. Administrative dietetic, nutritional, sanitation, and personnel advice
- i. All costs incurred in hiring and relocating, if necessary, the FSMC team
- j. All training costs for FSMC employees
- k. All travel costs for training for FSMC employees
- l. All miscellaneous costs to operate the program; i.e., consumable marketing materials
- m. One-time performance bond
- n. Depreciation for major new marketing programs as negotiated and approved in writing by the superintendent in advance

To be completed by the FSMC:

Fixed Price Per Meal/Lunch Equivalent: \$ _____

Award Criteria: Proposals will be evaluated by a committee against the following criteria with assigned weights in the following categories. Each area of the award criteria must be addressed in detail in the proposal.

Weight	Criteria
() points	Service Capability Plan
() points	Experience, References
() points	Financial Condition/Stability, Business Practices
() points	Accounting and Reporting Systems
() points	Personnel Management
() points	Innovation
() points	Promotion of the School Food Service Program
() points	Involvement of Students, Staff, and Patrons
() points	Cost and Performance Bond
() points	Program Financial Profile
100 points	TOTAL

The fixed price per meal/lunch equivalent will be subject to an annual escalator provision, made at the time of contract renewal, based on the CPI for Food Away from Home. The specific CPI used will be: CPI for All Urban Consumers.

COST REINSURABLE CONTRACT

(Competitive Proposal) Cost reimbursable (cost plus fee) contract – the FSMC will be paid on the basis of the direct cost incurred plus a fixed fee. The value of commodities used must be itemized in the regular monthly billing to the SFA to document savings resulting from commodity usage. The values are to be based on the values at the point the SFA receives the commodities from DHS and on USDA prices pertinent to the time period.

- a. All program expenses not otherwise defined in the contract will be assumed to be covered by the FSMC under the administrative fee. All in direct and overhead costs must be included in the administrative fee.
- b. The following must be included in the administrative fees and may not be charged in any other expenses. Any travel relating to the following must be covered by the administrative fee.
 - Personnel and Labor Relations and Visitation
 - Legal Department Services
 - Purchasing and Quality Control
 - Technical Research
 - Cost Incurred in Hiring and Relocating FSMC Management Personnel
 - Dietetic Services (Administrative & Nutritional)
 - Test Kitchens
 - Accounting and Accounting Procedures
 - Tax Administration
 - Technical Supervision
 - Supervisory Personnel and Regular Inspection or Audit Personnel
 - Teaching or Training Programs
 - General Regional Support
 - General National Headquarters Support
 - Design Services
 - Menu Development
 - Information Technology and Support
 - Payroll Documentation and Administrative Costs
 - Personnel Advise Services

To be completed by the FSMC (Choose One: Flat Fee or Administrative Fee, and Complete):
 Flat Fee: \$ _____
OR
 Administrative Fee Per Meal/Lunch Equivalent: \$ _____

The management fee represents a profit to the FSMC.

To be completed by the FSMC (Choose One: Flat Fee or Management Fee, and Complete):
 Flat Fee: \$ _____
OR
 Management Fee Per Meal/Lunch Equivalent: \$ _____

Management and administrative fees shall be paid by the SFA.

Award Criteria: Proposals will be evaluated by a committee against the following criteria with assigned weights in the following categories. Each area of the award criteria must be addressed in detail in the proposal.

Weight	Criteria
() points	Service Capability Plan
() points	Experience, References
() points	Financial Condition/Stability, Business Practices
() points	Accounting and Reporting Systems
() points	Personnel Management
() points	Innovation
() points	Promotion of the School Food Service Program
() points	Involvement of Students, Staff, and Patrons
() points	Cost and Performance Bond
() points	Program Financial Profile
100 points	TOTAL

The administrative and management fees will be subject to an annual escalator provision, made at the time of contract renewal, if applicable, based on the CPI for Food Away from Home. The specific CPI used will be: CPI for all Urban Consumers.

C. Prebid Meeting

A meeting with interested bidders/offerers to review the specifications, to clarify any questions, and for a walk-through of the facilities with school officials will be on _____ at _____.

Location: _____

Attendance is required optional.

Vendor presentations will will not be scheduled at this time.

Fax or e-mail any technical issue and specification questions pertaining to the RFP to the District at _____ no later than _____ and follow these guidelines:
(Fax) or (E-Mail Address) (Time and Date)

1. Specifically reference the section of the RFP in question. These questions will be addressed at the prebid meeting and then distributed in the form of an addendum. Vendors are requested to bring a copy of the solicitation to the conference.
2. The purpose of this conference is to allow the District the opportunity to provide clarification respond to questions from potential offerors relative to any facet of this solicitation, and to entertain suggestions for improvement of this document and/or the program.
3. The site tour will begin following the preproposal conference. Prospective offerors are to notify the District of their intent to participate by (Time) _____, (Date) _____, so transportation may be made available. Participation in the tour is limited to _____ representatives per offeror.
4. Prior to and after the preproposal conference, no oral interpretation will be made to any FSMC as to the meaning of the specification. Every interpretation will be in the form of a written addendum to the specification issued by the District and mailed to each interested FSMC of record.

D. Bid/Proposal Submission and Award

1. Proposals must be concise and in outline format. Pertinent supplemental information should be referenced and included as attachments. Return this Request for Proposal (RFP) document with all attachments filled out as requested and signed, along with the following items.
 - a. LETTER OF TRANSMITTAL. The Letter of Transmittal is to include:
 - (1) An introduction of the FSMC.
 - (2) The name, address, and telephone number of the person to be contacted, along with others authorized to represent the company in dealing with the RFP.
 - b. EXECUTIVE SUMMARY. Provide an Executive Summary which:
 - (1) Briefly describes the FSMC's approach to the proposal.
 - (2) Indicates any major requirements that cannot be met by the FSMC.
 - (3) Highlights the major features of the proposal and identifies any supporting information considered pertinent. In short, the reader should be able to determine the essence of the proposal and generally how well it meets the Requirements by reading the Executive Summary.
 - c. DETAILED DISCUSSION. This section should constitute the major portion of the proposal and must contain at least the following information:
 - (1) *Service Capability/Plan*
 - (a) Submit in writing definite goals/specific recommendations for improved current operations to include estimated increases in student participation and any changes to personnel and equipment.
 - (b) FSMC shall submit with its proposal a transition plan, which shall indicate the activities, procedures, timetable, and support personnel involved in the implementation of services.
 - (c) Describe the variety of menu offerings to be made available in your service plan and at what frequency.
 - (d) FSMC shall submit a proposed organizational chart for the on-site FSMC management team.

(2) *Experience, References*

- (a) Describe the FSMC's experience as managers and consultants of food service operations in general and public schools in particular.
- (b) Include a list of any similar operations and locations where the FSMC is operating food service programs. Include the number of meal/meal equivalents served daily. Note any that operate the School Breakfast Program (SBP) and the National School Lunch Program (NSLP). List name and phone number of the client Administrator capable of commenting on the FSMC's performance, as well as the annual budget for each Location.
- (c) Include resumes or listings of the qualifications of the proposed resident food service director (FSD) candidates. Final determination of the FSD must have the approval of the district.
- (d) Include resume and background of person who will supervise the work of the resident FSD and how the FSMC will ensure the best performance. Describe the FSMC's internal criteria for bonus opportunities for both the resident FSD and his or her next reporting level.
- (e) Include a list of any locations of school food service that have failed to renew their contracts with respondent within the past three years and contact names/phone numbers.
- (f) Include a table of company organization and a plan for the administrative management, supervision, and staffing proposed under the specifications of this contract.

(3) *Financial Condition/stability, Business Practices*

Provide data to indicate the financial condition of the company. Audited financial statement for the last two Years and management fee history for the last five years for five comparable clients must be included in the Proposal.

