

<p>Date Received SED Use Only</p>	<p>The University of the State of New York NEW YORK STATE EDUCATION DEPARTMENT Child Nutrition Programs Administration 89 Washington Avenue, Room 375 EBA Albany, NY 12234 Telephone: (518) 473-8781 Fax: (518) 473-0018 Web Address: www.cn.nysed.gov</p>	<p>Docutrax Stamp Here SED Use Only</p>
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TYPE II 2022-2023 Food Service Management Company Emergency Contract



School Food Authority: _____

LEA Code: _____

Program(s) – Please check all that apply:

- National School Lunch Program
- School Breakfast Program
- Afterschool Snack Program
- Summer Food Service Program

SFA Contract Manager Information:

SFA Contract Manager: _____

Title: _____

Phone Number: _____

Email: _____

Food Service Management Company Information:

Food Service Management Company: _____

Bid Price: \$ _____

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TYPE II 2022-2023 Food Service Management Company Contract Checklist

** Required - Fill out this form completely, sign and return it with the entire packet for all pre-bids or executed contracts.*

Ensure that your packet contains all the items required by checking each one to certify that they are included in the bid documents submitted. The items below indicated by an asterisk (*), must be completed and submitted with the pre-bid. Complete Pre-bid Contracts must be emailed to cn@nysed.gov 30 days prior to letting bids.

REQUIRED FORMS

- | | |
|--|--|
| <input type="checkbox"/> SFA Amendments - Form #1 & Form 1A
(submit only if changing SED prototype with any additions and/or deletions) * | <input type="checkbox"/> Preparation of Bid Specifications – Form #8 |
| <input type="checkbox"/> Cover Page – Form #2 | <input type="checkbox"/> Certificate of Insurance – Form #9 |
| <input type="checkbox"/> Bid Summary – Form #3 | <input type="checkbox"/> Performance Security (if applicable) – Form #10 |
| <input type="checkbox"/> Board Minutes (if not lowest bidder) – Form #4 | <input type="checkbox"/> SFSP Site List – Form #11A and B |

AGREEMENT SECTION

- | | |
|--|---|
| <input type="checkbox"/> Agreement Section
(Date of Agreement/SFA/FSMC names) | <input type="checkbox"/> Term of Contract (MM/DD/YYYY) * |
| <input type="checkbox"/> Agreement Section
(Awarded FSMC submitted proposal date) | <input type="checkbox"/> Original Signature of Board President and Date |
| <input type="checkbox"/> Circle Responsible Part (See Table of Contents) * | <input type="checkbox"/> Original Signature of FSMC/Title and Date |
| <input type="checkbox"/> Complete All Required Blanks (See Table of Contents) * | <input type="checkbox"/> Original Corporate Affidavit for FSMC signing contract |

BID SPECIFICATION SECTION

- | | |
|--|---|
| <input type="checkbox"/> Indicate Child Nutrition Programs currently participating in* | <input type="checkbox"/> Food Based Menu Plan and Implementation Timeline |
| <input type="checkbox"/> Specify any Child Nutrition Program SFA anticipates entering* | <input type="checkbox"/> Purchase Specifications |
| <input type="checkbox"/> Prior year’s participating and meal pricing information* | <input type="checkbox"/> Performance Security (See Table of Contents) * |
| <input type="checkbox"/> Insert student and adult meals and a la Carte prices* | <input type="checkbox"/> Select Bid Option 1 or 2* |
| <input type="checkbox"/> Specify meal service locations and times* | <input type="checkbox"/> Attach applicable information in Schedules A – I* |
| <input type="checkbox"/> Specify additional non-nutritious foods (if applicable)* | <input type="checkbox"/> Original signatures on Non-Collusive Bid Statement |

I certify that the above items have been checked for accuracy and are included in the agreement and bid specifications submitted for review.

Signature: _____ **Title:** _____

Printed Name: _____ **Date:** _____

Submit the executed contract for review and approval. The final contract includes all documents included by the SFA in the invitation to bid and all documents submitted by the FSMC that have been mutually agreed upon by both parties (i.e., work sheets, attachments, schedules and operating cost sheets). Omissions and inaccuracies in the contract will cause delays in approval and your receipt of reimbursement.

Complete All Blanks or Specify N/A If Not Applicable.

Please put an "X" through non-applicable sections. Do not delete page(s) from the document.
FORM #1 – 2022-2023 SFA Amendments to NYSED Prototype Contract

(This form is required for School Food Authorities altering, adding and/or deleting to sections of the NYSED Prototype Contract)

Regulations require that any changes by the SFA to the 2022-2023 SED Type II Contract Prototype be approved by SED prior to executing the contract. Therefore, any changes by the SFA to the agreement section and/or the specifications section of the SED prototype contract must be specified below on this form referencing the applicable page number and section specifying the proposed amendment. E-mail this form with the entire attached Type II contract to cn@nysed.gov for review and approval 30 days prior to letting bids. Once the amendments are approved by SED, this page must be resubmitted with the executed contract signed by the Board President and the FSMC awarded the contract agreeing to the approved amendments.

Please note: Reordering pages including additional pages and/or boilerplate attachments to the existing SED prototype contract for SED review/approval is not allowable; doing so will result in your submission being returned in its entirety unapproved.

Please complete the following information (refer to table of contents for page number, section, section name and section number).

School Food Authority: _____ **LEA Code:** _____

SFA Amendments: **Submitted by:** _____ **Date:** _____ **Phone:** _____

1.	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications			
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:	Section #:		
2.	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications			
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:	Section #:		
3.	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications			
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:	Section #:		

Please use Form #1A (Continuation Sheet) if additional space is required.

2022-2023 Amendments to NYSED Prototype Contract Continuation Sheet(s)

FORM #1A (Continuation Sheet): Page # of

School Food Authority: _____ LEA Code: _____

4.	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications
	SFA proposed Amendment to this section:	Page #:	Section Name: Section #:
5.	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications
	SFA proposed Amendment to this section:	Page #:	Section Name: Section #:
6.	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications
	SFA proposed Amendment to this section:	Page #:	Section Name: Section #:
7.	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications
	SFA proposed Amendment to this section:	Page #:	Section Name: Section #:
8.	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications
	SFA proposed Amendment to this section:	Page #:	Section Name: Section #:
9.	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications
	SFA proposed Amendment to this section:	Page #:	Section Name: Section #:
10.	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications
	SFA proposed Amendment to this section:	Page #:	Section Name: Section #:

School Food Authority: _____ LEA Code: _____

	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications
<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:	Section #:
	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications
<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:	Section #:
	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications
<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:	Section #:
	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications
<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:	Section #:
	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications
<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:	Section #:
	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications
<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:	Section #:
	The contract is amended as follows (check one):	<input type="checkbox"/> Agreement Section	<input type="checkbox"/> Bidding Requirements/Specifications
<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:	Section #:

Form #2 – Cover Page

(This form is required for all executed contracts)

FOR:

School Food Authority Name: _____

LEA Code: _____

Street Address: _____

City, State, Zip: _____

Telephone Number: _____

Superintendent/ CEO Name: _____

Email Address: _____

SUBMITTED BY:

Food Service Management Company Name: _____

Street Address: _____

City, State, Zip: _____

Telephone Number: _____

NYSED USE ONLY

NYSED Reviewed	
Date: _____	Initial: _____

Form #3 – BID SUMMARY FORM

School Food Authority: _____ LEA Code: _____

- 1) List the names of each Food Service Management Company submitting a sealed bid and the bid amount (use this form even if only one bid was received) and check the company awarded the bid. Submit this form with the signed contract.

FSMC Name	Bid Amount	Contract Awarded (check)

- 2) Did the SFA award the bid to the vendor with the lowest bid amount? YES NO

If no, provide an explanation below and attach to Form #4 a signed copy of the Board of Education resolution/minutes awarding the food service contract.

- 3) If only one bid was received, provide an explanation below.

Original Signature of SFA Representative (blue ink only)

Date

Form #4 – Board Minutes Form

(Attach board minutes only if the lowest bidder was not awarded the FSMC contract)

School Food Authority: _____ LEA Code: _____

[Redacted text block]

- [Redacted list item]

Form #6 – Debarment Option A (SFA Form)

(This form is required for all executed contracts)

checked the System of Award Management List on

_____ *SFA Representative Name and Title*

_____ *Date*

<http://www.sam.gov> and this prospective contractor

_____ *Name of FSMC and Principal/ President of Company*

was not on the list as being suspended, debarred or disqualified.

To the best of my knowledge, I certify the above information is true and correct.

_____ *Original Signature of SFA Representative (blue ink only)*

_____ *Date*

Please Note the Following Regarding Debarment Option A or Debarment Option B:

Although we have included a list of the FSMCs that have not been debarred (with an asterisk) as a part of our annual FSMC web posting, it was based on our office checking on the Excluded Parties on the System of Award website as of January 2019. However, since, by the time the SFA goes out to bid or extend, circumstances regarding the FSMC's debarment status may have changed, it is the SFA's responsibility to check the list before submitting your contract or extension to SED for approval.

Therefore, either:

- 1) The SFA must look on the EPLS website and complete the Debarment Option A form to be submitted with the Contract/Extension packet.

OR

- 2) The FSMC must complete the Debarment Option B form to be submitted with the Contract/Extension packet.

Please note: only the Debarment Option A or Debarment Option B form must be submitted with the contract or extension - do not submit both forms.

Form #7 – Debarment Option B

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

SFAs are required to ensure that all sub-contractors and sub-grantees are neither excluded nor disqualified under the suspension and debarment rules found at 2 CFR 200.212 by doing any one of the following:

- Checking the Excluded Parties List found at the System for Award Management www.SAM.gov;
- Collecting a certification that the entity is neither excluded nor disqualified. Since a Federal certification form is no longer available, the grantee or sub-grantee electing this method must devise its own;
- Including a clause to this effect in the sub-grant agreement and in any procurement contract expected to equal or exceed \$25,000 awarded by the grantee or a sub-grantee under its grant or sub-grant;
- Sub-grantee and contractors must obtain a DUNS Number. All Federal Government awards are required to have a DUNS number. To obtain a DUNS number, contact Dun and Bradstreet at 1-888-573-0876 or visit their website at <https://eupdate.dnb.com/requestoptions.asp> . There is no charge for a DUNS number. The DUNS number serves as a means of tracking and identifying applications for Federal assistance and is required on all applications for Federal assistance.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension. 2 CFR 200.212 Suspension and Debarment. The regulations were published as Part III of the December 26, 2013, Federal Register (pages 78590-78691). Copies of the regulations may be obtained by contacting by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON NEXT PAGE)

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title(s) of Authorized Representative(s)

Signature (Blue Ink Only)

Date

Instructions for Form #7

INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS

DEBARMENT OPTION B

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

Form #7A – Certification Regarding Lobbying

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

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

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

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

Name/Address of Organization

Name/Title of Submitting Official

Signature (blue ink only)

Date

Instructions for Form #7A

LOBBYING CERTIFICATION

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

This disclosure form shall be completed by the reporting entity, whether Sub awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the sub awardee, e.g., the first sub awardee of the prime is the 1st tier. Sub awards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Sub awardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a)
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. The certifying official shall sign and date the form; print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

Form #7B – Disclosure of Lobbying Activities

<h3 style="margin: 0;">FORM 7B</h3> <p style="margin: 0;">DISCLOSURE OF LOBBYING ACTIVITIES</p> <p style="margin: 0; font-size: small;">Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 (See reverse for public burden disclosure)</p>		Form AD-1048 (1/92) Approved by OMB 0348-0046
1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/applications <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change for Material Change only: Year: _____ Quarter: _____ Date of last report: _____
4. Name and address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Sub awardee Tier _____, <i>if known</i> : Congressional District, <i>if known</i> :		5. If Reporting Entity in #4 is Sub awardee, Enter Name and Address of Prime: Congressional District, <i>if known</i> :
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10a. Name and Address of Lobbying Entity <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services (including address if different from #10a.) <i>(last name, first name, MI):</i>	
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind: specify: nature _____ value _____	14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11: 	
15. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty not less than \$10,000 and not more than \$100,000 for each such failure.		
Signature: _____ <i>(Sign in Blue Ink Only)</i>		Print Name: _____
Title: _____		Telephone: _____ Date: _____
Federal Use Only:		Authorized for Local Reproduction Standard Form – LLL

Form #8 – Preparation of Bid Specifications Form

(This form is required for all executed contracts.)

School Food Authority: _____ **LEA Code:** _____

1) Did the SFA hire, discuss or consult with anyone in the preparation of bid specifications other than SED staff?

Yes No

If yes, please complete 2 and sign 3 below. If no, please sign 3 below.

2) Please specify below the name, title and company name of all involved parties that were hired by the SFA to assist in preparation of the bid specifications for bidding purposes.

Name	Title	Name of Company	Did They Participate in the Procurement Process? <i>(Please check the appropriate box)</i>	
			<input type="checkbox"/> Yes	<input type="checkbox"/> No
			<input type="checkbox"/> Yes	<input type="checkbox"/> No
			<input type="checkbox"/> Yes	<input type="checkbox"/> No
			<input type="checkbox"/> Yes	<input type="checkbox"/> No
			<input type="checkbox"/> Yes	<input type="checkbox"/> No

3) To the best of my knowledge, I certify the above information is true and correct.

