

# NATIONAL SCHOOL LUNCH PROGRAM

FOOD SERVICE MANAGEMENT COMPANY

CONTRACT



**Local Education Agency (School):** \_\_\_\_\_

**Agreement Number:** \_\_\_\_\_ **School Year** \_\_\_\_\_ **to** \_\_\_\_\_

Special Nutrition Programs  
Division of Child Care and Early Childhood Education  
Department of Health and Human Services

Arkansas Department of Health and Human Services  
Division of Child Care and Early Childhood Education  
Special Nutrition Programs

**INSTRUCTIONS FOR COMPLETING THE FOOD SERVICE MANAGEMENT  
COMPANY CONTRACT**

Cover Page	Insert school/facility name and lea agreement number
Page 4, Item A	Insert name of school/facility
Page 4, Item B	Insert type of procurement method (i.e. Small Purchase Procedures, Sealed Bids, or Competitive Proposals)
Page 5, Section I, Item A	Insert beginning date. For the ending date of June 30, insert the year.
Page 5, Section I, Item B	Check all programs that apply.
Page 7, Section I, Item N, 3 <sup>rd</sup> Bullet	The school/facility must decide if it wants to state the Specific Consumer Price Index (CPI) to be used by all food service management companies (FSMCs) or if it will allow each FSMC to insert its own preference. If the school/facility wants the FSMC to state the CPI, mark through the words that read to be inserted by the LEA in the parenthesis immediately following the blank line and leave line blank.
Pages 8-9, Section I	Read through the options that detail how the school/facility wants to pay the FSMC for its services. Under Option 2, there are two choices – making a total of three options from which to make a selection. Once the particular option is selected by the school/facility, this will prompt the FSMC to complete the items under the option selected.
Page 13, Section VI, Item E	Insert the menu planning option that the school/facility is implementing (i.e. Traditional, Enhanced or Nutrient Standard.)
Page 14, Section VIII, Item A	Check the box that applies.
Page 18, Section Xii	This paragraph is stated in the Contract to protect the school/facility. However, this is not mandatory. The school/facility may strike this paragraph if desired.

Page 19, Section XVII, Item A	Insert effective dates of contract
Pages 22, Section XXI, Items B-E	Insert the amount of each type of insurance coverage desired.
Pages 24-27	Projected operations
Page 28	Once Contract is awarded/accepted, the school LEA)/facility and the FSMC must sign and date in the presence of witnesses. This document now becomes the Contract to which the school district school/facility wants to pay the FSMC for its services, and the FSMC must abide. Once signed and dated, a copy must be mailed to the following address:

Arkansas Department of Health and Human Services  
Division of Child Care and Early Childhood Education  
Special Nutrition Programs  
Attention: NSLP  
P. O. Box 1437, Slot S-155  
Little Rock, AR 72203-1437

Toll Free: 1-800-482-5850, Extension 2-8869 or Local: (501) 682-8869

## GENERAL INFORMATION

**A. Intent**

This solicitation is for the purpose of entering into a contract for the operation of a local education agency for \_\_\_\_\_, hereinafter referred to as the Local Education Agency (LEA).

The bidder/offerer or Food Service Management Company (FSMC) will be referred to as the FSMC, and the contract will be between the FSMC and the LEA (Local Education Agency – School/Facility).

**B. Procurement Method:**

List which method will be used: \_\_\_\_\_

Small Purchase Procedures (for contracts of \$100,000 or less) or Sealed Bids of Competitive Proposal (for contracts of \$100,000). All procurement transactions shall be conducted in a manner that provides maximum open and free competition consistent with 7 CFR§3016.

**C. Final Contract**

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

**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 one which the contract is signed. This contract shall be for a period of up to one year, beginning on \_\_\_\_\_ and ending June 30 \_\_\_\_\_, and renewed annually with mutually agreement between the LEA and the FSMC.
  
- B. The FSMC shall operate in conformance with the LEA’s agreement with the Arkansas State Department of Health and Human Services – Special Nutrition Programs (**the State Agency.**)

Check only the programs you operate. The program(s) listed here should agree with those listed in Attachment A-2. If a program is added later (i.e., breakfast program), the appropriate procurement procedures must be followed. (Reference Item B on Page 3).

