

NATIONAL SCHOOL LUNCH PROGRAM

FOOD SERVICE MANAGEMENT COMPANY

CONTRACT ADDENDUM



Local Education Agency

Name: _____

Agreement Number: _____ **School Year** _____ - _____

**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

THE FOOD SERVICE MANAGEMENT COMPANY CONTRACT ADDENDUM

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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

Toll Free: 1-800-482-5850, Extension 682-8869 or Local: (501) 682-8869
You may email any questions concerning this food service contract to
Vickie.Stewart@arkansas.gov

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. Final Contract

The original completed 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 will operate. 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 ala'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. USDA commodities shall not be used for 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 it's 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'la 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. 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 non-abled 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.

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 LEA 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 the determination of eligibility for free or reduced-price meals and free milk, if applicable.

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.

IV. 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.

V. 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).

VI. 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 LEA shall offer free, reduced-price, and full-price reimbursable meals to all eligible children participating in the programs.
- 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. 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.

VII 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 service 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.

VIII. 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.

IX. 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.

X. 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.

XI. 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 4.
- 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. If the breach is remedied prior to the proposed termination date, the non-breaching party may elect to continue this agreement.

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