SFA Representative:

_____ *Printed Name*

_____ *Signature (Blue ink only)*

_____ *Title*

_____ *Date*

Form #9 – Certificate of Insurance Form

(This form is required for all executed contracts)

Attach a copy of the Certificate of Insurance

School Food Authority: _____

LEA Code: _____

Form #10 – Performance Security

(A copy of the performance bond or a copy of the authorization must be attached here if B1 or B2 is selected under Section 14)

School Food Authority: _____ **LEA Code:** _____

Form #11 – Summer Food Service Program

Check if not applicable

School Food Authorities (SFAs) which contract with a Food Service Management Company (FSMC) for food service operations during the school year are required to go out to bid separately for the Summer Food Service Program (SFSP) unless the contract includes provisions to operate the SFSP. The bid specifications and contract provisions for the "year-round" contract must include terms and conditions applicable to both the SFA and the FSMC which provide for the operation of the SFSP in compliance with 7CFR Part 225 of the federal regulations. In addition to the general terms and conditions contained in the contract agreement form, the following provisions are herein made part of this bid specification/contract form:

1. The SFA shall specify estimated participation in the SFSP, by meal type, and other site information as detailed on Form 11A attached.
2. The SFA shall maintain responsibility for the administration and management of the SFSP and sign all agreements, claims for federal reimbursement and/or other program documents.
3. The FSMC shall serve reimbursable meals pursuant to the SFSP regulations 7 CFR Part 225 and the menu planning option used by the SFA as specified in the SFSP Annual Application Agreement Form and in accordance with the attached menu (Schedule A).
4. The FSMC shall prepare, store and serve food items in accordance with State and local health standards. The contractor shall provide for meals, which it prepares to be periodically inspected by the local health department or an independent agency to determine bacterial levels in the meals being served. Such levels shall conform to the standards, which are applied by the local health authority with respect to the level of bacteria, which may be present in meals served by other establishments in the locality. The results of the inspections must be submitted promptly to the sponsor and State agency. The requirements of the attached Quality Control Plan must be met.
5. The FSMC shall provide food services, meal counting systems and record-keeping in compliance with 7 CFR Part 225 and 2 CFR Parts 400, 415, 416 et al (79 FR 75981) as applicable, also known as the "Super-Circular".
6. The FSMC and SFA shall maintain records in accordance with federal and State record retention policies, supported by invoices, receipts, purchase orders, production records, payroll records or other evidence for inspection and reference, to support the operating costs listed on monthly claims for reimbursement.
7. The FSMC and SFA shall maintain separate expenditure and revenue records for the SFSP for both operating and administrative costs.
8. The FSMC shall bill the SFA separately for expenses incurred in the SFSP under this contract.

Original Signatures and Date of Both Parties Required <i>(Original Signatures must be in blue ink only)</i>	
<i>Signature President, Board of Education</i>	<i>Authorized Signature of FSMC and Title</i>
<i>Name of School Food Authority</i>	<i>Name of Food Service Management Company</i>
<i>Date</i>	<i>Date</i>

Form #11A – Summer Food Service Program

Check here if N/A

Summer Food Service Program – Only complete if participating in the SFSP
SITES WHERE PROGRAM WILL OPERATE:

Sponsor Name:	Address:	Contact Person/Phone #:	FSMC Name:

Name and Site/ Address & Phone	Authorized Designee	Holding Facilities		Begin Date (1)	End Date (2)	Days of Week	Total Days Operating (3)	Types of Meals (4)	Estimated Average # Meals/ Day (5)	Total # Meals (6)	Delivery Time for Each Meal Type (7)
		<input type="checkbox"/> Yes	<input type="checkbox"/> No								
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					Breakfast			
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					AM Snack			
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					Lunch			
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					PM Snack			
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					Supper			
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					Breakfast			
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					AM Snack			
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					Lunch			
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					PM Snack			
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					Supper			
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					Breakfast			
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					AM Snack			
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					Lunch			
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					PM Snack			
		<input type="checkbox"/> Yes	<input type="checkbox"/> No					Supper			

Form #11B – Summer Food Service Program Continuation Sheet

Check here if N/A

Name and Site/ Address & Phone	Authorized Designee	Holding Facilities	Begin Date (1)	End Date (2)	Days of Week	Total Days Operating (3)	Types of Meals (4)	Estimated Average # Meals/ Day (5)	Total # Meals (6)	Delivery Time for Each Meal Type (7)
		<input type="checkbox"/> Yes <input type="checkbox"/> No					Breakfast			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					AM Snack			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					Lunch			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					PM Snack			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					Supper			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					Breakfast			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					AM Snack			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					Lunch			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					PM Snack			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					Supper			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					Breakfast			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					AM Snack			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					Lunch			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					PM Snack			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					Supper			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					Breakfast			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					AM Snack			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					Lunch			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					PM Snack			
		<input type="checkbox"/> Yes <input type="checkbox"/> No					Supper			

SUMMER FOOD SERVICE PROGRAM QUALITY CONTROL PLAN

Check here if N/A

Providing children with safe, nutritious and appetizing meals is one of the primary objectives of the Summer Food Service Program. Quality control in food production involves each stage of processing from procurement to service.

To ensure that health and sanitation requirements are met at all times in the preparation and delivery of the summer meals; each FSMC must submit the following documents with the bid:

- 1) A copy of the FSMC's quality control assurance plan that provides complete details on quality assurance procedures for meal preparation, packaging of food items, transportation and delivery schedules.
- 2) Quality assurance procedures shall identify the food production monitoring methods used to ensure that all foods are handled in a safe and sanitary manner. Quality assurance procedures will include but shall not be limited to the following:
- 3) The production/handling procedures for food (meal assembly) shall identify specific measures designed to monitor and assure the maintenance of personnel hygiene, sanitary conditions of the facility and the length of time associated with meal production periods.
- 4) Food product temperature monitoring procedures must provide a description of the procedures utilized to assure maintenance of safe food temperatures during all phases of handling, production, storage and shipment of meals. A log must be used for monitoring and recording food temperatures.
- 5) After the contract has been awarded and the program is in operation, the FSMC is responsible for submitting a copy of a log used for monitoring and recording food temperature during handling, production, storage, and delivery of the meals.
- 6) The SFA is also responsible for submitting samples of weights taken during program operations.
- 7) It is the responsibility of the SFA to ensure that the Quality Control Plan is in place before the contract begins.

Form #12 – Afterschool Snack Program

Check here if N/A

(Complete only if receiving reimbursement for snacks served to children in the after-school snack program.)

The parties of the attached contract, license, lease, amendment or other agreement or any kind (hereinafter, the “Contract”) agree to be bound by the following clauses which are hereby made a part of the Contract (the word Contractor herein refers to any party other than the School Food Authority, whether a contractor, licenser, licensee, lessor, lessee, or any other party):

1) The SFA shall specify estimated participation in the after-school care program(s) in the table below.

Estimated Participation in the After-School Care Program:

Participation in the after-school care program for the _____ school year was:

School	Enrollment	Time of Service			Student Participation		
					Free	Reduced	Paid
			to				
			to				
			to				
			to				
			to				
			to				
			to				
			to				
			to				
			to				
			to				

If the SFA charges for snack, please indicate the price for full price snack \$ ____.

2) Menu Cycle

The 21-day cycle menu and Food Item Specifications, see Schedule A/B, shall be used as a standard for the purpose of basing bids or estimating average cost per meal. The FSMC must adhere to the cycle for the first 21 days of meal service. Menu standard as presented in the 21-day cycle menu must be maintained as to type and quality of meal service.

Snacks served must consist of at least two different components, in at least the minimum portion requirements, as set forth in 7 CFR sections 210.10(n) and 210.10a(j):

- 3) The FSMC shall maintain the following records to provide the SFA with information to submit proper claims for reimbursement:
- a. Daily meal counts by category;
 - b. Daily attendance records, such as sign-in sheets, for the after-school program;
 - c. Written snack menus; and
 - d. All records must be maintained for three years plus the current year.

This must be in accordance with federal and State record retention policies.

Form #13 – Civil Rights Assurance
(To be completed by the Food Service Management Company)

The FSMC hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR Part SO.3 and 42; and FNS directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the FSMC receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.

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

FSMC Representative:

Printed Name

Signature (Blue ink only)

Title

Date

Agreement Section

THIS AGREEMENT, made _____ day of _____ by and between the
this _____
(Day) (Month, Year)

_____ in the city of _____, New York, herein after referred to

(School Food Authority)

(City)

as "SFA" and

referred to as "FSMC".

(Food Service Management Company)

WITNESSETH

NOW, THEREFORE, in consideration of the covenants and agreement hereinafter expressed, it is mutually covenanted and agreed between the parties hereto as follows:

1) Scope and Purpose

- a) The SFA shall provide the requisite administrative oversight of the food service program ("Program") operations administered by the FSMC with the necessary internal controls as it is their fiduciary responsibility to do so.
- b) The SFA is responsible for ensuring resolution of Program review, monitoring areas of non-compliance and/or audit findings for reimbursable meals, a la carte sales including vending machines, and adult meals.
- c) The SFA shall be responsible for the cost of the Program as indicated in the bid specifications and entitled to all receipts generated pursuant to this Agreement.
- d) All net income accruing to the SFA from the Program shall remain in the Program.
- e) The SFA shall retain control of the quality, extent and general nature of the Program and the prices to be charged.
- f) The SFA shall retain signature authority for the Single Permanent Agreement to participate in the Child Nutrition Programs, including but not limited to NYSED reports, the online/paper submission of monthly claims for reimbursement, free and reduced-price applications, etc.
- g) The SFA shall be legally responsible for the conduct of the Program, and shall supervise the food service operations by the FSMC in such a manner that will ensure compliance with the rules and regulations of the New York State Department of Education, herein referred to as SED and the United States Department of Agriculture, herein referred to as USDA, regarding the school food service program, including but not limited to 7 CFR Part 210, 215, 220, 225, 245, 250, 3015, and 2 CFR Parts 400, 415, 416. et al (79 FR 75981) also known as the "Super-Circular" and any FNS or NYSED Instruction and Policy as outlined in the SFA's Single Permanent Agreement with NYSED.
- h) The FSMC shall receive for its services an amount based on per meal bid price. All costs of the Program must be net of all applicable discounts, rebates and credits.
- i) The FSMC, an independent contractor, shall have the exclusive right to operate the school lunch and/or breakfast and/or milk program.
- j) The Programs provided shall be operated and maintained as a benefit to the SFA students and staff and not as a source of profit to the FSMC.
- k) The FSMC shall promote nutrition-health education required by the local, county, State or federal governments.
- l) The FSMC shall comply with the rules and regulations of the Commissioner of Education and the United States Department of Agriculture, and any additions or amendments hereto.

2) Free and Reduced Meal Policy

- a) The SFA free and reduced meal policy for the reimbursed school lunch and/or breakfast and/or special milk and/or USDA Foods distribution programs as defined in the Agreement and hereby in all respects made a part of this contract.
- b) The written policy of the SFA requiring feeding of needy children for free or at reduced price shall apply to the FSMC's food service operation and the SFA shall be responsible for the implementation of this policy.
- c) The SFA shall be responsible for the review and certification of the free and reduced-price eligibility applications, public announcement, letter to parents, direct certification, hearings, verification of certified applications and maintenance of the eligibility rosters, the completion, distribution and collection of the parent letter and household application for free and reduced-price students. FSMC employees are not allowed to review, process and/or approve free and reduced-price applications or to be involved in the free and reduced-price meal application process.
- d) The SFA shall be responsible for the establishment and maintenance of the free and reduced-price meals benefit issuance listing and providing it to the FSMC to ensure that student's meals are accurately claimed for reimbursement under the correct eligibility category.
- e) The SFA and the FSMC agree that no child who participates in the Child Nutrition Programs will be discriminated against on the basis of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation as well as their inability to pay.
- f) No school or school food authority may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and paid reimbursable lunches to all eligible children.

3) Meal Pattern

- a) The FSMC shall serve reimbursable lunches that meet Food Based Menu Pattern requirements pursuant to the National School Lunch Program regulations 7 CFR Part 210. and shall meet the Dietary Guidelines for Americans. Failure to do so will result in a loss of the total per meal price paid to the FSMC for all meals not meeting program requirements. Such actions constitute a breach of contract and subject the FSMC to a penalty as outlined in Section 26C and may be considered cause for termination of the contract in accordance with the sixty (60) day termination clause as outlined in Section 26D of the contract.
- b) The FSMC should offer a choice of reimbursable meal pattern lunches, subject to approval of the SFA.
- c) The FSMC shall serve reimbursable breakfasts that meet Food Based Menu Pattern requirements pursuant to the School Breakfast Program regulations 7 CFR Part 220, where indicated in Appendix B of this agreement, and shall meet the Dietary Guidelines for Americans. Failure to do so will result in a loss of the total per meal price paid to the FSMC for all meals not meeting program requirements. Such actions constitute a breach of contract and subject the FSMC to a penalty as outlined in Section 26C and may be considered cause for termination of the contract in accordance with the sixty (60) day termination clause as outlined in Section 26D of the contract.
- d) The FSMC shall serve reimbursable meal pattern snacks that meet meal pattern requirements pursuant to the National School Lunch Program regulations 7 CFR Part 210 and 220. Failure to do so will result in a loss of the total per meal price paid to the FSMC for all meals not meeting program requirements. Such actions constitute a breach of contract and subject the FSMC to a penalty as outlined in Section 26C and may be considered cause for termination of the contract in accordance with the sixty (60) day termination clause as outlined in Section 26D of the contract.
- e) The FSMC shall serve reimbursable milk pursuant to the Special Milk Program if eligible to do so.
- f) The FSMC must demonstrate that food-based menus are planned to meet the 2010 Dietary Guidelines for Americans and comply with established caloric ranges, sodium, saturated and trans-fat levels as outlined in 7 CFR Part 210 and 220.
- g) The FSMC shall make substitutions in the required food components of the meal pattern if individually participating children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority for a child with a disability which substantially limits one or more major life activities, which includes how the disability restricts the diet, the major life activity affected by the disability recommended alternate foods and foods that must be omitted from the child's diet. The SFA shall notify the FSMC of any special dietary needs. The U.S. Department of Agriculture's (USDA) nondiscrimination regulation (7 CFR 15b), as well as the regulations governing the National School Lunch Program and School Breakfast Program, make it clear that substitutions to the regular

meal must be made for children who are unable to eat school meals because of their disabilities, when that need is certified by a recognized medical authority.