- |   |                                      |
|---|--------------------------------------|
| <input type="checkbox"/> National School Lunch Program (NSLP) | <input type="checkbox"/> A la Carte  |
| <input type="checkbox"/> School Breakfast Program             | <input type="checkbox"/> Catering    |
| <input type="checkbox"/> After School Snack Program (ASSP)    | <input type="checkbox"/> Vending     |
| <input type="checkbox"/> Special Milk Program (SMP)           | <input type="checkbox"/> Concessions |
| <input type="checkbox"/> Contract Meals                       | <input type="checkbox"/> Adult Meals |

- C. The FSMC, as an independent contractor, shall have the exclusive right to operate the above program(s) at the sites specified y the LEA in Attachment A-1.
  
- D. The FSMC shall be an independent contractor and not an employee of the LEA. The employees of the FSMC are not employees of the LEA.
  
- E. The food service provided shall be operated and maintained as a benefit to the LEA’s students, faculty and staff.
  
- F. All income accruing as a result of payments by children and adults, federal and state reimbursement 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 LEA’s food service account. Any profit or guaranteed return shall remain in the LEA’s food service account. The LEA and the FSMC agree that this contract is neither a *cost-plus-a-percentage-of-income* nor a *cost-plus-a percentage-of-cost* contract as required under United States Department of Agriculture (USDA) Regulations 7 CFR§© and 7 CFR§3016.
  
- G. The LEA 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 LEA shall retain control of the CNP food service account and overall financial responsibility for the CNP.
- I. The LEA shall establish all selling prices, including price adjustments, for all reimbursable and non-reimbursable meals/milk and a' la carte (including vending, adult meals, contract meals and catering) prices. (Exception: Non-pricing programs need not establish a selling price for reimbursable meals/milk).
- J. The FSMC shall provide additional food service such as banquets, parties and refreshments for meetings as requested by the LEA. The LEA 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 providing such service. USDA commodities shall not be used for these special functions unless the LEA's students will be the primary beneficiaries. (Reference All State Directors' Memo 99-SNP-14).

The LEA may request of the FSMC additional food service programs; however, the LEA reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after the LEA's regularly scheduled lunch or breakfast periods, provided such is prohibited by state or federal program regulations.

- K. The FSMC shall cooperate with the LEA in promoting nutrition education and coordinating the LEA's food service with classroom instruction.
- L. 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, 3018 and 3019; 7 CFR Part 215 (SMP), if applicable; 7CFR Part 225 (SFSP), if applicable; and 7 CFR Part 226 (CACFP); if applicable.
- M. Meal Equivalents: For the purpose of making the meal count computation, include all Child Nutrition Programs (i.e., contract meals, SFSP meals, CACFP applicable), the number of lunches/breakfasts) 2 breakfasts 1 lunch)/after-school snacks (4 snacks equal 1 lunch) served to children shall be determined by actual count. The LEA shall determine a' al carte meal equivalents by dividing the a' la carte revenue from catering plus revenue from catering, vended meals and concessions by the sum of the total federal and state reimbursements (current year federal free reimbursement rate, state match reimbursement rate and state program reimbursement rate) plus the value of USDA entitlement and bonus donated foods. A' la carte revenue from vending machine sales as part of the a' la carte revenue.
- N. Payment Method: The following definitions are provided to clarify what are allowable direct costs:
  - **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 3.

**Labor** is defined as, and limited to, on-site employees responsible for the management, preparation, service and clean-up of meals.