(4) *Accounting and Reporting Systems*

Describe complete accounting procedures the FSMC would use for:

- (a) Inventory control
- (b) Method of recording, checking, and reporting sales
- (c) Internal control of cash handling
- (d) Internal audit systems
- (e) All regular accounting forms used with detailed explanations of their importance
- (f) All regular reports used with detailed explanation of their operation and importance
- (g) Data collection for purposes of evaluating the effectiveness of new and current programs

Provide examples of the reports the FSMC will provide the district and the frequency of each. List any Value-added administrative/back office assistance the FSMC will offer the SFA (and costs, if extra).

(5) *Personnel Management*

- (a) What is the FSMC's personnel management philosophy, particularly regarding resident managers and their relationship to exiting staff?
- (b) Describe training and development programs the FSMC will provide for employees and management personnel. Include detailed FSMC budget for training.
- (c) How does the FSMC attempt to improve employee morale and reduce turnover?

(6) *Innovation*

- (a) How would the FSMC's food service program in the district differ from current operations? Describe the costs and benefits of the FSMC's proposed changes.
- (b) Describe how changes would be implemented. Include a staffing model, if different from current staffing.
- (c) How would the FSMC involve employees to use their expertise and experience in making future innovations?
- (d) Examples of service and merchandising programs.
- (e) How would the FSMC modify company *turnkey* programs to meet the district's individual needs?

(7) *Promotion of the School Food Service Program*

- (a) What is the FSMC's philosophy regarding promotion (increasing awareness and participation) of the school food service program?
- (b) How would the FSMC implement this philosophy in our district? Give examples of the FSMC's efforts and results in other districts.
- (c) Provide documentation of efforts and results of promotions and SFA wellness policies in other districts.
- (d) How does the FSMC support *Nutrition Awareness* in the lunchroom and classroom?

(8) *Involvement of Students, Staff and Patrons*

Give examples, by client, of the FSMC efforts and results regarding involvement of students, teachers, building administrators, and parents in program evaluation and selection of menus, discussion of nutritional issues, etc., including examples of surveys and how results/requests were responded to and what actions were taken.

(9) *Cost Information*

- (a) Provide a complete breakdown and itemized detail of the proposed fee/meal, for at least the following major components:
- (b) Payroll/benefits (must tie to Worksheets 1-B and 2-B)
- (c) On-site FSMC staff expenses
- (d) On-site program expenses (including consumable proprietary materials; i.e., posters)
- (e) Indirect/overhead/central support expenses
- (f) Training expenses

2. An original and _____ copies of the sealed proposals are to be submitted to:

Public opening will be at (Time) _____ on (Date) _____. Proposals Will not be accepted after this time. Responses must be sealed and marked with the proposal name (Food Service Management Proposal), name and address of the vendor, and opening date and time. Fax responses cannot be accepted. No other distribution of the proposal shall be made by the offeror. Return of the complete document is required.

- 3. The SFA reserves the right to reject any or all proposals if deemed to be in the best interest of the SFA.
- 4. To be considered, each offeror must submit a complete response to this solicitation using the forms provided no other documents submitted with the RFP contract will affect the contract provisions, and there may be no modifications to the RFP/contract language.
- 5. Award shall be made to the qualified and responsible offeror whose proposal is responsive to this solicitation. A responsible offeror is one whose financial, technical, and other resources indicate an ability to perform the services required by this solicitation. Districts may award a contract based upon the initial proposals received without discussion of such proposals. Accordingly, each initial proposal should be submitted with the most favorable price and service standpoint.

6. Offerors and 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 offeror's own risk, and she or she cannot secure relief on the plea of error. The SFA is not liable for any cost incurred by the offeror prior to the signing of a contract by all parties. Paying the FSMC from ***Child Nutrition Program (CNP) funds is prohibited*** until the contract is signed.
7. Fax or e-mail any additional questions that may arise as a result of the site visits to the District at _____ or _____ by _____ (Fax) _____ (E-Mail Address) (Time) _____ on (Date) _____. Include a return fax and phone number, and specifically reference the section of the proposal in question. All questions must be submitted in writing. Questions and answers will be distributed to all suppliers solicited in the form of an addendum to avoid any unfair advantage. These guidelines for communication have been established to ensure a fair and equitable evaluation process for all respondents Any attempt to bypass the above lines of communication may be perceived as establishing an unfair or biased process and could lead to disqualification as a potential supplier.

E. Late Proposals

Any proposal after the exact time specified for receipt will not be considered. Any proposal en route, either in the mail or other locations in the District will not be considered timely and will be returned unopened. Proposals received after the deadline will be late and ineligible for consideration. Proposals received after the date and hour designated are automatically disqualified and will not be considered. The District is not responsible for delays in the delivery of mail by the U. S. Postal Service, private couriers, or any other means of delivery. It is the sole responsibility of the FSMC to ensure that its proposal reaches the District by the designated date and hour.

F. Final Contract

The complete contract includes all documents included by the SFA in the RFP, and all documents submitted by the FSMC that have been mutually agreed upon by both parties (i.e., worksheets, attachments, and operating cost sheets).

- G. This solicitation and any resulting contract shall be governed by all respects by the laws of the State of New Mexico. The contractor shall comply with applicable federal, state, and local laws and regulations. Any claim or action arising under this agreement/contract shall have a venue in _____ County, New Mexico.

- H. Errors or Omissions – The proposing FSMC shall not be allowed to take advantage of any errors or omissions in specifications. Where errors or omissions occur in the specification, the FSMC shall promptly notify the contract person listed. Inconsistencies in the specifications are to be reported before proposals are submitted.

- I. Ownership of all data, materials, and documentation originated and prepared for the District pursuant to the RFP shall belong exclusively to the District and be subject to inspection in accordance with the New Mexico Inspection of Public Records Act 14-2-1 through 14-2-12 NMSA, 1978.

Standard Terms and Conditions

I. Scope and Purpose

- A. **Duration of Contract.** The effective date may be different than July 1, but the termination date must be June 30. Keep in mind that the effective date may not occur prior to the date on which the contract is signed. This contract shall be for a period of up to one year, beginning on _____, and ending June 30, _____, with up to four 1-year renewals with mutual agreement between the SFA and the FSMC.
- B. **Types of Meals/Functions To Be Provided.** The FSMC shall operate in conformance with the SFA's Agreement with the New Mexico Public Education Department's, Student Nutrition Bureau (the **State Agency**).

The program(s) the district operates and wants the FSMC to administer are indicated below. The program(s) listed here should agree with those listed in Attachment A-2. If a program is added later (i.e., a breakfast program), the appropriate procurement procedures must be followed. NOTE: If a program/function is added after the contract is awarded, the district must rebid the FSMC services if the new program is expected to exceed \$100,000. (Reference 97-SP-30) (Reference Item B on **page 3**)

- | | |
|---|--|
| <input type="checkbox"/> National School Lunch Program (NSLP) | <input type="checkbox"/> Child and Adult Care Food Program (CACFP) |
| <input type="checkbox"/> School Breakfast Program (SBP) | <input type="checkbox"/> A la Carte |
| <input type="checkbox"/> After-School Snack Program (ASSP-NSLP) | <input type="checkbox"/> Adult Meals |
| <input type="checkbox"/> Fresh Fruit/Vegetable Program (FFVP) | <input type="checkbox"/> Catering/Special Event Meals |
| <input type="checkbox"/> Special Milk Program (SMP) | <input type="checkbox"/> Contract Meals |
| <input type="checkbox"/> Summer Food Service Program (SFSP) | <input type="checkbox"/> Vending Machine Sales |
| <input type="checkbox"/> Seamless Summer Program (SSP-NSLP) | <input type="checkbox"/> Concessions |

- C. The FSMC, as an independent contractor, shall have the exclusive right to operate the above program(s) at the sites specified by the SFA in Attachment A-2.
- D. The FSMC shall be an independent contractor and not an employee of the SFA. The employees of the FSMC are not employees of the SFA.
- E. The food service provided shall be operated and maintained as a benefit to the SFA's students, faculty, and staff.
- F. All income accruing as a result of payments by children and adults, federal and state reimbursements, and all other income from sources such as donations, special functions, catering, a la carte, vending, concessions, contract meals, grants, and loans shall be deposited in the SFA's food service account. Any profit or **GUARANTEED** return shall remain the SFA's food service account. The SFA and the FSMC agree that this contract is neither a cost-plus-a-percentage nor a cost-plus-a-percentage-of cost contract as required under the United States Department of Agriculture (USDA) Regulations 7 CFR §210.16(c) and 7 CFR §3016.