- h) The FSMC may use fillers or extenders, such as "textured vegetable protein," in foods served upon approval of the SFA and regulated by USDA.
- i) No payment shall be made to the FSMC by the SFA for any meals that are spoiled, inedible or unwholesome at time of delivery, or do not meet the detailed specifications and/or meal pattern requirements.

4) Point of Service Accountability/Collection Method

- a) Meals shall be served, and accurate pupil participation records shall be maintained by the FSMC which must ensure that accurate categorical meal counts are obtained at the point of service for reimbursement purposes.
- b) The FSMC shall implement an accurate point of service accountability system and a collection method which must protect the anonymity of free and reduced-price students which must be approved by the SFA.
- c) The FSMC must adapt to the SFA's point of sale system and associated training costs will be the responsibility of the

5) Menus

- a) All food items served must adhere to the specification listed on Schedule B and conform to the standard portion sizes listed in Schedule A and Schedule B.
- b) All menus, which are established/approved by the SFA and prepared by the FSMC, are to be served in all schools during all meal services. The FSMC shall not deviate from the SFA's established menu and/or impose preparation of menu items that they prefer to serve for their convenience and/or preference. The SFA may impose financial penalties on the FSMC for any unannounced deviation from the menus by the FSMC, without prior approval of the SFA.
- c) The FSMC must adhere to the cycle for the first 21 days of meal service. Menu standards as presented in the 21-day cycle menu must be maintained as to type and quality of meal service by the FSMC as indicated in Schedule A (Menus).
- d) High quality food items are to be provided by the FSMC. If, in the opinion of the SFA, the quality of food service becomes unsatisfactory, the FSMC may be subject to financial penalties, contract termination, and any other legal remedies available to the SFA.
- e) Food that has become outdated, spoiled, damaged, wilted, dried out, aged, burnt, and/or has improperly changed color shall not be used.
- f) All FSMC employees are to be trained to properly portion all food items to meet the USDA meal pattern requirements as well as the requirements of the bid specification. A schedule of staff training is to be included with each FSMC proposal in Schedule G.
- g) The District Manager of the FSMC shall monitor, supervise and train the food service staff personnel for the Program. The FSMC District Manager shall visit all district schools ____times throughout the school year and shall provide a written summary report to the SFA Business Manager within _____days of their visit.
- h) The SFA is responsible for the formation and establishment of an advisory board comprised of students, teachers and parents that will meet frequently throughout the school year to assist in menu planning. The FSMC shall participate in these periodic meetings when deemed appropriate by the SFA. Documentation of these meetings is to be kept on file by the SFA and made available upon request by SED.
- i) Menus are to be printed by the FSMC and distributed to parents, students, each school, and SFA administration and posted in all schools on a _____basis and should contain daily, weekly and/or seasonal specials planned in conjunction with the meal service requirements for holidays, educational and/or other special events. The FSMC will adhere to the SFA's additional promotional and merchandising specifications in Schedule A.
- j) A copy of each menu is to be supplied to the SFA's Business Office by the FSMC ____days prior to the month of actual preparation and service of foods for the SFA's review/approval.
- k) The FSMC is to post all menus in a prominent location in all cafeterias and on the SFA's website if applicable.
- l) Preparation and presentation of the same menu item(s) should be consistent in every building throughout the SFA where that menu item is being offered.
- m) The FSMC shall comply with the Buy American Provision, including but not limited to 7 CFR 210.21, 7 CFR Part 200, and 7 CFR Part 250 for contracts that involve the purchase of food. The SFA reserves the right to review FSMC purchase records to ensure compliance with the Buy American provision. The FSMC shall provide Nutrition Fact labels and any other documentation requested by the SFA to ensure compliance with Buy American.

6) Production Records/ Standardized Recipes

- a) Production records (7CFR 210.10(a)(3)) and standardized recipes (7CFR 210.10(l)(8)) are to be produced and used by the FSMC in all schools throughout the SFA as required by federal and State regulations to ensure consistency, quantity and quality of meals served.

- b) Production records must be accurate and kept on a daily basis (7CFR 210.10(a)(3)) and are to be completed for each meal, in all buildings by the FSMC and kept on file for 3 years plus the current year in accordance with federal and State record retention policies, in the SFA, for auditing purposes as required by federal and State regulations. Samples of the production records to be used by the FSMC must be included in Schedule A with each bid.
- c) All standardized recipes are to be kept on file in each kitchen and must indicate all ingredients and portion sizes. Samples of the standardized recipes to be used by the FSMC must be included in Schedule A with each bid.
- d) The FSMC must have the ability to provide all interested parties including the SFA, SED, parents, administration, etc. the actual ingredients and recipes of every menu item offered.
- e) The FSMC is to ensure consistent quality and portioning of menu items throughout the SFA and be subject to the SFA's audit of production records to ensure compliance with this requirement.
- f) The FMSC is to ensure that overproduction of meals does not occur and that leftovers are not removed from the SFA's premises at any time.

7) Meal Services

- a) The FSMC shall provide specified types of meal services in an efficient manner to maximize participation in the Child Nutrition Programs in the service locations and times as listed herein.
- b) The FSMC is expected to ensure that the quality of meal service is appealing and attractive to maximize customer satisfaction as well as ensure that students proceed through serving lines in an efficient manner.
- c) The FSMC shall provide condiments and utensils as needed.
- d) The FSMC shall use the SFA facilities for the preparation of food to be served in the designated meal service locations.
- e) All a la carte items served by the FSMC shall be approved by the SFA in advance of sale.
- f) The SFA should review all meal services to determine if complete meals are offered, if all items are available during the entire meal service, if food items listed on the menu are being served, if counts are accurately taken at the point of service, and if foods listed on the procurement schedule are available for service.
- g) The shall administer the Fresh Fruit and Vegetable Program (FFVP), if applicable. Food, labor and miscellaneous costs incurred will be reimbursed from the pre-approved allocation of money from a discretionary grant from the federal government. Additional administration fees, if any, must be negotiated and agreed upon, prior to implementation of the Fresh Fruit and Vegetable Program. If the FSMC administers the FFVP for the SFA, administrative expenses paid to the FSMC cannot exceed \$100 total per month for the total of up to 50 schools participating in the program. The administrative expense may increase incrementally by \$100 per month for an additional total of up to 50 schools participating in the FFVP. USDA allows no more than ten percent (10%) of the total grant awarded the SFA to be used for administrative expense (which includes equipment purchases). Refer to the USDA FFVP guidance material at the following link: <http://www.fns.usda.gov/ffvp/fns-resources>. NYSED limits the total administrative expenses paid to the FSMC to one half percent (1/2%) of the respective percent for SFAs with more than 150 schools participating in FFVP. See chart below:

Number of Schools	Total Allowable Admin Fee Per Month
1-50 schools	= \$100
51-100 schools	= \$200
101-150 schools	= \$300
151 plus schools	= ½% (cannot exceed ½% of up to 10% administrative expenses)

8) Pricing

- a) The SFA shall be responsible for establishing all selling prices for all reimbursable and non-reimbursable meals/milk and a la carte (including vending and adult meals) and be adhered to by the FSMC.
- b) The FSMC is to promote the sale of reimbursable meals throughout the district.
- c) All a la carte prices charged by the FSMC shall be approved by the SFA in advance of sales.
- d) 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.
- e) The SFA employees may purchase meals at the option and direction of the SFA. Prices charged by the FSMC must be approved by the BOE/Governing Body of the SFA. The price for adult meals for the same portion size as students must be equal to or more than the over 60% reimbursement rate for a free meal, plus the donated commodity entitlement rate for the current school year, plus sales tax. The FSMC shall be notified of such approval thirty (30) days before new prices are effective. The FSMC may serve meals to their employees free of charge, however, the cost of the meal or the value of the adult meal (value of the adult meals converted to equivalent meals) may not be charged to the SFA. The FSMC shall not count these meals for reimbursement under the Child Nutrition Programs.

9) Monitoring

- a) The SFA shall monitor the food service operation of the FSMC through periodic on-site visits to ensure that the food service is in conformance with USDA program regulations per 7 CFR § 210.16. If there is more than one site, there is an additional requirement that the SFA conduct an on-site review of the counting and claiming system no later than February 1 of each year as required by 7 CFR § 210.8. The designated SFA representative that is responsible for performing all on-site reviews and ensuring that if there are any problems found that they will be corrected within the required timeframes is:
- b) FSMC personnel are prohibited from conducting the self-review for the SFA; however, the FSMC may accompany the SFA during the self-review and is responsible for ensuring that any problems found during the self-review are corrected within the required timeframes.

10) All Foods Sold in School (Competitive Foods)

- a) The FSMC shall not sell, dispense, or cause to be on premises, the items listed by the SFA under federal and State regulations and hereby in all respects made a part of the contract.
- b) Neither the SFA nor the FSMC shall authorize the distribution or sale of competitive foods pursuant to State and federal laws and regulations.

11) USDA Foods

- a) The FSMC must pre-credit the SFA for the value of USDA Foods. A deduction for the value of USDA Foods must be reflected in the established bid price. The FSMC must provide an additional credit for any donated foods not accounted for in the established price per meal.
- b) Any USDA Foods received by the SFA and made available to the FSMC shall accrue only to the benefit of the SFA's nonprofit school food service program and shall be used therein.
- c) The FSMC must credit the SFA for the value of all USDA Foods received for use in the Programs in the school year including values of USDA Foods that were not accounted for in the original bid price. The FSMC must provide the SFA with a complete inventory of all USDA Foods received each month. Copies of the FSMC's monthly Inventory Request forms for USDA Foods must also be provided to the SFA each month for their review.
- d) The FSMC must utilize the SFA's entire USDA Foods entitlement as per Schedule H and any additional entitlement received throughout the contract terms. The FSMC and SFA must follow applicable federal and State requirements, including but not limited to 7 CFR 250.
- e) The FSMC shall only order USDA Foods in accordance with the SFA's menus reflected in Schedule A and the SFA's Local Wellness Policy (Schedule C).
- f) The FSMC must maintain (have available for audit by the SFA) records of transportation of USDA Foods throughout the SFA.
- g) USDA Foods are to be obtained for the use solely in the SFA's food service operation and shall not be removed from the SFA's premises. The FSMC will comply with the storage and inventory requirements for USDA Foods.
- h) The FSMC shall have records available to substantiate the full value and use of USDA Foods in reimbursable meal pattern lunches. Records should clearly reflect that the value and amount of USDA Foods received and used by the FSMC is solely for the SFA's benefit. The values are to be based on the value at the point the SFA receives the USDA Foods from the State distributing agency and based on the USDA Foods Value listing pertinent to the applicable time period. This includes when the FSMC procures end products from processors on behalf of the SFA in the form of rebates, credits and/or discounts.
- i) The FSMC shall select, accept and use in as large quantities as may be efficiently used in SFA's nonprofit school food service, the type and quantities of available USDA Foods, subject to the approval of the SFA. SFA shall have the sole discretion as to the final selection and ordering of USDA Foods.
- j) The _____ shall be responsible for transportation and storage charges for USDA Foods.
- k) The FSMC shall account for all federally donated USDA Foods separately from purchased food items. USDA Foods are not to be used for special functions conducted outside the nonprofit school food service.
- l) Title of products purchased or processed using USDA Foods must remain with the SFA. Any charges incurred by the FSMC when processing or purchasing products containing USDA Foods shall be paid by the FSMC and charged back to the SFA as a cost.
- m) The FSMC is subject to the applicable requirements of 7 CFR 250 to the extent that it uses USDA Foods.
- n) If the FSMC uses a commercial substitute in place of the USDA Food, it must be of the same generic identity, of U.S. origin, and of equal or better quality in place of USDA Food.
- o) The FSMC is prohibited from entering into any processing contracts utilizing USDA Foods on behalf of the SFA. All refunds received from processors must be retained by the nonprofit school food service account.
- p) Title to all USDA Foods provided to the FSMC for use in the school food service program shall remain with the SFA.

- q) The SFA must conduct a reconciliation in accordance with 7 CFR Part 250 to ensure that the FSMC has properly credited it for the value of all USDA Foods received for use in the SFA's food service operation in the applicable school year.
- r) The FSMC will maintain records to document its compliance with requirements relating to USDA Foods, in accordance with 7 CFR 250.54(b).
- s) When this contract terminates or subsequent extensions terminate, the FSMC must return all unused USDA Foods in its possession to the SFA within 15 days of the termination effective date. At that time the FSMC must also provide a final accounting of all USDA Foods used, in possession, and not yet delivered.
- t) The FSMC will use all USDA Foods ground beef and ground pork products, and all processed end products, in the SFA food service in accordance with CFR Part 250.53(5).
- u) The Department of USDA Foods, The NYS Child Nutrition Program Administration Office, The SFA, The NYS Comptroller, The Department of Agriculture, or their duly authorized representatives may perform onsite reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of USDA Foods in accordance with CFR Part 250.53(10).
- v) In the event that the full entitlement of USDA Foods ordered is not received through USDA, the FSMC may receive a credit for the amount of entitlement not received. Prior to providing such a credit, the SFA must verify the cause to determine if crediting is required.
- w) Extension/Renewals are contingent upon the fulfillment of all contract provisions related to USDA Foods.