**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.

- The charge to the LEA for FSMC’s fee to be clearly identified in the proposal.
- In addition, the FSMC may charge for its administrative overhead. This charge may be reflected as a cost-per-meal or a flat annual fee and must be clearly identified. If the FSMC intends to include an escalator clause (based on the specific Bureau of Labor Statistics Consumer Price Index (CPI) for Food Away From Home), it must be clearly stated specifically whether the fee increase shall be at the time of each annual renewal. Indicate which CPI shall be used \_\_\_\_\_ (to be inserted by the LEA) (i.e., CPI for all Urban Consumers, CPI for All Consumers Seasonally Adjusted, CPI for All Urban Consumers Selected Areas, CPI for Urban Wage Earners, Chain CPI for All Urban Consumers, etc.) for such increases. Additionally, the FSMC should state whether or not the increase includes both the management fee and the charge for administrative overhead. If no provision for such an increase is included in the proposal, none will be allowed in any annual extension of the contract.
- Select one of the following options:

- Option 1: (Sealed Bids) Fixed-Price-Bid – the FSMC will be paid at a fixed rate per/meal equivalent. The LEA 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 LEA receives the commodities from the Department of Health and Human Services (DHHS) and on USDA commodity prices pertinent to the time period and shall include both the basic commodities allocation as well as any bonus commodities.

To be completed by the FSMC:

Fixed Price Per Meal: \_\_\_\_\_

Formula Used by FSMC for Fixed Price: \_\_\_\_\_

\_\_\_\_\_

Programs Provided: : \_\_\_\_\_

\_\_\_\_\_

Services Provided: \_\_\_\_\_

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Meals Provided: \_\_\_\_\_

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- Option 2: (Competitive Proposals)
  
- Fixed-Price Bid – the FSMC will be paid at a fixed rate per meal/meal equivalent. The LEA 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 LEA receives the commodities from the Department of Health and Human Services (DHHS) and on USDA commodity prices pertinent to the time period and shall include both the basic commodities allocation as well as any bonus commodities.

To be completed by the FSMC:

Fixed Price Per Meal: \_\_\_\_\_

Formula Used by FSMC for Fixed Price: \_\_\_\_\_

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Program Provided: \_\_\_\_\_

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Services Provided: \_\_\_\_\_

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Meals Provided: \_\_\_\_\_

- Cost type 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 LEA to document savings resulting from commodity usage. The values are to be based on the values at the point the LEA receives the commodities from DHHS and USDA prices pertinent to the time period.
  - (1) All program expenses not otherwise defined in the contract will be assumed by the FSMC under the administrative fee. All indirect and overhead costs must be included in the administrative fee.
  - (2) The following must be included in the administrative fees and may 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 and Nutritional)
- Test Kitchens
- Accounting and Accounting Procedures
- Tax Administration
- Technical Supervision
- Supervisory Personnel and Regular Inspections or Audit Personnel
- Teaching and Training Programs
- General Regional Support
- General National Headquarters Support
- Design Services
- Menu Development
- Information Technology and Support
- Payroll Documentation and Administrative Cost
- Sanitation
- Personnel Advice

(3) The management fee represents a profit to the FSMC. This fee shall be identified as a cost per meal.

Management and administrative fees shall be paid by the LEA.

- O. The FSMC shall make substitutions in the food components of the meal pattern for students with disabilities when their disability restricts their diet as stated in the Students' Individual Educational Plans (IEPs) or 504 Plans and those students who are unable to consume regular lunch because of medical or other special dietary needs. Substitutions shall be made on a case-by-case when supported by a statement of the need for substitutes that includes recommended alternative foods unless otherwise exempted by USDA. Such statement shall be signed by a medical doctor or a recognized medical authority. There will be no additional charge to the student for such substitutions.
- P. The LEA will make the final determination of the opening and closing dates of all SFSP sites, if applicable.
- Q. Gifts from FSMC: The LEA's officers, employees or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors not 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 LEA shall retain signature authority for the application/agreement, free and reduced-price policy statement and programs indicated in Section I, Item B on

page 5 and the monthly claim for reimbursement. (reference 7 CFR § 210.9 (a) and (b) and 7 CFR § 210.16 (a) (5).

### **III Free and Reduced-Price Meals Policy**

- A. The LEA 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 LEA in its application to participate in the CNP and approved by the State Agency for the programs listed in Item B on page 5, as required overt identification of free and reduced-price eligible students under USDA Regulation 7 CFR § 245.8.
- C. The LEA 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

### **IV. Free and Reduced-Price Meals Policy**

- A. The LEA 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 LEA in its application to participate in the CNP and approved by the State Agency for the programs listed in Item B on page 3, as required under USDA regulations. Such accounting system must eliminate the potential for the overt identification of free and reduced-price eligible students under USDA Regulation 7 CFR § 245.8.
- C. The LEA 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, if desired.