- G. The SFA shall be legally responsible for the conduct of the food service program and shall supervise the food service operations in such manner as will ensure compliance with the rules and regulations of the State Agency and USDA regarding each of the CNP covered by this contract.
- H. The SFA shall retain control of the CNP food service account and overall financial responsibility for the CNP.
- I. The SFA shall establish all selling prices, including price adjustments, for all reimbursable and nonreimbursable meals/milk and a la carte (including vending, adult meals, contract meals, and catering) prices. (Exception: Nonpricing programs need not establish a selling price for reimbursable meals/milk.)
- J. The FSMC shall cooperate with the SFA in promoting nutrition education and coordinating the SFA's food Service with classroom instruction.
- K. The FSMC shall comply with the rules, regulations, policies, and instructions of the State agency and USDA and any additions or amendments thereto, including USDA Regulation 7 CFR Parts 210, 220, 245, 250, 3016, 3017, 3018, and 3019; 7 CFR Part 215 (SMP), if applicable; 7 CFR 225 (SFSP), if applicable; and 7 CFR Part 226 (CACFP), if applicable, and all food nutrition services, instructions, policies, and guidance, if applicable.
- L. Computation of Lunch Equivalency Rule and Lunch Equivalents.
 - 1. Lunch Equivalency Rate: The rate is the sum of the total reimbursement received for each lunch meal served and claimed.

Lunch Rate	
Current Year Federal Free Rate of Reimbursement:	\$ _____
Current Year State Match Reimbursement Rate:	\$ _____
Current Year State Program Reimbursement Rate: (If Applicable)	\$ _____
Current Year Value of USDA Entitlement Donated Foods:	\$ _____
Current Year Value of USDA Bonus Donated Foods: (If Applicable)	\$ _____
Total Lunch Equivalent Rate:	\$ _____

M. Definitions for Allowable Direct Cost (for *Cost Reimbursable Contracts* Only):

- **Food** is defined as, and limited to those items purchased for use in the preparation and service of any meals served under the program operated as specified under terms and conditions in Section I, Item B on page 10.
- **Labor** is defined as, and limited to, on-site employees responsible for the management, preparation, service, and clean-up of meals. The FSMC shall provide staff to manage the food service operations and supervise all employees employed therein. The gross management salaries approved shall not exceed \$ _____ for the initial contract school year and will be subject to an annual escalator provision, made at the time of contract renewal, if applicable, based on the Consumer Price Index (CPI) for Food Away From Home. The specific CPI used will be: CPI for All Urban Consumers.
- **Bonuses:** All bonuses must be paid from the management fee charged by the FSMC. Bonuses cannot be billed to the SFA as part of the direct cost of labor.
- **Miscellaneous Expenses** are defined as paper supplies (including decorations), equipment rental, cleaning materials, commodity handling and warehousing charges, travel as required for effective program management, uniforms, printing, taxes and licenses, insurance, and as contractually obligated herein.

N. The charge to the SFA for FSMC's fee is to be clearly identified in the proposal (see page 4).

O. Payment Terms/Method: The FSMC shall invoice SFA at the end of each month for amounts due based on on-site records. The SFA shall make payment within _____ business days of the invoice date.

For **Cost Reimbursable Contracts**: Detailed cost documents must be submitted monthly to support what the SFA is charged for each cost, charge, or expense. Costs, charges, and expenses are outlined on **page 4** and must be agreed upon by the FSMC. Upon termination of the Agreement, all outstanding amounts shall immediately become due and payable.

P. The FSMC shall make substitutions in the food items of the meal pattern for students with disabilities when their disability restricts their diet as stated in the students' *Individual Educational Plans (IEPs)* or 504 Plans and those nondisabled students who are unable to consume regular lunch because of medical or other special dietary needs. Substitutions other than MILK shall be made on a case-by-case basis when supported by a statement of the need for substitutes that includes recommended alternative foods. Such statement shall be signed by a medical doctor or a recognized medical authority. There will be no additional charge to the student for such substitutions.

Milk substitutions may be allowed when supported by a statement from a parent/guardian or medical authority, but only nondairy milk substitutes that meet the Nutrition Standards established by USDA may be used. According to the SFA's policy statement, the SFA chooses to make substitutions for fluid milk available (and, therefore, the FSMC will be so required). Yes No

Note: A Yes answer must be supported by the SFA's policy statement.

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

R. Gifts from FSMC: The SFA's officers, or agents shall neither solicit nor accept gratitude's, 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.

II. Signature Authority

- A. The SFA shall retain signature authority for the State Agency's application/agreement, free and reduced price policy statement, programs indicated in Section I, Item B on **page 10**, and the monthly claim for reimbursement. (Reference 7 CFR §210.16(a)(5).)

III. Free and Reduced-Price Meals Policy

- A. The SFA shall be responsible for the establishment and maintenance of the free and reduced-price meals' eligibility roster.
- B. The FSMC shall implement an accurate *point of service* count using the counting system submitted by the SFA in its application to participate in the Child Nutrition Program (CNP) and approved by the State Agency for the programs listed in Item B on **page 10**, as required under USDA regulations. Such a counting system must eliminate the potential for overt identification of free and reduced-price eligible students under USDA Regulation 7 CFR §245.8.
- C. The SFA shall be responsible for the development and distribution of the parent letter and Application for Free and Reduced-Price Meals and /or Free Milk and participating in Direct Certification. The SFA shall be responsible for the determination of eligibility for free or reduced-price meals and free milk in accordance with 7 CFR § 245.

The SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free or reduced-price meals and free milk, if applicable.

The SFA shall be responsible for verifying Applications for Free and Reduced-Price Meals as required by USDA Regulations.

An employee of the FSMC **may** **may not** (SFA must indicate) perform for the SFA in various aspects of the application, certification, and verification process of eligibility for school meal programs. If the SFA allows this, the FSMC employee must comply with all requirements for these processes, including limited disclosure of individual eligibility information. However, the SFA is ultimately responsible for ensuring that all requirements are being met and that the information on the application remains the property of the SFA and cannot be used or possessed by the FSMC for any use other than to determine eligibility for free or reduced-price meals.

IV. USDA-Donated Foods

- A. Any USDA-donated foods received by the SFA and made available to the FSMC must accrue solely to the benefit of the SFA's nonprofit school food service and SFSP programs, if applicable, and shall be fully utilized herein.
- B. The SFA shall retain title to all USDA-donated foods.
- C. The FSMC shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA-donated foods.
- D. The FSMC shall accept and use USDA-donated foods in as large quantities as may be efficiently utilized in the SFA's nonprofit food service, subject to approval of the SFA. The SFA shall consult with the FSMC in the selection of commodities; however, the final determination as to the acceptance of commodities must be made by the SFA.

E. In accordance with 7 CFR §250.51 (a), the FSMC must credit the SFA for the value of all donated foods received for use in the SFA's meal service in the school year (including both entitlement and bonus foods). Such requirement includes crediting for the value of donated foods contained in processed end products if the FSMC's contract requires it to:

1. The FSMC shall procure commodity processed end products on behalf of the SFA (SFA must indicate):
 Yes No
2. The FSMC shall act as an intermediary in passing the donated food value in commodity processed end products on to the FSA (SFA must indicate): Yes No

If either of the above is Yes, the FSMC will ensure compliance with the requirements in Subpart C of 7 CFR §250 and with the provisions of the Department of Human Services (DHS) or SFA 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.