12) Purchases

- a) The grade, purchase unit, style, weight, ingredients, formulation etc., as set forth by the SFA, see Schedule B, shall be complied with by the FSMC. If a brand name is specified, "or equal to" must also be indicated.
- b) The FSMC must purchase all food and non-food items at the lowest price possible consistent with maintaining quality standards.
- c) The FSMC may purchase from their owned or operated subsidiary facilities if the purchase price is lower than the prices otherwise available in the area.
- d) The FSMC shall honor existing purchasing contracts if advantageous to the SFA.
- e) The FSMC shall be solely responsible for the purchase and payment of all foods and beverages necessary for it to render proper performance of the food service program as stated herein. Such purchases and performance shall apply to all items in addition to food and beverage, which will be necessary for compliance with and of this agreement.
- f) The FSMC is to ensure that purchased foods for the sole use of the SFA's food service operation are not removed from the SFA premises at any time.
- g) The FSMC, as the agent of the SFA, will ensure that all procurement transactions meet any applicable procurement standards set forth by Federal, State, or Municipal regulations and policy.
- h) Upon request from the SFA, the FSMC is required to produce a report, which documents the procurement of NY grown/locally grown products including the local farm source, the product(s) purchased, and the value of the products purchased on behalf of the SFA
- i) The prices the FSMC charges the SFA for food, supplies, services, etc. must be competitive, reasonable and necessary.

13) Use of Facilities

- a) The FSMC shall instruct its employees to abide by the policies, rules and regulations, with respect to use of SFA premises/facilities as established by the SFA, which are furnished in writing to the FSMC by the SFA.
- b) The SFA shall furnish at its expense, electricity, gas, space, light, heat, power, hot and cold water and other utilities to the FSMC as in the judgment of the SFA that is reasonably needed and necessary for the operation of the food services as well as sanitary toilet facilities for FSMC employees.
- c) The SFA shall make available without any cost or charge to the FSMC contractor area or areas of the premises that are mutually agreeable to both parties in which the FSMC shall render its services; such area or areas reasonably necessary for providing efficient food service.
- d) The SFA may request of the FSMC, additional food service programs; however, the SFA reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after the SFA's regularly scheduled lunch or breakfast periods provided such use does not interfere with the operation of the School Lunch and/or Breakfast and/or Special Milk Programs.
- e) If the SFA uses the facilities for extracurricular activities before or after the SFA regularly scheduled lunch or breakfast period, the SFA shall return facilities and equipment to the FSMC in the same condition as received, normal wear and tear excepted.
- f) The SFA shall be responsible for painting and/or decorating within the kitchen and dining areas.
- g) The SFA shall have unlimited access, with or without notice to the FSMC, to all areas used by the FSMC for purposes of inspections and audits.

- h) The FSMC shall use the SFA facilities for the preparation of food to be served only at sites specified in the Schedules and Appendices and subject to approval by SED.

14) Inventory, Equipment and Storage

- a) The SFA shall furnish all necessary equipment to operate the food programs. At the time of the contract signing, an itemized inventory (to be certified by representatives of both parties) of all food items furnished or to be furnished by the SFA including miscellaneous kitchen items, will be made part of this contract and included in Schedule E.
- b) The FSMC and the SFA shall inventory the equipment and USDA Foods owned by the SFA at the beginning of the school year, including but not limited to silverware, trays, chinaware, glassware, kitchen utensils, and food commodities.
- c) The FSMC shall maintain the inventory of silverware, chinaware, glassware, kitchen utensils, and other operating items necessary for the food service operation throughout the school year.
- d) The _____ shall replace expendable equipment and replace, repair and maintain equipment except when damages result from the use of less than reasonable care by the employees of the FSMC. Any equipment purchases must be in compliance with CNP procurement regulations. Any equipment purchases beyond the federal or State threshold requires State Agency approval. Regarding all equipment, furnishings and small wares used for the services hereunder, the FSMC agrees that it will use the SFA equipment and machinery in good and proper manner and shall keep the same free from damages, in proper condition and in a state of cleanliness to assure STRICT COMPLIANCE WITH HEALTH REGULATIONS AS PROVIDED AND REQUIRED BY THE STATE OF NEW YORK, dealing with SFA facilities, as with all other health laws. Therefore:
 - i) Repairs necessary due to the negligence of the FSMC, its employees or agents shall be the sole responsibility and the sole expense of the FSMC.
 - ii) The SFA agrees at its sole option to repair or replace any equipment not functioning properly or which is missing upon proper written notification by the FSMC of the need for such repair or replacement and the availability of normal repair or replacement facilities. If the SFA, at its discretion, determines not to repair and/or replace equipment that the FSMC has expressly advised the SFA in writing (a) poses a safety risk to FSMC's employees, or (b) hinders FSMC's ability to perform its services under the agreement, then FSMC shall have the right to effectuate such reasonable repair and/or replacement at the expense of SFA.
 - iii) No purchases, alterations, changes, or improvements shall be made to the areas granted to the FSMC without obtaining prior written permission of the SFA with the final decision as to purchases, alterations, changes, or improvements reserved solely for the SFA.
- e) The SFA shall be responsible for repairs to all permanent fixtures such as faucets, lights, sewers, air conditioning, heating and all other electrical work NOT considered to be food equipment, since such food equipment is dealt with in item d) above.
- f) The FSMC shall maintain adequate storage practices, inventory, and control of federally donated foods in conformance with SFA's agreement with the Office of General Services as well as non-commodity purchases.
- g) The SFA shall provide locks for food storage, preparation and service areas. Keys to those locks shall be provided by the SFA to the FSMC at the SFA's discretion.
- h) The SFA shall provide the FSMC with telecommunication services as deemed necessary by the SFA.
- i) The SFA shall furnish and install any equipment or make any structural changes needed to comply with federal, State and local laws, ordinances, rules and regulations.
- j) The SFA shall be responsible for any losses including federally donated commodities, 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 SFA shall remain on the premises of the SFA.
- l) The SFA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the SFA premises.
- m) The FSMC shall obtain prior approval from the SFA before placement of any FSMC equipment on SFA premises.
- n) Upon termination of this contract the FSMC will surrender to the SFA all equipment and furnishings located in the food services facilities and/or as listed on the certified inventory list of all SFA owned property (both capital and/or expendable) as referred to above in b) and c). Such property and equipment or its equal quality replacement must be returned to the SFA in the same good order and condition as when received by the FSMC, reasonable wear and tear, damage from casualty fire and hazards covered by insurance ALONE EXCEPTED. Another inventory shall be taken upon termination to determine the status of all equipment hereunder. Discrepancies shall be corrected at the FSMC's sole expense with said replacement based on a comparison with the original inventory.

15) Deliveries/ Transportation

- a) The FSMC and the SFA are responsible for the proper and safe transportation of food between buildings to students in a prompt and efficient manner to adhere to the serving times established by the SFA.
- b) The _____ shall pay for oil and gas used by its owned, hired, or other vehicles under its supervision used for delivering food or non-food commodities.
- c) The _____ shall provide its own drivers for owned, hired, or other vehicles under its supervision used for delivering food or non-food commodities.

16) Sanitation/ Health Certification

- a) The FSMC shall serve all foods at proper temperatures and develop standards of time for food preparation prior to meal service such that the food should be ready to be served as close to serving time as possible.
- b) The SFA will provide for the removal of all trash and garbage from the designated area(s) with the FSMC being responsible for proper sanitary storage and placement in the designated area(s) of said trash and garbage until its removal.
- c) The FSMC shall clean the kitchen area, including but not limited to sinks, counters, tables, chairs, silverware, and utensils.
- d) The _____ shall clean the grease traps in the food service area to be in good working order.
- e) The _____ shall maintain the grease traps in the food service area to be in good working order.
- f) The FSMC shall operate and care for all equipment and food service areas (except walls, windows and lights) in a clean, safe, and healthy condition in accordance with standards acceptable to the SFA and comply with all applicable laws, ordinances, regulations and rules of federal, State, and local authorities.
- g) The _____ shall be responsible for the professional cleaning of ducts and hoods above the filter line and will provide extermination services as needed and not less than one time per year.
- h) The FSMC shall comply with all local and State sanitation requirements in the preparation of food and attend all related mandated training as deemed necessary by the SFA and/or SED.
- i) The FSMC shall adhere to the School Food Safety Plan set forth as per USDA regulations for all preparation and meal service of school meals, using a Hazard Analysis and Critical Control Point (HACCP) system as required by Public Law 108-265 which is to be included as part of the Bid by the SFA as reflected in Schedule F.
- j) The SFA shall maintain all applicable health certifications on its facilities and shall ensure that all State and local regulations are being met by the FSMC preparing and/or serving meals at any SFA facility.
- k) The SFA shall immediately correct any problems found as a result of a health inspection.
- l) The FSMC shall adhere strictly to all applicable Pure Food Laws, ordinances as well as all related regulations as adopted and promulgated by the federal government, the State of New York, the local Departments of Health and said FSMC will otherwise fully comply at all times with the rules and regulations as set up by the SFA as well as with any change in the State and/or county Laws, etc., covering and controlling food services at the facilities.
- m) The FSMC shall comply with all health and safety regulations required by federal, State, or local law.
- n) The FSMC and the SFA shall comply with all building rules and regulations.
- o) The FSMC shall procure the most recent applicable health certification required by federal, State, or local law and post in a noticeable place in the food service area.
- p) The FSMC shall have State or local health certification for any facility outside the SFA in which it proposes to prepare meals and the FSMC shall maintain this health certification for the duration of the contract.
- q) The FSMC shall comply with the additional food and safety specifications by the SFA as reflected in Schedule F.

17) Employees

- a) Fingerprinting - The FSMC shall comply with the Regulations of the Commissioner - Part 87 Criminal History Record Check for Prospective School Employees. The _____ will be responsible for fees associated with obtaining fingerprints of prospective employees. The fingerprinting process prescribed by the New York State Education Department must be followed.
- b) The results of all fingerprints from the Office of School Personnel Review and Accountability (OSPRA) must be given to the covered school district, charter school or BOCES as well as prospective employer (FSMC). A prospective school employee means any individual, employee of a provider of contracted services to a covered school who is to be placed within such covered school. A covered school means a board of cooperative educational services, a charter school, a school district, or any nonpublic or private elementary or secondary school that elects to fingerprint and seek clearance for prospective employees from the department beginning July 1, 2007, geographically located in New York State, excluding the city school district of the City of New York. The _____ must ensure that employee fingerprinting records are on file.

- c) The FSMC must complete and retain an Employment Eligibility Verification Form I-9 for each individual hired for employment. The form must be kept on file for three years after hiring an individual or one year after the employee is terminated.
- d) The FSMC shall comply with all wage and hours of employment requirements of federal and State Law.
- e) All employees of the FSMC shall be paid in accordance with the Fair Labor Standard Act, as amended and any other applicable statutes.
- f) The FSMC shall comply with Titles VI and VII of the Civil Rights Act of 1964 and the implementing regulations of the United States Department of Agriculture issued thereunder and any additions or amendments thereto. The FSMC shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations 41 CFR Part 60. The FSMC shall also ensure that a Civil Rights training, in accordance with 7 CFR 210.23(b) and FNS-113, Appendix B, is provided to all food service employees at least once each school year.
- g) The FSMC shall provide Workman's Compensation for its employees.
- h) The FSMC shall provide the SFA with a list of its personnel policies and fringe benefits for its employees.
- i) Staffing patterns shall be mutually agreed upon and there shall be no deviations from the recommended staffing pattern contained in Schedule G without the SFA's prior approval and consent.
- j) The FSMC shall not hire employees in excess of the number required for efficient school food service operations needed for the applicable months of the school year that the Child Nutrition Programs are in operation.
- k) The FSMC shall provide the SFA with a schedule of employees, positions, assigned locations, salaries (and hours to be worked) two full calendar weeks prior to the commencement of operation as reflected in Schedule G.
- l) The SFA may request in writing the removal of an employee of the FSMC who violates health requirements or conducts himself/herself in a manner which is detrimental to the physical, mental, or moral wellbeing of students. In the event of the removal or suspension of any such employee, the FSMC shall immediately restructure its staff without disruption in service.
- m) All FSMC personnel assigned to each school shall meet the professional standard requirements as prescribed by USDA, SED or the SFA in accordance with federal, State or local law regulations and guidance and shall be trained by the FSMC on the use of all meal preparation/service equipment, emergency valves, switches, fire and safety devices in the kitchen and cafeteria areas.
- n) The SFA will ensure that all FSMC employees have been subjected to the same hiring requirements as SFA employees as indicated in Schedule G (i.e., physicals, employee screenings, background checks, immigration, etc.) and ensure that the proper documentation is maintained on file.
- o) The FSMC will adhere to additional FSMC staffing requirements by the SFA regarding the interview process, resumes, qualifications, job descriptions, substitutes, time/attendance, snow days, vacation days, benefits, terminating, hiring, proper attire, communication with SFA, unions, wages, withholdings, workers compensation, unemployment insurance, retirements, student workers, etc. in Schedule G.
- p) The FSMC will adhere to additional FSMC staff training requirements by the SFA in Schedule G.
- q) The FSMC shall have the sole responsibility to compensate its employees, including all applicable taxes and insurance, and shall be solely responsible for any losses incurred by the SFA resulting from dishonest, fraudulent or negligent acts on the part of the FSMC's employees or agents. ALL food service employees shall comply with all rules of the SFA for cleanliness and courtesy.
- r) The FSMC shall be an independent contractor and not an employee of the SFA; nor are the employees of the FSMC employees of the SFA. If applicable, list all employees of the SFA that will be working in the school lunch program. If additional space is needed, indicate on Schedule G.