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

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

### **V. USDA-Donated Foods**

- A. Any USDA-donated foods received by the LEA and made available to the FSMC must accrue solely to the benefit of the LEA's nonprofit school food service and SFSP programs, if applicable, and shall be fully utilized therein.
- B. The LEA shall retain title to all USDA-donated foods.

- C. The FSMC is prohibited from entering into any processing contracts utilizing USDA-donated foods on behalf of the LEA. All refunds received from processors must be retained by the nonprofit school food service account.
- D. 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.
- E. The FSMC shall accept and use USDA-donated foods in as large quantities as may be efficiently utilized in the LEA's nonprofit food service, subject to approval of the LEA. The LEA 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 LEA.
- F. The FSMC shall account for all USDA-donated foods separately from purchased foods. The FSMC is required to maintain accurate and complete records with respect to the receipt, use/disposition, storage, and inventory of USDA-donated foods. Failure by the FSMC to maintain the required records under this contract shall be considered prima facie evidence of improper distribution or loss of USDA-donated foods.
- G. The FSMC shall have records available to substantiate that the full value of all USDA-donated foods is used solely for the benefit of the LEA.

**VI. Health Certifications**

- A. The LEA 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 LEA facility.
- B. The FSMC shall maintain state and/or local health certifications for any facility outside the LEA 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).

**VII. Meals**

- A. The FSMC shall serve meals on such days and at such times as requested by the LEA.
- B. The LEA 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 5.
- D. In order for the FSMC to offer a la carte food service, the FSMC must offer free reduced-price, and full-price reimbursable meals to all eligible children.
- E. The FSMC shall provide meals that meet the \_\_\_\_\_ menu-planning option.

- 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 a part of this contract.
- H. The FSMC shall sell on the premises only those foods and beverages authorized by the LEA and only at the times and places designated by the LEA.
- I. No payment will be made to the FSMC for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the LEA for each food component in the meal pattern, or do not otherwise meet the requirements of the contract.

### **VIII. Books and Records**

- A. The FSMC shall maintain such record (supported by invoices, receipts, or other evidence) as the LEA will need to meet monthly reporting responsibilities and shall submit monthly operating statements in a format approved by the LEA 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 LEA shall perform edit checks on the participation records provided by the FSMC prior to the preparation and submission of the claim for reimbursement.
- B. The FSMC shall maintain records at the LEA 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 LEA with a year-end statement.
- D. The LEA 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 LEA and the FSMC must provide all documents as necessary for the independent auditor to conduct the LEA's single audit.
- F. Books and records of the FSMC pertaining to CNP operations 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, in which the FSMC contract is in place, including extensions for audit, examination, excerpts, and transcriptions by the LEA and/or any state or federal representatives and auditors. (Reference 7 CFR §210.9[b][17].)
- G. If audit findings regarding the FSMC's 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.

- H. The FSMC shall not remove federally required records from LEA premises upon contract termination.

**IX. Employees**

- A. The LEA must designate if current LEA employees, including site and area managers as well as any other staff, will be retained by the LEA or be subject to employment by the FSMC.

Employees retained by:  LEA  
 FSMC  
 Both LEA and FSMC

- B. The LEA shall have final approval regarding the hiring of the FSMC's site manager.
- C. 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 LEA-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
- D. The FSMC shall provide Workers' Compensation coverage for its employees.
- E. The FSMC shall instruct its employees to abide by the policies, rules, and regulations with respect to use of the LEA's premises as established by the LEA and which are furnished in writing to the FSMC.
- F. The FSMC shall maintain its own personnel and fringe benefits policies for its employees, subject to review by the LEA. Fringe benefits, as well as the basis for any salary increases or bonuses, must be specified in the proposal and approved by the LEA in order for these to be allowable costs. Salary increase must be based on the same criteria as that for management fee increases. (Reference Section I, Item N on page 6.)
- G. Staffing patterns, except for the site manager, shall be mutually agreed upon.
- H. The FSMC shall not be responsible for hiring employees in excess of the number for efficient operation.
- I. The FSMC shall provide the LEA with as a schedule of employees, positions, assigned locations, salaries, and hours to be worked as part of the proposal on Work Sheet 1B on page 33. Specific locations and assignments will be provided to the SFA two full calendar weeks prior to the commencement of operation.
- J. The SFA shall provide sanitary toilet and handwashing facilities for the employees of the FSMC

- K. The LEA 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.
- 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 LEA 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.