F. In accordance with 7 CFR §250.51(b), the SFA may permit crediting for the value of donated foods through invoice reductions, refunds, discounts, or other means. However, all forms of crediting must provide clear documentation of the value received from the donated foods; e.g., by separate line item entries on invoices.

1. For **Fixed-Price Contracts**: Yes No (SFA must indicate if this is a **Fixed-Price Contract** or not.) The SFA may permit a FSMC to precredit for donated foods. In precrediting, a deduction for the value of donated foods is included in the established fixed price per meal. However, the SFA must ensure that the FSMC provides an additional credit for any donated foods not accounted for in the fixed price per meal; i.e., for donated foods that are not made available until later in the year.
2. For **Cost Reimbursable Contracts**: Yes No (SFA must indicate if this is a **Cost Reimbursable Contract** or not.) Crediting may be performed by disclosure, i.e., the FSMC credits the SFA for the value of donated foods by disclosing, in its billing for food costs submitted to the SFA, the savings resulting from the receipt of donated foods for the billing period.
3. In both types of contracts, the SFA must require crediting to be performed not less frequently than annually and must ensure that the specified method of valuation of donated foods permits crediting to be achieved in the required time period. The SFA must also ensure that the method, and timing, of crediting does not cause its cash resources to exceed the limits established in 7 CFR §210.9(b)(2).

G. In accordance with 7 CFR §210.51(c), the SFA must ensure that, in crediting it for the value of donated foods, the FSMC uses the donated food values determined by DHS in accordance with 7 CFR §250.58(e). Negotiation of such values is not permitted. Additionally, the method of valuation must ensure that crediting may be achieved in accordance with Item F above and at the specific frequency established in procurement documents:

(SFA must select one) Quarterly Monthly Annually By Semester

H. In accordance with 7 CFR §250.51(d), the FSMC must use all donated ground beef, donated ground pork, and all processed end products in the SFA's food service and must use all other donated foods, or commercially purchased foods of the same generic identity, of United States origin and of equal or better quality than the donated foods in the SFA's food service (unless the contract specifically stipulates that the donated foods, and not such commercial substitutes, be used).

The SFA will only allow donated foods (not such commercial substitutes) to be used (SFA indicate):
 Yes No

- I. The FSMC will not itself enter into the processing agreement with the processor as required in Subpart C of 7 CFR §250.50.
- J. The FSMC will comply with the storage and inventory requirements for donated foods. The FSMC must meet the general requirement for the storage and inventory management of donated foods in 7 CFR §250.14(b). In accordance with 7 CFR §250.52(a), the FSMC **may** **may not** store and inventory donated foods together with foods it has purchased commercially for the SFA's use. If the FSMC is permitted to store and inventory such foods together with other commercially purchased foods, it may only do so to the extent that such a system ensures compliance with the requirements for the use of donated foods in 7 CFR §250.51(d). In *Cost Reimbursable Contracts*: **Yes** **No** (SFA must indicate) the FSMC must ensure its system of inventory management does not result in the SFA being charged for donated foods.
- K. DHS, a subdistributing agency, or the SFA, the Comptroller General, 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.
- L. The FSMC and SFA must maintain records of receipt of donated foods and processed end products, of crediting for the value of donated foods, and other records relating to donated foods, in accordance with 7 CFR §250.54.
1. The SFA must maintain the following records relating to the use of donated foods in its contract with the FSMC:
 - a. The donated foods and processed end products received and provided to the FSMC for use in the SFA's food service.
 - b. Documentation 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, 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.
 2. The FSMC must maintain the following records relating to the use of donated foods in its contract with the SFA:
 - 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. 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 §250.51(a), the value of donated foods contained in processed end products.
 - c. Documentation of its procurement of processed end products on behalf of the SFA, if applicable. (See Item E previously.)
 3. The SFA must ensure that the FSMC is in compliance with the requirements of 7 CFR §250 through its monitoring of the food service operation, as required in 7 CFR §210, §225, or §226, as applicable. The SFA must also 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, including, in accordance with the requirements in §250.51(a), the value of donated foods contained in processed end product.
- M. Extensions or renewals of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to donated foods.

V. Health Certifications/Food Safety

- A. The SFA shall maintain all applicable health certification on its facilities and shall ensure that all state and local regulations are being met by the FSMC preparing or serving meals at any SFA facility.
- B. The FSMC shall maintain state and/or local health certification for any facility outside the SFA in which it proposes to prepare meals and shall maintain this health certification for the duration of the contract as required under USDA Regulations 7 CFR §210.16(c).
- C. The FSMC shall adhere to the food safety program implemented by the SFA for all preparation and service of school meals, using a Hazard Analysis and Critical Control Point (HACCAP) system as required under Public Law 108-265.
- D. The FSMC agrees to allow at least two health inspections to be conducted by the Health Department at every site involved in school meal preparation and/or service as required by Public Law 108-265.

IV. Meals

- A. The FSMC shall serve meals on such days and at such times as requested by the SFA.
- B. The SFA shall retain control of the quality, extent, and general nature of the food service.
- C. The FSMC shall offer free, reduced-price, and full-price reimbursable meals to all eligible children participating in the programs indicated in Section I, Item B on **page 9**.
- D. In order for the FSMC to offer a la carte food service, if applicable, the FSMC must offer free, reduced price, and full-price reimbursable meals to all eligible children.
- E. The FSMC shall provide meals that meet the menu-planning system option selected below by the SFA: (If more than one option is selected, the SFA must indicate which sites follow each menu-planning system selected.)

Traditional Food-Based **Enhanced Food-Based** **Nutrient Standard Menu Planning**

Note: The menu-planning option selected **CANNOT** be changed during the initial contract year or subsequent renewal years unless the FSMC services are rebid by the SFA. (Reference 97-SNP-30.)

- F. The FSMC shall promote maximum participation in the CNP.
- G. The FSMC shall provide the specified types of service in the schools/sites listed in Attachment A2, which is part of this contract.
- H. The FSMC shall sell on the premises only those foods and beverages authorized by the SFA and only at the times and places designated by the SFA.
- I. No payment shall 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.

IV. Books and Records

- A. The FSMC shall maintain such records (supported by invoices, receipts, or other evidence) as the SFA will need to meet monthly reporting responsibilities and shall submit monthly operating statements in a format approved by the SFA, including operating costs, meals, per labor hour, meals served, etc., no later than the tenth calendar day succeeding the month in which services were rendered. Participation records, including claim information by eligibility category, shall be submitted no later than the fifth working day succeeding the month in which services were rendered. The SFA shall perform edit checks on the participation records provided by the FSMC prior to the preparation and submission of the claim for reimbursement.
- B. The FSMC shall maintain records for the SFA to support all allowable expenses appearing on the monthly operating statement. These records shall be kept in an orderly fashion according to expense categories.
- C. The FSMC shall provide the SFA with a year-end statement.
- D. 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.
- E. The SFA and the FSMC must provide all documents as necessary for the independent auditor to conduct the SFA's single audit.
- F. Books and records of the FSMC pertaining to the contract shall be made available, upon demand, in an easily accessible manner for a period of five years after the final claim for reimbursement for the fiscal year to which they pertain. The books and records shall be made available for audit, examination, excerpts, and to transcriptions by the SFA and/or any state or federal representatives and auditors. If audit findings regarding the FSMC records have not been resolved within the five year record retention period, the records must be retained beyond the five-year period for as long as required for the resolution of the issues raised by the audit. (Reference 7 CFR §210.9(b)(17), 7 CFR §3016.36(i)(10), and 7 CFR §3019.48(d.)
- G. The FSMC shall not remove federally required records from the SFA premises upon contract termination.