18) Emergency Closing

- a) The SFA will establish procedures on a site by site basis for working with the FSMC when there is a weather emergency, change in the site schedule, field trips, unexpected closings or other events that may affect participation in the meal program. Events not under the control of the SFA and acts of God shall not affect the guaranteed return to the SFA.

19) Licenses, Fees and Taxes

- a) The FSMC shall be responsible for paying all applicable taxes and fees, including but not limited to excise tax, State and local income taxes, payroll, and withholding taxes and hold the SFA harmless for all claims arising under such taxes and fees.
- b) The SFA shall be responsible for paying sales taxes collected on any receipts deposited in its name.
- c) The FSMC shall be responsible for securing and posting all licenses, permits and food handler's cards as required by federal, State, or local law.
- d) The FSMC shall be responsible for any fines imposed by the county health department related to the FSMC's operation of the Program.

20) Income, Reimbursement/ Deposits

- a) All income accruing from the result of payments from children and adults, federal and State reimbursements, and all other income sources shall be deposited in the SFA's food service account.
- b) Any profit or guaranteed return shall remain in the SFA's food service account.
- c) The SFA shall receive all income from the program(s) including a la carte and/or vending machine sales which the SFA must deposit in the school cafeteria fund accounts. At no time shall the SFA relinquish Child Nutrition Program reimbursements to the FSMC.
- d) Authority to sign claims for reimbursement shall remain solely with the SFA.
- e) The FSMC staff cannot submit claims for reimbursement online or by mail and cannot be issued Child Nutrition Management System (CNMS) passwords in order to submit claims; however, they may prepare claims and provide supporting documentation for the SFA's review/approval.
- f) The SFA must review claims and accountability systems, as well as perform the edit checks, to determine the accuracy of claims before submission to SED.
- g) If reimbursement is denied as a direct result of the failure of the FSMC to comply with the provisions of this contract, the FSMC shall assume responsibility for the amount of denied reimbursements.

21) Vending Machines

- a) The FSMC must ensure that all sales generated from these a la carte vending machine sales accrue to the SFA and be deposited into the SFA's food service account and converted into equivalent meals using the set conversion factor established by this contract. The total number of vending machines determined by the SFA to be a part of the Child Nutrition Programs whose sales must be converted to equivalent meals are .
- b) The _____ will be responsible for stocking, maintenance, upkeep, and emptying monies from the Child Nutrition a la carte vending machines and must provide a verifiable audit of items sold and revenues received.
- c) Timers may be requested for vending machines at the discretion of the SFA.

22) Financial Accounting, Reporting and Auditing

- a) Financial accounting by the FSMC shall be in accordance with USDA and New York State Department of Education rules and regulations and applicable federal and State Laws.
- b) The per meal cost (bid amount) is \$ _____ for breakfast and \$ _____ for lunch and \$ _____ for snack.
- c) The FSMC reimbursement shall not exceed the per meal bid price, as established in the Bid Form Section, and will

be reimbursed only as approved and audited by _____ or his/her authorized representative.

- i) Reimbursement due to the FSMC shall equal meals claimed for reimbursement plus equivalent meals multiplied by the per meal bid price.
- ii) SFA shall designate by title the employee whose responsibility shall be to supervise and audit all financials related to operations of the FSMC:

d) The FSMC's payment shall not exceed contract terms (meals plus equivalent meals multiplied by the bid price) and is limited to the extent of Program income.

e) The SFA shall make payment within 15 days to the FSMC for the direct costs of operation after the submission of a valid claim in accordance with c), above, for each week of program operation to the extent of the school cafeteria fund account balance. Normal credit terms will be 15 days from billing date.

f) The FSMC shall maintain source documentation records (supported by invoices, receipts, or other evidence) as the SFA will need to meet monthly reporting responsibilities. The FSMC must submit monthly operating statements in a format approved by the SFA no later than the fifteenth (15th) calendar day succeeding the month in which services were rendered; participation records shall be submitted no later than the fifth (5th) working day succeeding the month in which services were rendered and reported on a calendar month basis. The SFA shall perform edit checks on the participation records provided by the FSMC prior to the preparation and submission of monthly claims for reimbursement as well as audit food, labor and other large expenses and perform random audits of smaller expenses on a monthly basis.

g) The FSMC shall provide the SFA with a year-end statement by the date determined by the SFA: The SFA shall audit the FSMC's operations as part of its year-end audit. The SFA and FSMC must provide all necessary documents for the independent auditor and/or to conduct the SFA's single audit.

h) The FSMC must provide all information requested by the SFA, which will allow the SFA to make adjustments to the correct accounting period after the SFA has reconciled FSMC source documentation to effectuate payment. Failure to do so will result in delays in payment to the FSMC. NYSED reserves the right to randomly request SFA and/or FSMC copies of invoices and operating statements to ensure compliance.

23) Books/ Records and Record Retention

- a) Books and records of the FSMC pertaining to the school food service operations shall be maintained and made available in accordance with federal and State record retention policies, for a period of three (3) years from the day of the State Agency or the SFA's final allowable payment under the contract has been recorded. The following records must be maintained for the three-year period following the recording of the final payment: original bid and contract, basis for contract selection, terms and conditions of the contract, billing and payment records, and history of FSMC's claims and breaches. The three-year period shall be extended if there are bid protests, litigation and audits. In these cases, the records must be retained until the completion of the action and resolution of all issues arising from the action or the expiration of the regular three-year period, whichever is last.
- b) Books and records of the FSMC pertaining to the Program operations shall be made available, immediately upon demand, in an easily accessible manner for audit, examination, excerpts and transcriptions by the SFA and/or any state or federal representatives and/or auditors. Failure to do so in a timely manner will result in potential loss of reimbursements to the SFA and subsequently loss of payment to the FSMC. FSMC must adhere to all Federal, State or Local record retention policies and procedures.
- c) The FSMC shall not remove any records from the SFA premises upon termination of the contract, including those mandated by federal, State or local law or policy.

24) Insurance

- a) The FSMC shall procure and maintain at its own expense a general liability policy which names the SFA as an additional insured on all required insurance policies, including products liability in the amounts of at least \$____ for injury and death, and property damage with a limit of \$____ for each accident provided by insurance companies authorized to do business in the State of New York. The certificate of insurance shall provide for notice to the SFA of cancellation of insurance policies sixty (60) days before such cancellation is to take effect.
- b) The FSMC shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the FSMC pursuant to this agreement. The FSMC shall indemnify and hold harmless the SFA and its officers and employees from claims, suits, actions, damages and costs of every nature arising out of the provision of services pursuant to this Agreement.
- c) In accordance with Form #9, the FSMC shall provide a certificate of insurance for all required policies; the certificate of insurance shall contain: 1) names and addresses of insured; 2) titles and locations of the operations to which the insurance applies; 3) number of the policy and type or types of insurance in force thereunder on the date of the certificate; 4) expiration date of the policy and the type and types of insurance in force thereunder on the date of the certificate; 5) statement that the insurance of the type afforded by the policy applies to all of the operations and activities on and at the site of the project or incidental thereto, which are undertaken by the FSMC during the performance of the contract.
- d) The FSMC shall provide fire and theft insurance at its own expense to cover any risk created by fire and/or theft to its property located on the premises of the SFA. The FSMC further agrees to provide all necessary fire and/or theft insurance to cover clothes, garments and other articles owned by their employees.

25) Performance Security

- a) The FSMC shall provide the security form, as authorized, prior to the commencement of food service operations. The performance security shall be in a form acceptable to the SFA and shall be in the amount of \$____. The FSMC shall submit the performance security to the SFA prior to the commencement of program operations.
- b) It is recommended and encouraged that all security options be left open to the bidder. However, the SFA may choose to eliminate one or more options in the bid specifications.

26) Contract Term, Termination and Renewals

- a) This contract shall become effective on _____ and terminate on _____.
- b) _____

- c) If the FSMC violates or breaches the terms of and conditions of this Contract, the SFA shall give the FSMC written notice and an opportunity to cure the violation/breach. Should the FSMC fail to make reasonable progress to affect such cure, or correct the violation/breach, the SFA may assess the following penalties against the FSMC:

First written notification of violation/breach. Correction or reasonable progress to effect such cure must be made within five (5) operating days.

Failure to comply will result in penalty of \$500 per day per school involved.

Second written notification for the same violation/breach. Corrective or reasonable progress to effect such cure must be made within five (5) operating days.

Failure to comply will result in penalty of \$750 per day per school involved.

Third written notification for the same violation/breach. Correction or reasonable progress to effect such cure must be made within five (5) operating days.

Failure to comply will result in penalty of \$1000 per day per school involved.

Failure to comply with these notices will be considered cause for termination of the contract in accordance with the sixty (60) day termination clause below.

- d) The SFA or the FSMC may terminate the contract, for cause, by giving sixty (60) days written notice, except: If the FSMC makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of bidder's insolvency. If anticipated revenues or commodity assistance from federal and State reimbursements are reduced and the FSMC submits in writing a proposal of recommended changes necessary to maintain Program solvency yet the SFA repeatedly refuses or fails to take appropriate action to maintain Program solvency within thirty (30) days of receipt of said notice, the FSMC may, without prejudice and within seven (7) days written notice, terminate the contract.
- e) The SFA or FSMC may terminate the contract, for convenience, by giving sixty (60) days advance written notice to the other party. Such notice shall set forth with sufficient specificity such party's reasons for termination. A FSMC facilitating the termination for convenience clause must provide adequate advance notice to the SFA that would permit the SFA sufficient time to arrange alternate food service.
- f) Neither the FSMC nor the SFA 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 either the FSMC or the SFA, respectively, and which by the exercise of due diligence it is unable to prevent.
- g) [REDACTED]

27) General

- a) This contract shall be construed under the laws of the State of New York. Any action or proceeding arising out of this contract shall be brought in the appropriate courts of the State of New York.
- b) The SFA shall neither solicit or accept gratuities, favors or anything of monetary value from contractors or potential contractors. To the extent permissible under State law, rules and/or regulations, violations of these standards shall be subject to appropriate penalties, sanctions and/or other disciplinary actions.
- c) The FSMC shall comply with the provisions of the bid specifications and hereby in all respects made a part of this contract.
- d) The FSMC may not subcontract out services to be rendered pursuant to the terms of this contract without the express prior approval, written authorization and consent of the SFA and governing board of the SFA.
- e) The SFA reserves the right to reject any and all items which do not comply with the requirements set forth herein.
- f) This contract constitutes the entire contract between the SFA and the FSMC and may not be changed; terminated or extended orally or by course of conduct.
- g) No waiver of any default shall be construed to be or constitute a waiver of any subsequent default.
- h) Payments on any claim shall not preclude the SFA from making claim for adjustment on any item found not to have been in accordance with the provisions of this contract and bid specifications.
- i) [REDACTED]
- j) SED reserves the right to deny reimbursement due to a SFA's failure to follow proper bidding procedures.
- k) The complete contract includes all documents submitted by the SFA and all documents submitted by the FSMC that have been mutually agreed upon by both parties; i.e., worksheets, schedules, appendices, etc.

- l) The terms and conditions of this contract are subject to review and approval by the New York State Department of Education, Child Nutrition Program Administration.
- m) It is further agreed between the SFA and the FSMC that the clauses attached hereto and designated as, required Forms #1-#13, Schedules A-I and Appendices A-B are hereby in all respects made a part of this contract.
- n) The successful bidder shall enter the SFA FOOD MANAGEMENT COMPANY CONTRACT attached hereto and, in all respects, made a part of this bid specification. By submitting a bid, the bidder agrees to all the terms and conditions contained herein.
- o) In the event fiscal action is taken by SED against the SFA based on areas of non-compliance related to the menu/meal pattern found during any administrative reviews, procurement review or program irregularity review, conducted during the course of this contract, the SFA can recoup funds from the FSMC.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Original Signatures and Date of Both Parties Required <i>(Original Signatures must be in blue ink only)</i>	
<i>Signature President, Board of Education</i>	<i>Authorized Signature of FSMC and Title</i>
<i>Print Name</i>	<i>Print Name</i>
<i>Name of School Food Authority</i>	<i>Name of Food Service Management Company</i>
<i>Date</i>	<i>Date</i>

Please note: The SFA is not liable for any cost incurred by the bidder prior to the signing of a contract by all parties. Paying the FSMC from Child Nutrition Program funds is prohibited until the contract is signed.

Corporate Affidavit

STATE OF: _____

COUNTY OF: _____

SS: _____

CITY OF: _____

On this _____ day of _____, 20____, before me, the Subscriber, personally came to me known, who

being by me duly sworn, did depose and say that she/he resides in the town/city of _____

, _____ State, that she/he is the _____ of

the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation,

that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of

said corporation and that she/he signed her/his name thereto by like order.