**X. Monitoring**

- A. The LEA 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. (Reference 7 CFR §210.16.) Further, if there is more than one school site, there is an additional requirement that the LEA conduct an on-site review of the counting claiming system no later than February 1 of each year as required by 7 CFR §210.8.
- B. The records necessary for the LEA 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 LEA upon request for the purpose of auditing, examination, and review.
- C. The LEA, as an SFSP sponsor, is responsible for conducting and documenting the required SFSP site visits of all sites for pre-approval and during operation of the program.

**XI. Use of Advisory Group/Menus**

- A. The LEA 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 developed by the LEA for the NSLP (Attachment C). The FSMC must also comply with the menu cycle as specified by the LEA for the SBP (Attachment D) and/or ASSP (Attachment E) and include them in the RFP/IFB. Any changes made by the FSMC after the initial menu cycle for the NSLP, SBP, and/or ASSP may be made only with the approval of the LEA. The LEA shall approve the menus no later than two weeks prior to service. (Reference 7 CFR §210.16.

**XII. Use of Facilities, Inventory, Equipment, and Storage**

- A. The LEA 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 LEA may request of the FSMC additional food service programs; however, the LEA reserves the right, at its sole discretion, to sell or dispense food or beverages, provided such use does not interfere with the operation of the CNP. Any additional food service that is a substantive change to the contract which involves a total cost of \$100,000 or more must be approved by the State Agency and be competitively procured and the contract would need to be re-bid. (Reference All State Directors' Memo 97-SP-30 and Section I, Item B on page 5.)
- C. The FSMC and the LEA shall inventory the equipment and commodities owned by the LEA 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 LEA.
- E. The LEA will replace expendable equipment and replace, repair, and maintain non-expendable equipment except when damages result from the use of less than reasonable care by the employees of the FSMC.
- F. The FSMC shall provide the LEA with one set of keys for all food service areas secured with locks.
- G. The LEA shall provide the FSMC with local telephone service.
- H. The LEA shall furnish and install any equipment and/or make any structural changes needed to comply with federal, state, or local laws, ordinances, rules, and regulations.
- I. The LEA 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.
- J. All food preparation and serving equipment owned by the SFA shall remain the premises of the LEA.
- K. The LEA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the LEA premises.
- L. The FSMC shall notify the LEA of any equipment belonging to the FSMC on LEA premises within ten days of its placement on LEA premises.
- M. The LEA shall have access, with or without notice, to all of the LEA's facilities used by the FSMC for purposes of inspection and audit.
- N. The FSMC shall not use the LEA's facilities to produce food, meals, or services or other organizations without the approval of the LEA. If such usage is mutually accepted, there shall be a signed agreement which stipulates the fees to be paid by the FSMC to the LEA for such facility usage.

- O. The LEA, on the termination or expiration of the contract, shall conduct a physical inventory of all equipment and commodities owned by the LEA.
- P. The FSMC shall surrender to the LEA, upon termination of the contract, all equipment and furnishings in good repair and condition.

**XIII. Purchases** - If the FSMC is procuring goods or services which are being charged to the LEA under the contract, the FSMC is acting as an agent for the LEA and must follow the same procurement rules under which the LEA must operate and that the FSMC may not serve as a vendor. Any rebates, discounts, or commissions associated in any manner with purchase must be returned to the nonprofit school food service account. Only net costs must be charged to the LEA.