VII. Employees

- A. The SFA must designate if CURRENT SFA employees, including site and area managers as well as any other staff, will be retained by the SFA or be subject to employment by the FSMC. This must agree with the information reported on Worksheets 1-A and 2-A on **pages 37 and 39** and Worksheets 1-B and 2-B on **pages 38 and 40**.

Employees retained by: SFA (See Worksheets 1-A and 2-A.)
 FSMC (See Worksheets 1-B and 2-B.)
 Both SFA and FSMC (See Worksheets 1-A, 1-B, and 2-B.)
- B. The FSMC shall provide the SFA with a schedule of employees, positions, assigned locations, salaries, and hours to be worked as part of the proposal on Worksheets 1-B and 2-B on pages 38 and 40. Specific locations and assignments will be provided to the SFA two full calendar weeks prior to the commencement of operation.
- C. The SFA shall have final approval regarding the hiring of the FSMC's site manager.

- D. The FSMC shall comply with all wage and hours of employment requirements of federal and state laws. The FSMC shall be responsible for supervising and training personnel, including SFA-employed staff. Supervision activities include employee and labor relations, personnel development, and hiring and termination of FSMC management staff, except for the site manager. The FSMC shall also be responsible for the hiring and termination of nonmanagement staff who are employees of the FSMC.
- E. The FSMC shall provide Workers' Compensation coverage for its employees.
- F. The FSMC shall instruct its employees to abide by the policies, rules, and regulations with respect to use of the SFA's premises as established by the SFA and which are furnished in writing to the FSMC.
- G. The FSMC shall maintain its own personnel and fringe benefits policies for its employees, subject to review by the SFA. Fringe benefits, as well as the basis for any salary increases, must be specified in the proposal and approved by the SFA in order for these to be allowable costs. Salary increases must be based on the same criteria as that for management fee increases. (Reference General Section, **page 4**.)
- H. Staffing patterns, except for the site manager, shall be mutually agreed upon.
- I. The FSMC shall not be allowed to hire employees in excess of the number required for efficient operation.
- J. The SFA shall provide sanitary toilet and hand washing facilities for the employees of FSMC.
- K. The SFA may request in writing the removal of any employee of the FSMC who violates health requirements or conducts himself or herself in a manner that is detrimental to the well-being of the students, provided such request is not in violation of any federal, state, or local employment laws.
- L. In the event of the removal or suspension of any such employee, the FSMC shall immediately restructure the food service staff without disruption of service.
- M. All SFA and/or FSMC personnel assigned to the food service operation in each school shall be instructed in the use of all emergency valves, switches, and fire and safety devices in the kitchen and cafeteria areas.

IX. Monitoring

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

X. Use of Advisory Group/Menus

- A. The SFA shall establish and the FSMC shall participate in the formation, establishment, and periodic meetings of the SFA advisory board composed of students, teachers, and parents to assist in menu planning. (Reference 7 CFR §210.16(a)(8).)
- B. The FSMC must comply with the 21-day menu cycle and specifications (Attachment B) developed by the SFA for the NSLP (Attachment C). The FSMC must also comply with the menu cycle as specified by the SFA for the SBP (Attachment D) and/or ASSP (Attachment E) and include them in the RFP. Any changes made by the FSMC after the first initial menu cycle for the NSLP, SBP, and/or ASSP may be made only with the approval of the SFA. The SFA shall approve the menus no later than two weeks prior to service. (Reference 7 CFR §210.16.)
- C. The FSMC must comply with school district's local wellness policy. In addition, the FSMC must comply with all state laws that affect school meal preparation and/or service.

XI. Use of Facilities, Inventory, Equipment, and Storage

- A. The SFA will make available, without any cost or charge to the FSMC, area(s) of the premises agreeable to both parties in which the FSMC shall render its services.
- B. The SFA, may request of the FSMC additional food service programs as long as any additional food service is not a substantive change to the contract that involves a total of \$100,000 or more. The SFA or requesting organization will be billed for the actual cost of food supplies, labor, and the FSMC's overhead and administrative expenses, if applicable, to provide such service. USDA commodities shall not be used for these special functions unless the SFA's students are the primary beneficiaries. The SFA reserves the right, as its sole discretion, to sell or dispense food or beverages, provided such use does not interfere with the operation of the CNP. (Reference All State Directors' Memorandum 97-SNP-30 and Section 1, Item B on **page 10**.)

Note: Any additional food service programs requested that involve a substantive change to the contract must be competitively procured, separate from this contract.

- C. The FSMC and the SFA shall inventory the equipment and commodities owned by the SFA at the beginning of the school year, including (but not limited to) silverware, trays, chinaware, glassware, and/or kitchen utensils.
- D. The FSMC shall maintain the inventory of silverware, chinaware, kitchen utensils, and other operating items necessary for the food service operation and at the inventory level as specified by the SFA.
- E. The SFA will replace expendable equipment and replace, repair, and maintain nonexpendable equipment except when damages result from the use of less than reasonable care by the employees of the FSMC.
- F. The FSMC shall maintain adequate storage procedures, inventory, and control of USDA-donated foods in conformance with the SFA's agreement with the State Agency.
- G. The FSMC shall provide the SFA with one set of keys for all food service areas secured with locks.
- H. The SFA shall provide the FSMC with local telephone service.
- I. The SFA shall furnish and install any equipment and/or make any structural changes needed to comply with federal, state, or local laws, ordinances, rules, and regulations.

- J. The SFA shall be responsible for any losses, including USDA-donated foods, which may arise due to equipment malfunction or loss of electrical power not within the control of the FSMC.
- K. All food preparation and serving equipment owned by the SFA shall remain on the premises of the SFA.
- L. The SFA shall not be responsible for the loss or damage to equipment owned by the FSMC and located on the SFA premises.
- M. The FSMC shall notify the SFA of any equipment belonging to the FSMC on SFA premises within ten days of its placement on SFA premises.
- N. 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.
- O. The FSMC shall not use the SFA's facility 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.
- P. The SFA, on the termination or expiration of the contract, shall conduct a physical inventory of all equipment and commodities owned by the SFA.
- Q. The FSMC shall surrender to the SFA, upon termination of the contract, all equipment and furnishings in good repair and condition, reasonable wear and tear expected.

XII. Purchases the SFA must indicate one of the five options:

- A. The SFA will do all purchasing for CNP.
- B. Except for Item D under Section XXII on **page 25**, the SFA will do all purchasing for CNP.
- C. For ***Cost Reimbursable Contracts***: The FSMC bills the SFA for foods when purchased. At the option of the SFA, the FSMC will purchase back unused supplies from the SFA at the termination of the contract in order to prevent overbuying (if the FSMC bills the SFA for supplies as purchased, rather than as used.)
- D. For ***Cost Reimbursable Contracts***: The FSMC bills the SFA for food when used. The SFA will buy the ending inventory from the FSMC if the FSMC bills for foods when used.
- E. For ***Fixed-Price Contracts***: The FSMC will buy the beginning inventory, exclusive of commodities, from the SFA (not applicable in a *cost reimbursable contract* since the FSMC should only be charging for new purchases.)

If Item C or Item D were chosen, the following requirements will apply:

1. When the FSMC is procuring goods or services which are being charged to the SFA, the FSMC is acting as an agency 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. All costs to the program must be net of applicable rebates, discounts, and credits. The FSMC must be transparent in its identification of these rebates, discounts, and credits. (Reference CFR §210.21(f)(1)(iii), (iv), (v), and (vi). The FSMC may not require any additional liability coverage, regardless of dollar value, beyond that which the SFA would require under procurements not involving the FSMC. (Reference FNS Instruction 1998-SP-25.)

2. Allowable costs will be paid from the nonprofit school food service account to the FSMC net of all discounts, rebates, and other applicable credits accruing to or received by the FSMC or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA. (Reference 7 CFR §210.21(f)(1)(i).)
3. SFA must indicate either a. or b.
 - a. The FSMC must separately identify for each cost submitted for payment to the SFA 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.) (Reference 7 CFR §210.21(f)(1)(ii).)