Corporate Official Name: _____

Corporate Official Signature: _____

(Blue Ink Only)

Affix Corporate Seal Here:

(Date)

AFFIX NOTARY PUBLIC SEAL HERE

- b. Breakfast
- i. Participation in the School Breakfast Program for the _____ to _____ school year.*

<u>School</u>	Selling Price		Average Daily Participation			Total Adults/Faculty
	Student	Adult	Free	Reduced	Paid	

- c. Pricing Information (Continued)
- i. A la Carte Sales to students and adults for the _____ to _____ school year. *
TOTAL: \$ _____
- ii. Sales in the Special Milk Program for the _____ to _____ school year. *
TOTAL: \$ _____
- iii. Child Nutrition revenues (sales of meals and reimbursement received for breakfast, lunch, snacks and milk) for the _____ to _____ school year. *
TOTAL: \$ _____.

If the entire school year's data was not used, please provide an explanation below.

9. Prices
- a. The prices to be charged for the 2022-2023 (upcoming) school year are as follows:

Insert Student and Adult Meal Prices Below:

<u>School</u>	Student Lunch	*Adult Lunch	Student Breakfast	Adult Breakfast	Student Milk	Adult Milk

12. Menu Cycle/ Meal Plan

- a. The 21-day cycle menu (see Schedule A) must be used as a standard for the purpose of basing bids or estimating average cost per meal. The FSMC must adhere to the cycle for the first 21 days of meal service. Menu standards as presented in the 21-day cycle menu must be maintained as to type and quality of meal service.
- b. The 21-day cycle menu should contain all the food items the SFA wants the FSMC to provide to the SFA's students. If the SFA wants students to have a number of choices of hot entrees and/or cold entrees daily, the menu included in this bid specification should reflect those choices along with the description of the food item outlined in the Product Specifications in Schedule B. In addition, the menu and procurement standards must include the requirements of the SFA's wellness policy. For example, the wellness policy should exclude items containing high sodium to meet compliance with the Implementation Timeline of Sodium Target 1 and the Product Specifications in Schedule B should specify items with low sodium in them. It is important for SFAs to keep in mind that the 21-day menu and Product Specifications/Procurement Specifications are the means of ensuring FSMCs meet requirements of the SFA's wellness policy.

Final Rule Nutrition Standards in the National School Lunch and Breakfast Programs (School Year 2022-2023)

Meals must comply with the 2010 Dietary Guidelines for Americans. To accomplish this, the following food based menu plan standards and timeline must be adhered to by all parties:

	Breakfast Meal Pattern			Lunch Meal Pattern		
	Grades K-5 ^a	Grades 6-8 ^a	Grades 9-12 ^a	Grades K-5	Grades 6-8	Grades 9-12
Meal Pattern	Amount of Food^b Per Week (Minimum Per Day)					
Fruits (cups) ^{b,c}	5 (1) ^e	5 (1) ^e	5 (1) ^e	2½ (½)	2½ (½)	5 (1)
Vegetables (cups) ^{b,c}	0	0	0	3¾ (¾)	3¾ (¾)	5 (1)
Dark green ^d	0	0	0	½	½	½
Red/Orange ^d	0	0	0	¾	¾	1¼
Beans/Peas (Legumes) ^d	0	0	0	½	½	½
Starchy ^d	0	0	0	½	½	½
Other ^{d,e}	0	0	0	½	½	¾
Additional Veg to Reach Total ^f	0	0	0	1	1	1½
Grains (oz eq) ^g	7 (1)	8 (1)	9 (1)	8 (1)	8 (1)	10 (2)
Meats/Meat Alternates (oz eq)	0 ^h	0 ^h	0 ^h	8 (1)	9 (1)	10 (2)
Fluid milk (cups) ⁱ	5 (1)	5 (1)	5 (1)	5 (1)	5 (1)	5 (1)
Other Specifications: Daily Amount Based on the Average for a 5-Day Week						
Min-max calories (kcal) ^{j,k}	350-500	400-550	450-600	550-650	600-700	750-850
Saturated fat ^k (% of total calories)	< 10	< 10	< 10	< 10	< 10	< 10
Sodium (mg) ^k	< 540	< 600	< 640	< 1230	< 1360	< 1420
Trans fat ^k	Nutrition label or manufacturer specifications must indicate zero grams of trans fat per serving.					

- a. Food items included in each food group and subgroup and amount equivalents. Minimum creditable serving is ½ cup.
- b. One quarter-cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.
- c. For breakfast, vegetables may be substituted for fruits, but the first two cups per week of any such substitution must be from the dark green, red/ orange, beans and peas (legumes) or “Other vegetables” subgroups as defined in § 210.10(c)(2)(iii).
- d. Larger amounts of these vegetables may be served.
- e. This category consists of “Other vegetables” as defined in § 210.10(c)(2)(iii)(E). For the purposes of the NSLP, “Other vegetables” requirement may be met with any additional amounts from the dark green, red/orange, and beans/peas (legumes) vegetable subgroups as defined in § 210.10(c) (2)(iii).
- f. Any vegetable subgroup may be offered to meet the total weekly vegetable requirement.
- g. All grains must be whole grain-rich in both the NSLP and the SBP beginning July 1, 2014.
- h. There is no separate meat/meat alternate component in the SBP. Schools may substitute 1 oz. eq. of meat/meat alternate for 1 oz. eq. of grains after the minimum daily grains requirement is met.
- i. Fluid milk must be low-fat (1 percent milk fat or less, unflavored) or fat-free (unflavored or flavored).
- j. The average daily amount of calories for a 5-day school week must be within the range (at least the minimum and no more than the maximum values).
- k. Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, trans fat, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent milk fat are not allowed.

Implementation Timeline

Meals must comply with the 2010 Dietary Guidelines for Americans. To accomplish this, the following food based menu plan standards and timeline must be adhered to by all parties:

New Requirements	Implementation (School Year) for NSLP (L) and SBP (B)						
	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2022/23
Fruits Component							
• Offer fruit daily	L						
• Fruit quantity increase to 5 cups/week (minimum 1 cup/day)			B				
Vegetables Component							
• Offer vegetables subgroups weekly	L						
Grains Component							
• Half of grains must be whole grain-rich	L B						
• All grains must be whole-grain rich			L, B				
• Offer weekly grains ranges	L B						
Meats/Meat Alternates Component							
• Offer weekly meats/meat alternates ranges (daily min.)	L						
Milk Component							
• Offer only fat-free (unflavored or flavored and low-fat (unflavored milk	L, B						
Dietary Specifications (to be met on average over a week)							
• Calorie ranges	L	B					
• Saturated fat limit (no change)	L, B						
• Sodium Targets <ul style="list-style-type: none"> ○ Target 1 ○ Target 2 ○ Final target 			L, B			L, B	L, B
• Zero grams of <u>trans</u> fat per portion	L	B					
Menu Planning							
• A single FBMP approach	L	B					
Age-Grade Groups							
• Establish age/grade groups: K-5, 6-8, 9-12	L	B					
Offer vs. Serve							
• Reimbursable meals must contain a fruit or vegetable (1/2 cup minimum)	L		B				
Monitoring							
• 3-year administrative review cycle		L, B					
• Conduct weighted nutrient analysis on 1 week of menus	L B						

13. Purchase Specifications

- a. Food and beverage procurement specifications are to be developed by the SFA based on individual SFA preferences and requirements and included in Schedule B. A nutrient fact label from the manufacturer must be available for processed brand name products.
- b. Section 104 (d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 requires schools and institutions participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) to purchase domestic commodities or products for use in meals served under the NSLP and SBP. The legislation defines “domestic commodity or product” as one that is produced in the United States and is processed in the United States substantially using agricultural commodities that are produced in the United States. “Substantially” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. These provisions now apply to all funds in the food service account and not just to federal reimbursement.
- c. Wherever possible, and within the guidelines stated in the previous paragraph, the FSMC shall purchase foods which are labeled with a CN label by the manufacturer. In all other cases, procurement standards must be clear and include the following information: grades, purchase units, style, condition, weight, ingredients, formations and delivery times which the SFA should check to determine if procurement standards are being met and shall be complied with by the FSMC; if a brand name is being specified, the SFA must also include “or equal value” to allow potential bidders to comply with the SFA's bid specifications.
- d. Section 204 of the Child Nutrition and Women, Infants and Children Reauthorization Act of 2004 (PL 108-265) signed into law June 30, 2004 included a provision that requires each local educational agency (LEA) participating in the National School Lunch Program, School Breakfast Program, Special Milk Program and Summer Food Service Program to establish a Local Wellness Policy for schools under the LEA. The nutrition guidelines selected by the SFA for all foods available on each school campus under the SFA during the school day with the objectives of promoting student health and reducing childhood obesity must be implemented by the FSMC. The Local Wellness Policy is to be included as a part of the bid package in Schedule C. A la carte items are also to meet the SFA's standards indicated in Schedules A, B and C.

14. Performance Security

- a. It is recommended and encouraged that all performance security options be left open to the bidder. However, the SFA may select one, two or three of the options as indicated below:
- b. The FSMC shall be required to:
 1. **Performance Bond –**
Submit with the bid an assurance by a surety authorized to conduct business within New York State, that if selected as the successful bidder, and upon award of the contract, a performance bond will be issued in the amount of \$ _____ (10% of annual projected operating costs). Simultaneously with delivery of the executed contract, the successful vendor must provide to the SFA the executed surety company bond as required, to be held as security by the SFA for the faithful performance by FSMC of all terms of the contract. If selected, attach a copy of the Performance Bond on Required Form 10.
 2. **Reserve Fund –**
Submit with the bid an authorization for the SFA to hold in a reserve fund the amount of \$ _____ (10% of annual projected operating costs) out of the initial revenues produced by the school lunch program and earned by the FSMC. The SFA shall retain such reserve fund until the FSMC has faithfully performed all terms of the contract. If selected, attach a copy of the Authorization on Required Form 10.
 3. **Certified Check –**
Submit with the bid a letter of intent which states that a certified check, payable to the SFA in the amount of \$ _____ (10% of annual projected operating costs) will be issued upon award of the bid. Simultaneously, with delivery of the executed contract, the successful bidder must provide to the SFA, the certified check as required, to be held as security by the SFA for the faithful performance by the FSMC of all terms of the contract.

15. Bid Options

a. The SFA has determined that the following bid option will be accepted: *(Check one)*

Bid Option 1 – The SFA will use this bid option for receiving the same bid price for breakfast and lunch meals.

Bid Option 2 – The SFA will require separate bids for the following programs (check all that apply):

Breakfast

Lunch

Snack

The FSMC's cost reimbursement shall not exceed the contract terms (meals plus equivalent meals served multiplied by the Per Meal Cost Reimbursement Rate), limited to the extent of program income.

16. Bid Forms

- a. The SFA must cross out the options that are not relevant on the applicable bid form and fill in the blank amount(s) where applicable.
- b. Each bidder must complete the applicable bid form and the applicable annual financial budget projection exhibit(s) based on the SFA's bid option selection.
- c. The bid amount should take into account the value of USDA Foods, as specified in Schedule H

2022-2023 Bid Form (Option 1)

(The FSMC bidding on this option must also complete the annual financial budget projection on Exhibit 1)

The contract will be awarded based on the lowest responsible bid proposal for a per meal cost for breakfast and lunch, as defined herein. The FSMC will bill the SFA based on the individual per meal amounts.

To Be Completed by the FSMC			
Per meal cost rate		=	
*Transfer this amount to either Option A, B or C selected by the SFA below.			(Per Meal)

We, the undersigned agree to operate the food service management program as described in the bid specifications for the 2022-2023 school year. This proposal is subject to all the attached definitions, terms, conditions and specifications and we hereby agree to enter into the attached agreement subsequent to the award of the bid.

To be Completed by SFA – (Cross out the option(s) that are not relevant and also fill in blank amount where applicable)	
<input type="checkbox"/> Option A - Guaranteed Return to SFA TOTAL PER MEAL COST for the operation of the program wherein all operating costs, incurred by the SFA of * \$ _____ will accrue from program income including all cash receipts from the sale of meal pattern lunches, a la carte items, special milk program, adult meals, breakfast program, snacks and federal and State reimbursements. Any deficit will be assumed by the FSMC.	<u>Grand Total Bid Amount</u> (To be completed by FSMC based on option selected by SFA)
<input type="checkbox"/> Option B - Break Even TOTAL PER MEAL COST for the operation of the program wherein all operating costs will accrue from program income including all cash receipts from the sale of meal pattern lunches, a la carte items, special milk program, adult meals, breakfast program, snacks and federal and State reimbursements. Any deficit will be assumed by the FSMC.	
<input type="checkbox"/> Option C - General Fund Subsidy TOTAL PER MEAL COST for the operation of the program requiring a General Fund subsidy of * \$ _____ to cover the operating costs which exceed cash receipts from the sale of meal pattern lunches, a la carte items, special milk program, adult meals, breakfast program, snacks and federal and State reimbursements. The SFA shall not be liable from the General Fund over and above this subsidy.	
*To be completed by the SFA **The minimum conversion factor to be used to convert a la carte sales is \$4.21. Please note: The New York State Education Department establishes the a la carte conversion factor to be used to convert a la carte sales to equivalent meals, which include a la carte sales to students, adults and Child Nutrition vending machine sales as determined by the SFA to be part of the Child Nutrition Program. This conversion factor must reflect the most current rate issued by the NYS Education Department at the time of bid advertisement and must be used at the time of the bid proposal.	