A. Check all that apply:

- For cost-reimbursable contracts when the FSMC bills the LEA for foods when purchased.
- For cost-reimbursable contracts when the FSMC bills the LEA for food when used.
- The FSMC will buy the beginning inventory, exclusive of commodities, from the LEA (not applicable in a cost reimbursable contract since the FSMC should only be charging for new purchases).
- The LEA will buy the ending inventory from the FSMC if the FSMC bills for foods when used.
- At the option of the LEA, the FSMC will purchase back unused supplies from LEA at the termination of the contract in order to prevent overbuying (if the FSMC bills the LEA for supplies as purchased, rather than as used).

**XIV. Sanitation**

- A. The FSMC shall place garbage and trash in containers in designated areas as specified by the LEA.
- B. The LEA 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 clean, safe, and healthy condition in accordance with the standards acceptable to the LEA and comply with all applicable laws, ordinances, regulations, and rules of federal, state, and local, authorities, including laws related to recycling.
- E. The LEA shall clean ducts and hoods above the filter line.
- F. The LEA shall provide extermination services as needed.



- G. The FSMC shall comply with all local and state sanitation requirements in the preparation of food.

**XV. Licenses, Fees, and Taxes**

- A. The FSMC shall be responsible for paying all applicable taxes and fees, including (but not limited to) excise tax, state and local income tax, payroll and withholding taxes, for FSMC employees; the FSMC shall hold the LEA 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 LEA building rules and regulations.

**XVI. Non-discrimination**

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

**XVII. Emergency Closing**

- A. The LEA shall notify the FSMC of any interruption in utility service of which it has knowledge.
- B. The LEA 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.

**XVIII. Term and Termination**

- A. This contract shall become effective on \_\_\_\_\_, and terminate on June 30, \_\_\_\_\_. The contract may be renewed according to the items in Section I, Item A on page 5.
- B. The LEA the FSMC may terminate the contract for cause by giving 60 days written notice.
- C. At any time, because of circumstances beyond the control of the LEA as well as the FSMC, the FSMC or the LEA may terminate the contract by giving 30 days written notice to the other party.
- D. Neither the FSMC nor the LEA shall be responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any acts not within the control of the FSMC or the LEA, respectively, and which, by the exercise of due diligence, it was unable to prevent.

## **XIX. Non-performance by FSMC**

- A. In the event of the FSMC's non-performance under this contract and/or the violation or breach of the contract items, the LEA 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 LEA 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 original and renewal contracts.
- C. In the event either party commits a material breach, the non-breaching party may terminate this agreement for cause by giving 60 days written notice. If the breach is remedied prior to the proposed termination date, the non-breaching party may elect to continue this agreement.

Notwithstanding the breaching provision above, the LEA may terminate this contract for breach/neglect as determined by the LEA 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 LEA. The LEA 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.

## **XX. 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 113-6, *Civil rights Compliance and Enforcement in School Nutrition Programs*.
- E. The FSMC shall comply with the *Buy American provision* for contracts that involve the purchase of food, 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.
- 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 (33U.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*, in accordance with its instructions included in Attachment K.

**XXI. 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 LEA are to be used.
- E. Payments on any claim shall not preclude the LEA from making a claim for adjustment on any item found not to have been in accordance with the provisions of this contract and specifications.
- F. The LEA 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.
- H. Any discovery, invention, software, or programs paid for by the property to the LEA to which the State Agency and USDA shall have unrestricted rights.

**XXII. Insurance**

- A. The FSMC shall maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the State of Arkansas. A Certificate of Insurance of the FSMC's insurance coverage indicating these amounts must be submitted at the time of award.
- 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

(Dollar Amount)\_\_\_\_\_ Combined Single Limit
- C. Automobile Liability: (Dollar Amount) \_\_\_\_\_ Combined Single Limit
- D. Workers' Compensation — Statutory; Employer's Liability — (Dollar Amount)\_\_\_\_\_
- E. Excess Umbrella Liability: (Dollar Amount) \_\_\_\_\_ Combined Single Unit

- F. The LEA 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 LEA for General Liability, Automobile, Workers' Compensation, and Excess Umbrella.
- G. The contract of insurance shall provide for notice to the LEA of cancellation of insurance policies 30 days before such cancellation is to take effect.