OR

 - b. The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification. (Reference 7 CFR §210.21(f)(1)(ii).)
4. The FSMC's determination of its allowable costs must be made in compliance with the applicable departmental and program regulations and Office of Management and Budget (OMB) cost circulars. The FSMC is required to demonstrate that the prices charged to the SFA for food, supplies, etc., are reasonable and necessary.
5. The FSMC must identify the amount of each discount, rebate, and other applicable credit on bills and invoices presented to the SFA for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State Agency, the SFA may permit the FSMC to report this information on a less frequent basis than monthly, but no less frequently than annually. (Reference 7 CFR §210.21(f)(1)(iii).)
6. The FSMC must identify the method by which it will report discounts, rebates, and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract.
7. The FSMC must maintain documentation of costs and discounts, rebates, and other applicable credits and must furnish such documentation upon request to the SFA, the State Agency, or USDA.
Prohibited Expenditures: No expenditure may be made from the nonprofit school food service account for any cost resulting from a ***Cost Reimbursable Contract*** that fails to include the requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the FSMC receiving payments in excess of the FSMC's actual, net allowable costs.

XIII. Sanitation

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

- F. The SFA shall provide extermination services as needed.
- G. The FSMC shall comply with all local and state sanitation requirements in the preparation of food.

XIV. Licenses, Fees, and Taxes

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

XV. Nondiscrimination

Both the SFA and the FSMC agree that no child who participates in the NSLP, SBP, SMP, ASSP, CACFP, SSP, or SFSP will be discriminated against on the basis of race, color, national origin, age, sex, or disability.

XVI. Emergency Closing

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

XVII. Term and Termination

- A. The SFA or the FSMC may terminate the contract for cause by giving 60 days written notice.
- B. At any time, because of circumstances beyond the control of the SFA as well as the FSMC, the FSMC or the SFA may terminate the contract by giving _____ days written notice to the other party. (The SFA must determine the number of days. The maximum number of days must not exceed 30 days.)
- C. Neither the FSMC nor the SFA shall be responsible for any losses resulting if the fulfillment of the terms of the contract are 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, it was unable to prevent.

XVIII. Nonperformance by FSMC

- A. In the event of the FSMC's nonperformance under this contract and/or the violation or breach of the contract terms, the SFA shall have the right to pursue all administrative, contractual, and legal remedies against the FSMC and shall have the right to seek all sanctions and penalties as may be appropriate.
- B. The FSMC shall pay the SFA the full amount of any meal overclaims which are attributable to the FSMC's negligence, including those overclaims based on review or audit findings that occurred during the effective dates of original and renewal contracts.
- C. In the event either party commits a material breach, the nonbreaching party may terminate this agreement for cause by giving 60 days written notice. If the breach is remedied prior to the proposed termination date, the nonbreaching party may elect to continue this agreement.

Notwithstanding the breaching provision above, the SFA may terminate this contract for breach/neglect as Determined by the SFA with written notification to the FSMC when considering such items as failure to maintain and enforce required standards of sanitation, failure to maintain proper insurance coverage as outlined by the contract, failure to provide required periodic information/statements, or failure to maintain quality of service at a level satisfactory to the SFA. The SFA is the responsible authority without recourse to FNS or the State Agency to the settlement and satisfaction of all contractual and administrative issues arising from the transaction. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of contractual nature. Matters concerning violations of the law will be referred to local, state, or federal authority that has proper jurisdiction.

XIX. Certifications

- A. The FSMC shall comply with the mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat. 871.)
- B. The FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (the *Act*), 40 U.S.C. §327-330, as supplemented by Department of Labor regulations, 29 CFR Part 5. Under Section 103 of the Act, the FSMC shall be required to compute the wages of every laborer on the basis of a standard workday of eight hours and a standard workweek of 40 hours. Work in excess of the standard workday or standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or 40 hours in any workweek.
- C. The FSMC shall comply with Executive Order 11246, entitled *Equal Employment Opportunity*, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, 41 CFR Part 60.
- D. The FSMC shall comply with the following civil rights laws, as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans With Disabilities Act; and FNS Instruction 113-1, *Civil Rights Compliance and Enforcement Programs and Activities in School Nutrition Programs*.
- E. The FSMC shall comply with the *Buy American* provision for contracts that involve the purchase of food, USDA Regulation 7 CFR Part 250.
- F. The FSMC has signed the *Certification of Independent Price Determination*, Attachment H, which was attached as an addendum to the FSMC's bid/proposal and which is incorporated herein by reference and made a part of this contract.
- G. The FSMC has signed the *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion*, Attachment I, which was attached as an addendum to the FSMC's bid/proposal and which is incorporated and made a part of this contract. This is required of contracts of \$25,000 or more. (Reference 7 CFR §3017.)
- H. The FSMC shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Air Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15).

- I. The FSMC has signed the Lobbying Certification, Attachment J, which was attached as an addendum to the FSMC's bid/proposal and which is incorporated and made a part of this contract. If applicable, the FSMC has also completed and submitted Standard Form-LLL, Disclosure Form to Report Lobbying (Attachment K), or will complete and submit as required in accordance with its instruction included in Attachment K.

XX. Miscellaneous

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

XII. Insurance

- A. The FSMC shall maintain the insurance coverage set forth below for each accident provided by insurance Companies authorized to do business in the state of New Mexico. A Certificate of Insurance of the FSMC's insurance coverage indicating these amounts must be submitted at the time of award. This must be completed by the SFA.
- B. Comprehensive General Liability – includes coverage for:
 - 1. Premises–Operations
 - 2. Products–Completed Operations
 - 3. Contractual Insurance
 - 4. Broad Form Property Damage
 - 5. Independent Contractors
 - 6. Personal Injury\$ _____ Combined Single Limit
- C. Automobile Liability: \$ _____ Combined Single Limit
- D. Workers' Compensation–Statutory; Employer's Liability: \$ _____
- F. Excess Umbrella Liability: \$ _____

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

XXII. Optional Requirements to Be Included– To be completed by the SFA

- A. The district will will not (SFA must indicate) reimbursement for reasonable cellular telephone expenses incurred by the Director for communications related to the contract. Reasonable expenses shall not include additional services such as paging, e-mail, or voice mail. If allowed, it must be charged as an expense by the FSMC.
- B. The district will reimburse for travel expenses for on-site FSMC staff only that are allowable direct costs related to the contract and which are approved in advance. Reasonable expenses shall include mileage reimbursement, lodging (at the lowest available room rate), and reasonable meal expenses. Mileage, lodging, and meal expenses will be reimbursed at the same rate as received by SFA employees.
- C. The district will reimburse reasonable mileage expense of the Director for allowable local travel related to the contract based on the same mileage rate as received by SFA employees. This mileage rate is \$ _____.
- D. The following provision will will not (SFA must indicate) apply to FSMC investment: The FSMC may may not (SFA must indicate) purchase nonexpendable equipment for the food service program in an amount not to exceed _____. The FSMC shall be subject to the same procurement requirements to which the district is subject in any procurement action and may not serve as a vendor when procuring on behalf of the school food service. The district shall repay at the rate specified when the equipment was purchased, which sum shall be charged to the district as an Operating Expense of the food service program. Ownership of the investment will vest in the district upon full payment of the purchase price to the FSMC. Upon such payment, the FSMC shall deliver a Bill of Sale evidencing transfer of title to the equipment to the district. As per OMB Circular A-87, Attachment B, #19c, approval by the State Agency of the equipment purchase is not necessary.

If the Agreement expires or is terminated prior to the complete repayment of the investment, the district shall, on the expiration date, or within five days after receipt by either party of any notice of termination under this Agreement, either (SFA must indicate):

- 1. Reimburse the FSMC the unpaid portion of the investment.