SUBMITTED BY: (Original Signature Required – Blue Ink Only)	
Name of FSMC: _____ Address: _____ _____ _____	Authorized Signature: _____ Printed Name, Title: _____ Date: _____

Exhibit #1: 2022-2023 Annual Financial Budget Projection

(For use with BID OPTION 1 Breakfast and Lunch with the same bid price)

TO BE COMPLETED BY THE FSMC

A proposed financial budget must be included with the bid proposal and should contain the following information:

(A) PROJECTED GROSS RECEIPTS FOR BREAKFAST AND LUNCH

1. Cash Sales	
a. Full Price and Reduced-Price Lunch Sales	
b. Adult and Student a la Carte Sales	
c. Special Milk Sales	
d. Full Price and Reduced-Price Breakfast Sales	
2. Federal and State Reimbursements	
3. General Fund Subsidy (Where Applicable)	
4. Total Projected Receipts	

(B) PROJECTED EXPENSES FOR BREAKFAST AND LUNCH

1. Food Costs	
2. Labor-Salaries/Fringe Benefits	
3. Miscellaneous (As Defined Herein)	
4. Management Fee	
5. Total Projected Expenses	
6. SFA Guaranteed Return	
(Item A.4 minus Item B.5) = SFA Guaranteed Return. This amount must equal or exceed the guaranteed return to the SFA as specified by the SFA under bid Option A.	

(C) PROJECTED MEALS FOR BREAKFAST AND LUNCH

1. Student Meal Pattern	
Breakfast	
Lunch	
Total	
2. A La Carte Sales	
Divided by Conversion Factor**	\$4.21
Equivalent Meals	
3. Total Projected Meals	

(D) PROJECTED MEALS PER LABOR HOUR FOR BREAKFAST AND LUNCH

1. Total Projected Meals (Item C.3.)	÷	
2. Projected meals per labor hour	=	

** See bid for conversion factor explanation

2022-2023 Bid Form (Option 2)

(The FSMC bidding on this option must also complete the annual financial budget projection on Exhibit 2A, 2B, 2C)

The contract will be awarded based on the lowest responsible bid proposal for the combined grand total of breakfast and lunch, which shall reflect a per meal cost for breakfast, lunch and snack, as defined herein. The FSMC will bill the SFA based on the individual per meal amounts.

<u>To Be Completed by the FSMC</u>		<u>To Be Completed by the SFA</u>			<u>To Be Completed by the FSMC</u>	
Program	Total Per Meal	x	SFA Estimate of Meals and Equivalent Meals	=	Total SFA Cost	
Breakfast	_____	X	_____	+	_____	
Lunch	_____	X	_____	=	_____	
Snack	_____	X	_____	=	_____	
Grand Total*				=	_____	

**Transfer this amount to either Option A, B or C selected by the SFA below.*

We, the undersigned agree to operate the food service management program as described in the bid specifications for the 2022-2023 school year. This proposal is subject to all the attached definitions, terms, conditions and specifications and we hereby agree to enter into the attached agreement subsequent to the award of the bid.

<u>To be Completed by SFA – (Cross out the option(s) that are not relevant and also fill in blank amount where applicable)</u>		<i>Grand Total Bid Amount (To be completed by FSMC based on option selected by SFA)</i>
<input type="checkbox"/> Option A - Guaranteed Return to SFA TOTAL PER MEAL COST for the operation of the program wherein all operating costs, incurred by the SFA of * \$ _____ will accrue from program income including all cash receipts from the sale of meal pattern lunches, a la carte items, special milk program, adult meals, breakfast program, snacks and federal and State reimbursements. Any deficit will be assumed by the FSMC.		_____
<input type="checkbox"/> Option B - Break Even TOTAL PER MEAL COST for the operation of the program wherein all operating costs will accrue from program income including all cash receipts from the sale of meal pattern lunches, a la carte items, special milk program, adult meals, breakfast program, snacks and federal and State reimbursements. Any deficit will be assumed by the FSMC.		_____
<input type="checkbox"/> Option C - General Fund Subsidy TOTAL PER MEAL COST for the operation of the program requiring a General Fund subsidy of * \$ _____ to cover the operating costs which exceed cash receipts from the sale of meal pattern lunches, a la carte items, special milk program, adult meals, breakfast program, snacks and federal and State reimbursements. The SFA shall not be liable from the General Fund over and above this subsidy.		_____
*To be completed by the SFA **The minimum conversion factor to be used to convert a la carte sales is \$4.21. Please note: The New York State Education Department establishes the a la carte conversion factor to be used to convert a la carte sales to equivalent meals which include a la carte sales to students, adults and Child Nutrition vending machine sales as determined by the SFA to be part of the Child Nutrition Program. This conversion factor must reflect the most current rate issued by the NYS Education Department at the time of bid advertisement and must be used at the time of the bid proposal.		

SUBMITTED BY: <i>(Original Signature Required – Blue Ink Only)</i>	
Name of FSMC: _____ Address: _____ _____ _____	Authorized Signature: _____ Printed Name, Title: _____ Date: _____

Exhibit #2A: 2022-2023 Annual Financial Budget Projection

(For use with BID OPTION 2 – Lunch Bid)

TO BE COMPLETED BY THE FSMC

A proposed financial budget must be included with the bid proposal and should contain the following information:

(A) **PROJECTED GROSS RECEIPTS FOR LUNCH**

1. Cash Sales	
a. Full Price and Reduced-Price Lunch Sales	
b. Adult and Student a la Carte Sales	
c. Special Milk Sales	
2. Federal and State Reimbursements	
3. General Fund Subsidy (Where Applicable)	
4. Total Projected Receipts	

(B) **PROJECTED EXPENSES FOR LUNCH**

1. Food Costs	
2. Labor-Salaries/Fringe Benefits	
3. Miscellaneous (As Defined Herein)	
4. Management Fee	
5. Total Projected Expenses	
6. SFA Guaranteed Return	
(Item A.4 minus Item B.5) = SFA Guaranteed Return. This amount added to the figure on B 6 of Schedule C 3 must equal or exceed the guaranteed return to the SFA as specified by the SFA under bid Option A.	

(C) **PROJECTED MEALS FOR LUNCH**

1. Student Meal Pattern Lunch	
2. A La Carte Sales	
Divided by Conversion Factor**	\$4.21
Equivalent Meals	
3. Total Projected Meals	

(D) **PROJECTED MEALS PER LABOR HOUR FOR LUNCH**

1. Total Projected Meals (Item C.3.)	÷	Total Projected Labor Hours
2. Projected meals per labor hour	=	

** See bid for conversion factor explanation

Exhibit #2B: 2022-2023 Annual Financial Budget Projection

(For use with BID OPTION 2 – Breakfast Bid)

TO BE COMPLETED BY THE FSMC

A proposed financial budget must be included with the bid proposal and should contain the following information:

(A) **PROJECTED GROSS RECEIPTS FOR BREAKFAST**

1. Cash Sales	
a. Full Price and Reduced-Price Breakfast Sales	
b. Adult and Student a la Carte Sales	
c. Special Milk Sales	
2. Federal and State Reimbursements	
3. General Fund Subsidy (Where Applicable)	
4. Total Projected Receipts	

(B) **PROJECTED EXPENSES FOR BREAKFAST**

1. Food Costs	
2. Labor-Salaries/Fringe Benefits	
3. Miscellaneous (As Defined Herein)	
4. Management Fee	
5. Total Projected Expenses	
6. SFA Guaranteed Return	
(Item A.4 minus Item B.5) = SFA Guaranteed Return. This amount added to the figure on B 6 of Schedule C 3 must equal or exceed the guaranteed return to the SFA as specified by the SFA under bid Option A.	

(C) **PROJECTED MEALS FOR BREAKFAST**

1. Student Meal Pattern Breakfast	
2. A La Carte Sales	
Divided by Conversion Factor**	\$4.21
Equivalent Meals	
3. Total Projected Meals	

(D) **PROJECTED MEALS PER LABOR HOUR FOR BREAKFAST**

1. Total Projected Meals (Item C.3.)	÷	Total Projected Labor Hours
2. Projected meals per labor hour	=	

** See bid for conversion factor explanation

Exhibit #2C: 2022-2023 Annual Financial Budget Projection

(For use with BID OPTION 2 – Snack Bid)

TO BE COMPLETED BY THE FSMC

A proposed financial budget must be included with the bid proposal and should contain the following information:

(A) **PROJECTED GROSS RECEIPTS FOR SNACK**

1. Cash Sales	
a. Full Price and Reduced-Price Snack Sales	
b. Adult and Student a la Carte Sales	
2. Federal Reimbursements	
3. General Fund Subsidy (Where Applicable)	
4. Total Projected Receipts	

(B) **PROJECTED EXPENSES FOR SNACK**

1. Food Costs	
2. Labor-Salaries/Fringe Benefits	
3. Miscellaneous (As Defined Herein)	
4. Management Fee	
5. Total Projected Expenses	
6. SFA Guaranteed Return	
(Item A.4 minus Item B.5) = SFA Guaranteed Return. This amount added to the figure on B 6 of Schedule C 3 must equal or exceed the guaranteed return to the SFA as specified by the SFA under bid Option A.	

(C) **PROJECTED MEALS FOR SNACK**

1. Student Meal Pattern Snack	
2. A La Carte Sales	
Divided by Conversion Factor**	\$4.21
Equivalent Meals	
3. Total Projected Meals	

(D) **PROJECTED MEALS PER LABOR HOUR FOR SNACK**

1. Total Projected Meals (Item C.3.)	÷	Total Projected Labor Hours
2. Projected meals per labor hour	=	

** See bid for conversion factor explanation

17. Award of Contract

- a. Award of the contract shall be to the lowest responsible bidder whose responsibility shall be determined by the SFA Board of Education.
- b. In preparation for the first day of meal service, the FSMC awarded the contract must submit a detailed written timetable for the transition to their FSMC operations within 15 days of award of the contract. The timetable must include interviewing/hiring staff, training and provisions for providing other services and enhancements as outlined in this agreement and bid specifications.
- c. If the SFA allows bidders to bid under more than one option (A, B or C) on the BID FORM, the SFA will consider bids in the following consecutive order to determine the lowest responsible bidder: from the lowest Option A, then Option B, to the highest Option C.

IMPORTANT

(1) PREBID DOCUMENTS -

Complete NYSED Prototype Pre-bid Contracts are to be emailed to cn@nysed.gov 30 days prior to letting bids. Schedules A-I must contain complete information and be included in with the prototype pre-bid contract for review by NYSED Child Nutrition Program Administration Office. A pre-review email will be sent to the SFA once the pre-bid has been reviewed and approved.

(2) EXECUTED CONTRACTS -

Schedules A-I must contain complete information and be included in with the prototype pre-bid contract for review by NYSED Child Nutrition Program Administration Office.

Schedule A

ATTACH MENU(S) AND OTHER RELATED MATERIALS HERE

- I. Attach 21-day menu for breakfast and/or lunch and/or summer as applicable. The menu provided must be in compliance with the Food Based Meal Pattern and Nutrition Standards outlined on pages 48 and 49 of this contract. All menus must include the daily recommended portion sizes per serving.
- II. Attach the following related materials here:
 - a. SFA may attach a menu for each grade level
 - b. Merchandising specifications and Promotional specifications
 - c. Attach Sample Production Records - Refer to <http://www.cn.nysed.gov> for sample production records
 - d. Attach Sample Standardized Recipes - Refer to <http://www.cn.nysed.gov> for sample standardized recipes
- III. Milk is the only beverage choice in its own category. For example: Milk or juice cannot be a beverage choice. Beverages other than milk, including but not limited to iced tea, lemonade, punch, juice, water, coffee, fruit drinks, etc., may not be substituted for milk as part of the reimbursable meal.
- IV. An SFA with no capability to prepare a 21-day cycle menu may, with State Agency approval, require that each food service management company include a 21-day cycle menu, developed in accordance with the provisions of 7 CFR 210.10, 220.8, and/or 225.16, with its bid proposal. The SFA must attach a plan on how the menu will be evaluated to ensure compliance with the meal pattern for components and quantity, and dietary specifications, affordability, nutrition requirements, and appeal to students.

Schedule B

ATTACH FOOD, BEVERAGE and SMALLWARE PRODUCT SPECIFICATIONS HERE

A specification is a statement that contains a detailed description or enumerates particulars of a product.

Characteristics in a specification include (but are not limited to):

- Name of Product
- Description of Product
- Case and Pack Weight
- Minimum and Maximum Size and Pieces
- Quality indicators: product type dictates the quality indicators; e.g., type, style, pack, size, units per case, syrup density, special gravity, age, exact cutting instructions, weight range, composition, condition upon receipt of product, fat content, cut of meat used, market class, variety, degree of ripeness or maturity, geographical origin, temperature during delivery and upon receipt, sugar ratio, milk fat content, milk solids and bacteria count, brand names, trim or yield, preservation or processing method, trade association standards, chemical standards.
- Main Ingredients
- If a brand name is indicated, “or equal to” must be specified
- Include required portion sizes for each grade group
- Meal Pattern Requirements/Child Nutrition (CN) Label
- Test or inspection procedures
- Other Product Ingredients
- Prohibited Ingredients
- Nutritional Standards
- Buy American – Refer to information in Appendix B

PLEASE NOTE: In the event that the SFA did not include Schedule B, the FSMC must identify the food products that will be served on the menu using specifications like grading, weight, item labels, nutritional qualities, etc..