**XXIII. SFSP — Additional Requirements, if applicable**

- A. The LEA 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): Bidder/offerer shall submit with his or her bid a bid guarantee in the amount of (not less than 5 percent or more than 10 percent of the total bid price), 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 (a) to unsuccessful bidders/offerers as soon as practicable after the opening of bids/proposals and (b) to the successful bidder/offerer 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 FSMS must obtain a performance bond in the amount of \$ \_\_\_\_\_ (not less than 10 percent nor more than 25 percent of the value of the contract) which shall be in the form of a firm commitment such as 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 bidders/offerers as soon as practicable after the opening of bids/proposals. Performance bonds for the successful bidder/offerer shall be held for the duration of the contract.
- C. The LEA 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 11-day menu cycle developed by the LEA for the SFSP (Attachment F) and include it in the RFP. The LEA shall approve any changes in the menus no later than two weeks prior to service after the initial cycle has been used. The LEA shall inform the State Agency of menu changes for the SFSP.

**PROJECTED OPERATIONS**  
(To be completed by LEA)

**Bidder/Offerer:** \_\_\_\_\_ **based on** \_\_\_\_\_ **Days of Service**  
**ACTUAL IN-SCHOOL REVENUE (DOLLARS ONLY):**

<b>Breakfasts:</b>	<b>Meals</b>		<b>Price</b>		<b>Total</b>
Elementary Full-Price	# _____	x	_____	=	\$ _____
Secondary Full-Price	# _____	x	_____	=	\$ _____
Reduced-Price	# _____	x	_____	=	\$ _____
Adult	# _____	x	_____	=	\$ _____
A' la Carte	# _____	x	_____	=	\$ _____
Contract	# _____	x	_____	=	\$ _____
Subtotal Breakfasts:					\$ _____

**Lunches:**

Elementary Full-Price	# _____	x	_____	=	\$ _____
Secondary Full-Price	# _____	x	_____	=	\$ _____
Reduced-Price	# _____	x	_____	=	\$ _____
Adult	# _____	x	_____	=	\$ _____
A' la Carte	# _____	x	_____	=	\$ _____
Contract	# _____	x	_____	=	\$ _____
Subtotal Lunches:					\$ _____

**After-School Snack:**

Full-Price	# _____	x	_____	=	\$ _____
Reduced-Price	# _____	x	_____	=	\$ _____
A' la Carte	# _____	x	_____	=	\$ _____
Subtotal After-School Snack:					\$ _____
Special Milk (If applicable)	# _____	x	_____	=	\$ _____
Vending Machine Sales	# _____	x	_____	=	\$ _____
Special Functions	# _____	x	_____	=	\$ _____

**TOTAL IN-SCHOOL REVENUE = \$\_\_\_\_\_**

**FEDERAL REIMBURSEMENT**

<b>Breakfasts:</b>	Meals		Price		Total
Free	# _____	x	_____	=	\$ _____
Free, Severe Need	# _____	x	_____	=	\$ _____
Reduced-Price	# _____	x	_____	=	\$ _____
Reduced-Price, Severe Need	# _____	x	_____	=	\$ _____
Full-Price	# _____	x	_____	=	\$ _____

**Lunches:**

Free	# _____	x	_____	=	\$ _____
Reduced-Price	# _____	x	_____	=	\$ _____
Full-Price	# _____	x	_____	=	\$ _____

**Supplements:**

Free	# _____	x	_____	=	\$ _____
Reduced-Price	# _____	x	_____	=	\$ _____
Full-Price	# _____	x	_____	=	\$ _____

**Special Milk, if applicable:**

Full-Price	# _____	x	_____	=	\$ _____
Free	# _____	x	_____	=	\$ _____

**Summer Food Service, if applicable**

Breakfast	# _____	x	_____	=	\$ _____
Lunch	# _____	x	_____	=	\$ _____
Snack	# _____	x	_____	=	\$ _____