OR

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

OR

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

- E. Except as otherwise expressly provided in this contract, the FSMC will defend, indemnify, and hold the SFA harmless from and against all claims, liability, loss and expense, including reasonable collection expenses, attorneys' fees and court costs that may rise because of the sole negligence, misconduct, or other fault of the FSMC, its agents or employees in the performance of its obligations under this contract, except to the extent any such claims or actions result from the negligence of the SFA, its employees or agents. This clause shall survive termination of the Agreement.
- F. The SFA will will not (SFA must indicate) require the FSMC to perform a security (background) check on any FSMC employee that will be working at the SFA.
- G. Limitation on Nonperformance for Deficit Operations (Guarantee). The district and the FSMC shall work together to ensure a financially sound operation. If food service operations result in a deficit during the initial contract school year, the FSMC shall reimburse the district for the deficit. All FSMC assumptions used in calculating financial projections shall be clearly defined in the financial section of each proposal. Factors not clearly defined shall be the sole responsibility of the FSMC. If the contract is renewed, this condition shall apply to subsequent years. FSMCs cannot recover any deficits in subsequent years if contract is renewed.
- H. Assumptions. Financial terms of the Agreement are based upon existing conditions and the following assumptions. If there is a material change in conditions, including, without limitations, changes to the following assumptions, the contract (1) may be terminated at the end of the current term or (2) continue under the same terms as written, whichever is mutually agreed upon.
- The district's policies, practices, and service requirements shall remain materially consistent throughout the contract term and any subsequent contract renewals.
 - Average daily attendance (ADA) for the initial contract year beginning July 1 shall equal or exceed prior year's ADA.
 - Legislation, regulations, and reimbursement rates that create changes in the school lunch program shall remain materially consistent throughout the year.
 - Usable commodities, of adequate quality and variety required for the menu cycle, valued at an amount as set forth by USDA per pattern meal for the contract year will continue to be available.
 - The government reimbursement rates in effect shall remain materially consistent throughout the year.
 - Meal components and quantities required by the National School Lunch Act (NSLA) or the NSLP remain consistent with prior years.
 - Service hours, service requirements, and type or number of facilities selling food and/or beverages on district's premises shall remain materially consistent throughout the year.
 - The state or federal minimum wage rate and taxes in effect shall remain materially consistent throughout the year.
 - The projected number of full feeding days are: _____
 - District revenue credited to the food service program shall include all state and federal amounts received specifically for child nutrition operations.

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

XXIII. Trade Secrets and Proprietary Information

- A. During the term of the Agreement, the FSMC may grant to the district 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 district 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 district shall not photocopy or otherwise duplicate any such material without the prior written consent of the FSMC. All trade secrets and other confidential information shall remain the exclusive property of the FSMC and shall be returned to the FSMC immediately upon termination of the Agreement. The district shall not use any confusingly similar names, marks, systems, insignia, symbols, procedures, and methods. Without limiting the foregoing and except for software provided by the district, the district 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 district. Furthermore, the district's access or use of such software shall not create any right, title interest, or copyright in such software and the district 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. The district's obligations under this section are subject to obligations under the New Mexico Inspection of Public Records Act. 14-2-1 through 14-2-12 NMSA, 1978. This provision shall survive termination of the Agreement.
- B. Any discovery, invention, software, or programs, the development of which is paid for by the SFA, shall be the property of the SFA to which the State Agency and USDA shall have unrestricted rights. (Reference 7 CFR §3016.34(b).)

XXIV. SFSP-Additional Requirements, if applicable

(SFA must mark through this entire section if not applicable-See next page also)

- A. The SFA shall be responsible for determining eligibility of all SFSP sites.
- B. Bonding requirements.
 - 1. Bid guarantee (when the SFSP portion of the bid exceeds \$100,000):

Offeror shall submit with his or her bid guarantee in the amount of \$ _____ (FSMC must indicate). This amount shall be _____% (SFA must indicate) (not less than 5 percent or more than 10 percent of the total bid price), which shall be in the form of firm commitment such as bid bond, postal money order, certified check, cashier's check, or irrevocable letter of credit. Bid guarantees other than bid bonds will be returned (a) to unsuccessful offerors as soon as practicable after the opening of proposals and (b) to the successful offeror upon execution of such further contractual documents (i.e., insurance coverage) and bonds as may be required by the bid.

2. Performance guarantee (when the SFSP portion of the contract exceeds \$100,000):

The FSMC must obtain a performance bond in the amount of \$ _____ (FSMC must indicate). This amount shall be _____% (SFA must indicate) (not less than 10 percent nor more than 25 percent of the value of the contract) which shall be in the form of a firm commitment such as bid bond, postal money order, certified check, cashier's check, or irrevocable Letter of credit. Bid guarantees other than bid bonds will be returned to unsuccessful offerors as soon as practicable after the opening of proposals. Performance bonds for the successful offeror shall be held for the duration of the contract.

- C. The SFA shall immediately correct any problems found as a result of a health inspection and shall submit written documentation of the corrective action implemented within two weeks of the citation.
- D. The FSMC must comply with the 5-day menu cycle developed by the SFA for the SFSP (Attachment F) and include it in the RFP. The SFA shall approve any changes in the menus no later than two weeks prior to service after the initial cycle has been used. The SFA shall inform the State Agency of menu changes for the SFSP.

**PROJECTED OPERATIONS—REVENUE
FOR PROGRAMS AND SITES TO BE CONTRACTED
NATIONAL SCHOOL LUNCH PROGRAM (NSLP)/SCHOOL BREAKFAST
PROGRAM (SBP)/SPECIAL MILK PROGRAM (SMP) ONLY
(To be completed by School Food Authority (SFA))**

Data shown is based on the most recent full-service year:

		School Year	
National School Lunch Program—			
Lunches	Meals	Price Charged	Total
Elementary Full-Price	# _____	x _____	= \$ _____
Secondary Full-Price	# _____	x _____	= \$ _____
Reduced-Price	# _____	x _____	= \$ _____
Adult	# _____	x _____	= \$ _____
Contract	# _____	x _____	= \$ _____
Subtotal Lunches:			\$ _____
After-School Snack—NSLP			
Full-Price	# _____	x _____	= \$ _____
Reduced-Price	# _____	x _____	= \$ _____
Adult	# _____	x _____	= \$ _____
Contract	# _____	x _____	= \$ _____
Subtotal Snacks:			\$ _____
School Breakfast Program—			
Breakfasts:			
Elementary Full-Price	# _____	x _____	= \$ _____
Secondary Full-Price	# _____	x _____	= \$ _____
Reduced-Price	# _____	x _____	= \$ _____
Adult	# _____	x _____	= \$ _____
Contract	# _____	x _____	= \$ _____
Subtotal Breakfasts:			\$ _____
Special Milk Program—			
Special Milk, if applicable	# _____	x _____	= \$ _____
	(Milk)		
Special Functions (Catering)	# _____	x _____	= \$ _____
A la Carte Total Revenue (include a la carte sales to adults and students), if applicable			\$ _____
Concession Revenue, if applicable			\$ _____
Vending Machine Sales Total Revenue			\$ _____
	TOTAL IN-SCHOOL REVENUE		= \$ _____
	(NSLP/SBP/SMP Only)		

PROJECTED OPERATIONS—REVENUE (To Be Completed by SFA)

FEDERAL REIMBURSEMENT (NSLP/SMP Only)			
Data shown is based on the most recent full-service year: _____ School Year			
NSLP Lunches:	Meals	Rate	Total
Free	# _____	x _____	= \$ _____
Reduced-Price	# _____	x _____	= \$ _____
Full-Price	# _____	x _____	= \$ _____
Total Lunch			\$ _____
After-School Snack Program:			
Free	# _____	x _____	= \$ _____
Reduced-Price	# _____	x _____	= \$ _____
Full-Price	# _____	x _____	= \$ _____
Total Snacks			\$ _____
SBP Breakfasts:			
Free	# _____	x _____	= \$ _____
Free-Severe Need	# _____	x _____	= \$ _____
Reduced-Price	# _____	x _____	= \$ _____
Reduced-Price-Severe Need	# _____	x _____	= \$ _____
Full-Price	# _____	x _____	= \$ _____
Total Breakfast			\$ _____
Special Milk, if applicable:			
Full-Price	# _____	x _____	= \$ _____
Free	# _____	x _____	= \$ _____
Total Milk			\$ _____

STATE REIMBURSEMENT			
Data shown is based on the most recent full-service year: _____ School Year			
	Meals	Rate	Total
State Match:	# _____	x _____	= \$ _____
State Program, if applicable:	# _____	x _____	= \$ _____

TOTAL STATE REIMBURSEMENT = \$ _____

Total In-School Revenue	= \$ _____
Total Federal Reimbursement	= \$ _____
Total State Reimbursement	= \$ _____
Interest Income	= \$ _____
Total Revenue	= \$ _____ (NSLP/SBP/SMP Only)

**PROJECTED OPERATIONS – EXPENDITURES
FOR PROGRAMS AND SITES TO BE CONTRACTED
(NSLP/SBP/SMP ONLY)
(To Be Completed by SFA)**

Data shown is based on the most recent full-service year: _____ School Year

Food and Milk

Enter the amounts of food and milk purchased and received. Include the Commodity Distribution Assessment Fee \$ _____
Commodity Value \$ _____
Bonus Commodity Value \$ _____

Direct Labor and Benefits

Enter the gross amount paid for salaries to food service workers. Include employee benefits such as health insurance, retirement funds, and matching social security. Include any FSMC fees and expenses. \$ _____

Other Direct

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

Expendable Equipment

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

Nonexpendable Equipment

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

Nonreimbursable Expenses

Enter all expenditures that are not an allowable cost for reimbursement purposes (i.e., bank charge of bounced checks, lost commodities, etc.) \$ _____

A la Carte Sales (If not included above)

Enter total expenditures related to a la carte sales (i.e., food, labor, supplies). \$ _____

Special Functions (Catering)

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

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

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

Concession Sales

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

Subtotal Expenditures:

Less Commodity Usage _____ x _____ = (_____)
NSLP Lunches Only Current Commodity Rates, including
Bonus Commodities (See Page 10)

Less Rebates, Discounts, Commissions, if applicable = (_____)

TOTAL EXPENDITURES: \$ _____

Summary

Total Revenue \$ _____
Total Expenditures \$ _____
Profit or (Loss) \$ _____

DO NOT INCLUDE THIS PAGE IF NOT APPLICABLE

**REVENUE/EXPENDITUES FOR SUMMER FOOD SERVICE PROGRAM (SFSP)
(To Be Completed by SFA)**

Data shown is based on the most recent full-service year: _____ School Year

REVENUES (FEDERAL REIMBURSEMENT)-			
Operating	Meals	Rate	Total
Breakfast	# _____	x _____	= \$ _____
Lunch/Supper	# _____	x _____	= \$ _____
Snack	# _____	x _____	= \$ _____
Administrative Cost			
Breakfast	# _____	x _____	= \$ _____
Lunch/Supper	# _____	x _____	= \$ _____
Snack	# _____	x _____	= \$ _____
Total Revenue (SFSP)			\$ _____

EXPENDITURES	
Operating	
Cost of Food and Milk	\$ _____
Food Service Labor, Payroll Taxes, and Benefits	\$ _____
Nonfood Supplies	\$ _____
Utilities	\$ _____
Rental of Facility	\$ _____
Rental of Equipment	\$ _____
Use Allowance of Equipment	\$ _____
Transportation of Children/Meals (Rural Sponsors Only)	\$ _____
Other (Specify) _____	\$ _____
Total Operating	\$ _____
Administrative:	
Administrative Salaries	\$ _____
Payroll Taxes and Benefits	\$ _____
Office (Maintenance, Rental, Supplies)	\$ _____
Utilities	\$ _____
Mileage (Administrative Purposes Only)	\$ _____
Audit/Legal Fees	\$ _____
Communications (Telephone, Postage, Outreach)	\$ _____
Publication Fee	\$ _____
Other (Specify) _____	\$ _____
Total Administrative	\$ _____
Total Expenditures (SFSP)	\$ _____

Summary: Total Revenue \$ _____
 Total Expenditures \$ _____
 Profit or (Loss) \$ _____

DO NOT INCLUDE THIS PAGE IF NOT APPLICABLE

**REVENUE/EXPENDITURES FOR SEAMLESS SUMMER PROGRAM (SSP)
(To Be Completed by SFA)**

Data shown is based on the most recent full-service year: _____ School Year

REVENUES (FEDERAL REIMBURSEMENT)-			
	Meals	Rate	Total
Breakfast	# _____	x _____	= \$ _____
Severe Need Breakfast	# _____	x _____	= \$ _____
Lunch/Supper	# _____	x _____	= \$ _____
Snack	# _____	x _____	= \$ _____
Total Revenue (SSP)			\$ _____

EXPENDITURES	
Operating	
Cost of Food and Milk	\$ _____
SSP Food-Related Supplies	\$ _____
Food Service Labor and Benefits	\$ _____
Administrative Labor and Benefits	\$ _____
Administrative Costs	\$ _____
Other (Specify) _____	\$ _____
Total Expenditures (SSP)	\$ _____

Summary:	Total Revenue	\$ _____
	Total Expenditures	\$ _____
	Profit or (Loss)	\$ _____

DO NOT INCLUDE THIS PAGE IF NOT APPLICABLE

**REVENUE/EXPENDITURES FOR FRESH FRUIT/VEGETABLE PROGRAM (FFVP)
 (To Be Completed by SFA)**

Column A Elementary Site Name	Column B Site Code	Column C Total Enrollment (From Previous October)	Column D x \$50 (Minimum Grant Amount)	Column E x \$75 (Maximum Grant Amount)
Total			\$	\$

The total grant amount may be used for acquiring, delivering, preparing, and serving the fresh fruits/vegetables; or a maximum of 10 percent of the total grant may be used for administrative expenses.

10 percent of *minimum* grant (Column D) amount = \$ _____ *minimum* amount of administrative funds

10 percent of *maximum* grant (Column E) amount = \$ _____ *maximum* amount of administrative funds

Administrative funds are documented expenses for planning the program, managing paperwork, obtaining needed equipment, and all other expenses related to the FFVP that are not related to the preparation or service of the fruits/vegetables.

The FSMC's compensation for administering the FFVP *can be* from 0 percent to 10 percent of the total grant amount. The FSMC must indicate the percentage it needs (if any) of the administrative funds available: _____ %
 (FSMC Must Indicate 0%-)

DO NOT INCLUDE THIS PAGE IF NOT APPLICABLE

**REVENUE/EXPENDITURES FOR CHILD AND ADULT CARE FOOD PROGRAM
(To Be Completed by SFA)**

Data shown is based on the most recent full-service year: _____ School Year

REVENUES (FEDERAL REIMBURSEMENT)-					
Child and Adult Care, if applicable:					
	Meals		Rate	Total	
Breakfast	# _____	x	_____	= \$	_____
Lunch/Supper	# _____	x	_____	= \$	_____
Snack	# _____	x	_____	= \$	_____
At-Risk Snack	# _____	x	_____	= \$	_____
					\$ _____
					Total CACFP
					Total Federal Reimbursement \$ _____

EXPENDITURES	
Operating	
Cost of Food and Milk	\$ _____
CACFP Food-Related Supplies	\$ _____
Food Service Labor and Benefits	\$ _____
Administrative Labor and Benefits	\$ _____
Administrative Costs	\$ _____
Other (Specify) _____	\$ _____
Total Expenditures (CACFP)	\$ _____

Summary: Total Revenue \$ _____
 Total Expenditures \$ _____
 Profit or (Loss) \$ _____