**Child and Adult Care, if applicable:**

Breakfast # \_\_\_\_\_ x \_\_\_\_\_ = \$ \_\_\_\_\_

Lunch # \_\_\_\_\_ x \_\_\_\_\_ = \$ \_\_\_\_\_

Snack # \_\_\_\_\_ x \_\_\_\_\_ = \$ \_\_\_\_\_

**TOTAL FEDERAL REIMBURSEMENT = \$ \_\_\_\_\_**

STATE REIMBURSEMENT:

	Meals	Price	Total
State Match:	# _____	x _____	= \$ _____

State Program:	# _____	x _____	= \$ _____
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**TOTAL STATE REIMBURSEMENT = \$ \_\_\_\_\_**

**TOTAL OF ALL REIMBURSEMENTS = \$ \_\_\_\_\_**

**INTEREST INCOME = \$ \_\_\_\_\_**

**TOTAL REVENUE = \$ \_\_\_\_\_**

Expenses That SFA Is Contracting for and Charging to the Food Service Account

<b>EXPENSES:</b>	<b>TOTAL COST:</b>	<b>COST PER MEAL:</b>
Food Cost-Including Commodities	\$ _____	\$ _____
Commodity Delivery Charge	\$ _____	\$ _____
Labor Cost	\$ _____	\$ _____
Fringe Benefits	\$ _____	\$ _____
Teacher Retirement Match	\$ _____	\$ _____
FICA Match	\$ _____	\$ _____
Garbage, Repairs, etc.	\$ _____	\$ _____
Direct Costs	\$ _____	\$ _____
Non-Food (Paper Products, Supplies, etc.)	\$ _____	\$ _____
Special Function:	\$ _____	\$ _____
Food, Labor, & Supplies	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____



_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Subtotal Expenses: \$ \_\_\_\_\_ Total Cost Per Meal \$ \_\_\_\_\_

Less Commodity Usage at \$ \_\_\_\_\_ Per Reimbursable Lunch: \$ \_\_\_\_\_

TOTAL EXPENSES: \$ \_\_\_\_\_

**SUMMARY:**

Total Revenue \$ \_\_\_\_\_

Total Expenses \$ \_\_\_\_\_

**PROFIT OR (LOSS)** \$ \_\_\_\_\_

This page to be completed for Summer Food Service Program (SFSP), if applicable.

**Expenses That SFA Is Contracting for and Charging to the Food Service Account**

<b>EXPENSES:</b>	<b>TOTAL COST:</b>	<b>COST PER MEAL:</b>
Food Cost — Including Commodities		
Breakfast	\$ _____	\$ _____
Lunch	\$ _____	\$ _____
Snack	\$ _____	\$ _____
Subtotal	\$ _____	\$ _____
Commodity Delivery Charge	\$ _____	\$ _____
Labor Cost	\$ _____	\$ _____
Fringe Benefits	\$ _____	\$ _____
On-Site Manager Salary & Benefits	\$ _____	\$ _____
Other Direct Costs	\$ _____	\$ _____
Garbage, Repairs, etc.	\$ _____	\$ _____

Nonfood (Paper Products, Supplies, etc.)	\$ _____	\$ _____
Other:	\$ _____	\$ _____
	\$ _____	\$ _____
Subtotal Expenses:	\$ _____	Total Cost per Meal \$ _____
Less Commodity Usage at	\$ _____	Per Reimbursable \$ _____
<b>TOTAL EXPENSES:</b>	\$ _____	
<b>SUMMARY:</b>	\$ _____	
Total Revenue	\$ _____	
Total Expenses	\$ _____	
<b>PROFIT OR (LOSS)</b>	\$ _____	

**AGREEMENT PAGE**

The bidder/offerer certifies that the FSMC shall operate in accordance with all applicable state and federal regulations.

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

This Agreement shall be in effect for one year and may be renewed by mutual agreement for four additional one-year periods.

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

ATTEST:

LOCAL EDUCATION AGENCY

\_\_\_\_\_

\_\_\_\_\_

Name of LEA

\_\_\_\_\_

Signature of Authorized Representative

\_\_\_\_\_  
Typed Name of Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date Signed

ATTEST:

FOOD SERVICE MANAGEMENT COMPANY:

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

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

\_\_\_\_\_  
Typed Name of Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date Signed