Schedule C

ATTACH SFA LOCAL WELLNESS POLICY

Local Wellness Policy Federal Regulation:

Section 204 of the Child Nutrition and Women, Infants and Children Reauthorization Act of 2004 (PL 108-265) signed into law June 30, 2004 included a provision that requires each local educational agency (LEA) participating in the National School Lunch Program, School Breakfast Program, Special Milk Program and Summer Food Service Program to establish a local wellness policy for schools under the LEA. This policy must be developed and implemented not later than the first day of the school year beginning after June 30, 2006.

Schedule D1

COST RESPONSIBILITY DETAIL SHEET

The SFA has deemed the following cost responsibility schedule to be a necessary part of this bid specification. Costs which are not provided for under the contract terms but are necessary for the effective on-site operation of the food service program and are directly incurred for the SFAs operation must be assigned and designated below by the SFA. Any explanations, if necessary, are to be provided on Schedule D2:

COST CATEGORY	ITEMIZED COSTS	FSMC	SFA	N/A
Food:	Food Purchases			
	Commodity Processing Charges			
	Processing & Payment of Invoices			
USDA Foods:	Processing & Fees for Service			
	Payment of Invoices			
Labor:	Wages			
	Fringe Benefits & Insurance			
	Payroll Taxes			
	Preparation & Processing of Payroll			
Miscellaneous/ Additional Items:	Paper and Cleaning Supplies			
	China/Silverware/Glassware - initial inventory replacement			
	China/Silverware/Glassware - during operation			
	Telecommunications (telephone, computer, internet, fax, etc.)			
	Uniforms/Laundry*			
	Sanitation of Cafeteria Tables and Floors*			
	Trash Removal*			
	- from kitchen			
	- from dining area			
	- from premises			
	Equipment Replacement & Repair*			
	- non-expendable			
	- expendable			
	Products and Public Liability Insurance*			
	Equipment Rental			
	Car/Truck Rental			
	Storage Costs (excluding donated commodities) (food and non-food supplies) *			
	Courier Services (bank deposits, school deliveries, etc.) *			
	Employee Recruitment – initial replacement*			
	Sales Tax			
	Other* - specify: _____ (cannot include overhead expenses incurred by FSMC)			
	Other* - specify: _____ (cannot include overhead expenses incurred by FSMC)			
	Other* - specify: _____ (cannot include overhead expenses incurred by FSMC)			
Other* - specify: _____ (cannot include overhead expenses incurred by FSMC)				

*These direct cost items may or may not apply to each SFA. At local discretion, based upon actual practice and need, the SFA should assign cost responsibility for these items, applicable to their operation, or designate them as N/A for each of the above items.

Schedule D2

DETAILED EXPLANATIONS FROM COST RESPONSIBILITY DETAIL SHEET

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Schedule E

ATTACH ITEMIZED INVENTORY LIST

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Schedule F

SCHOOL FOOD SAFETY PLAN AND ANY OTHER ADDITIONAL FOOD AND SAFETY SPECIFICATIONS

Select the option that applies:

The SFA will adopt and adhere to the Food Service Management Company's Food Safety Plan and other Food Safety
The SFA will establish the Food Safety Plan and other Food Safety Specifications that the Food Service Management
Company must adhere to

HAACP/Food Safety Plan Federal Regulation:

Section 111 of the Child Nutrition and WIC Reauthorization Act of 2004 (Public Law 108-265) amended section 9(h) of the Richard B. Russell National School Lunch Act by requiring school food authorities (SFAs) to implement a food safety program. The Reauthorization Act requires that, during the preparation and service of meals, the SFA comply with the HACCP system established by the Secretary of Agriculture. The law requires compliance with this requirement by July 1, 2005.

Please Note: The FSMC shall adhere to the School Food Safety Plan set forth as per USDA regulations for all preparation and meal service of school meals, using a Hazard Analysis and Critical Control Point (HACCP) system as required under by Public Law 108-265 which is to be included as part of the Bid by the SFA as reflected in Schedule F.

Schedule G

STAFFING SCHEDULES AND OTHER RELATED INFORMATION

- I. Prospective bidders are asked to present their hourly labor schedules by building to reflect the staffing levels needed to efficiently operate the SFA's Child Nutrition Program Operations, including but not limited to employee benefit packages, training requirements, etc.
 - a. Bidders must certify that the information provided is accurate and based on actual labor needed for the Program operations
- II. In the event that the SFA prepares labor schedules specifying the minimum and/or specific staffing requirements for their SFA for bidding purposes, those schedules and related information are to be attached here as they are a part of the bid specifications.
- III. In the event the SFA retains the services of the food service staff, the SFA must list all food service staff in Schedule G listing the title and salary of each employee.

Schedule H

USDA Foods Entitlement Value for 2022-2023 School Year

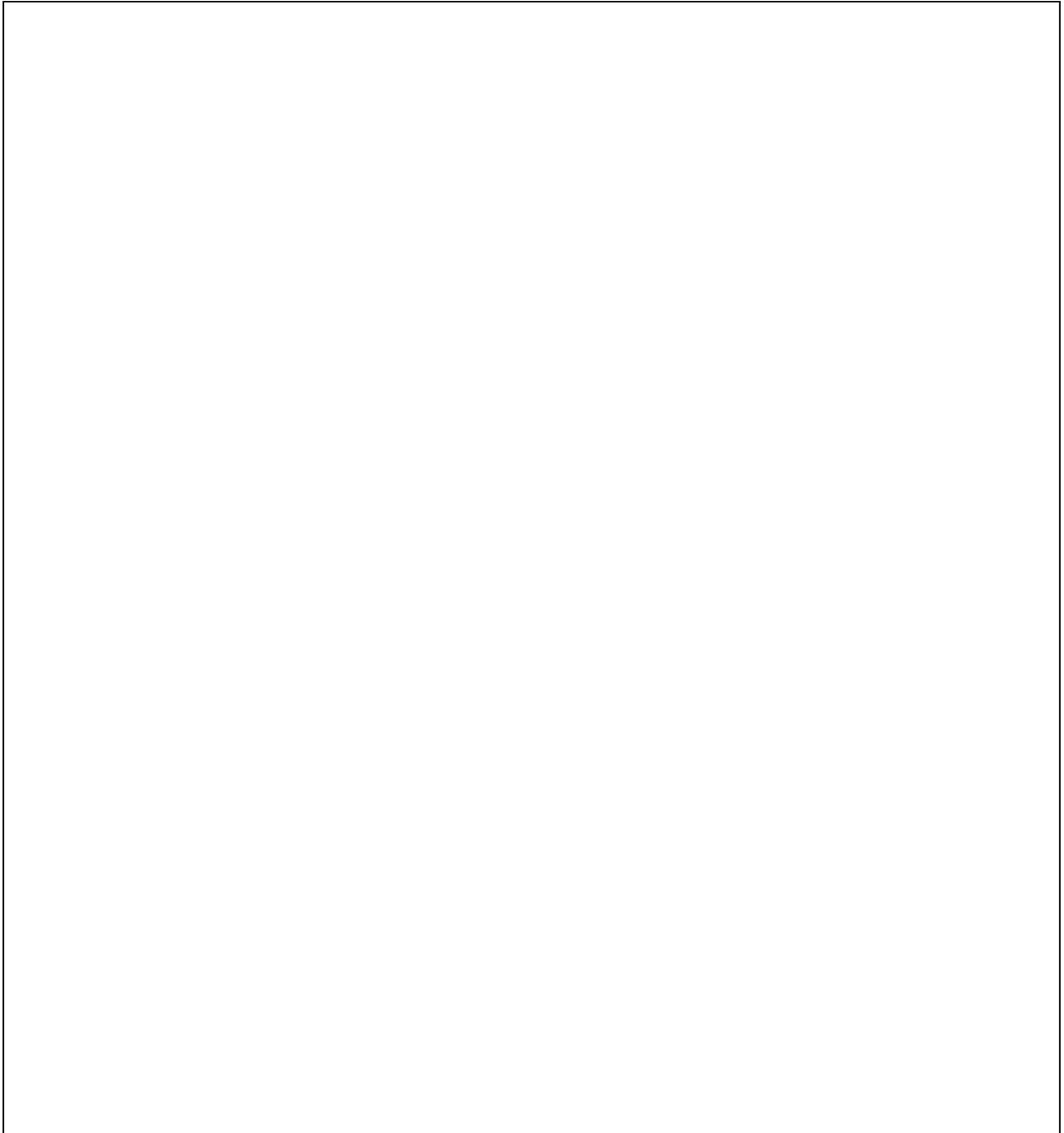
ATTACH DIRECT DIVERSION RECEIPT AND, IF APPLICABLE, WBSCM REQUISITION STATUS REPORT

Schedule I

ADDITIONAL SCHEDULES

Only attach here any other additional schedules that are part of the bid specifications that are for informational purposes only. This may include the following examples:

- School calendar
- School district map
- Reimbursement claim form, etc.

A large, empty rectangular box with a thin black border, intended for the attachment of additional schedules as specified in the text above. The box occupies most of the page's vertical space below the list of examples.

Appendix A

STANDARD DEFINITIONS FOR ALL NEW YORK STATE SCHOOL FOOD AUTHORITY - FOOD SERVICE MANAGEMENT COMPANY CONTRACTS

Bid is a complete and properly signed proposal on the forms provided herein to provide the food service program management services, equipment, supplies or materials required for the sum stipulated therein supported by data called for by the Bidding Documents.

Bidder is any individual, company or corporation submitting a bid.

Bidding Documents include the Advertisement or "Notice to Bidders" and the documents contained herein. Board is the Governing Board of the SFA.

Conditions and Specifications constitute any description in the Bidding Documents of services; materials, supplies, and/or equipment required for the performance of the obligations under the Contract or the circumstances under which such services, materials, supplies, and/or equipment are to be provided.

Contract or Agreement is a formal agreement duly executed by the authorized representatives of the SFA and the FSMC which calls for the provision of all services, materials, supplies or equipment by the FSMC in accordance with all Conditions and Specifications in the Bidding Documents, for a price to be paid by the SFA.

Contractor means a commercial enterprise, public or nonprofit private organization or individual that enters into a contract with or without a fixed fee.

End Product means a finished product containing any amount of donated food that has been commercially processed.

Food is defined as and limited to those items purchased for use in the preparation and service of student, a la carte, adult and special event meals as specified.

Food Service Management Company (FSMC) means a commercial enterprise or a nonprofit organization that is or may be contracted with by the SFA to manage any aspect of the school food service in whole or in part. An FSMC is a company that is acting on behalf of a school food authority by actually being in charge of or directing any aspect of the food service and must meet applicable program requirements.

Instructions to Bidders include all "Conditions and Specifications," the bid proposal forms, including any NYSED pre-approved amendments issued prior to the opening of bids, and the "Contract."

Invitation to Bid (IFB) means a type of solicitation document used in the competitive sealed bidding, where the primary consideration is cost and the expectation is that competitive bids will be received and an acceptance (award) will be made to the responsive and responsible bidder whose bid is lowest in price. The IFB must be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them with sufficient time to respond prior to the date set for opening the bids. Also, the IFB should describe the minimum standards expected of a responsible bidder in measurable terms.

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

Management Fee is defined as all costs other than food, labor and miscellaneous as defined herein.

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, and as agreed upon by the SFA (*see below), uniforms, menu paper and printing, taxes and licenses, laundry, insurance, information technology costs associated with the food service operation, and other costs as contractually obligated herein. Miscellaneous Expenses are to be used solely for the purpose of the Child Nutrition Program in which this contract operates.

Travel as required for effective program management and as agreed upon by the SFA:

- Travel as required: Travel of the manager from one building to another in the district. Travel to State sponsored meetings.
- Travel as agreed upon: Travel to special meetings. Travel of regional chef, dietician, etc. if the SFA deems such visits necessary for the efficient operation of the program.

Nonprofit School Food Service means all food service operations conducted by the SFA principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food services.

Notice to Bidders is the formal statement issued by the SFA inviting bids on all the services, materials, supplies or equipment described in the Bidding Documents.

School Food Authority (SFA) is a public school district, non-public school, residential childcare institution, county jail or correctional facility participating in the National School Lunch, School Breakfast or Special Milk program. Successful Bidder is a Bidder to whom an award is made by the Board.

All additional definitions set forth in the Specifications are generally applicable to the Bidding Documents.

APPENDIX B

STANDARD CLAUSES FOR ALL NEW YORK STATE SCHOOL FOOD AUTHORITY FOODSERVICE MANAGEMENT COMPANY CONTRACTS

The parties of the attached contract, license, lease, amendment or other agreement or any kind (hereinafter, the contract or this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word Contractor herein refers to any party other than the SFA, whether a contractor, licenser, licensee, lessor, lessee, or any other party):

1. **Governing Law**—This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.
2. **Conflicting Terms**—In case of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix B, the terms of this Appendix B shall control.
3. Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163). Grantor agencies are permitted to require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.
4. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
5. **Hold Harmless**—The FSMC shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the intentionally negligent or negligent acts, errors or omissions of its employees providing the services rendered by the FSMC pursuant to this AGREEMENT. The FSMC shall defend and indemnify and hold harmless the SFA and its officers and employees from claims, suits, actions damages and costs of every nature arising out of the intentionally negligent or negligent provision of services pursuant to this AGREEMENT.
6. **Davis-Bacon Act**, as amended (40 U.S.C. 3141-3148). Where applicable, all prime construction contracts in excess of \$2,000 must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the Act, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.
7. **The Copeland “Anti-Kickback” Act** (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). Where applicable, all contracts must be in compliance with the Copeland “Anti-Kickback” Act (18 U.S.C 874 as supplemented by Department of Labor regulations (29 CFR Part 3). The Act provides that each contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.
8. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a

standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

9. **Criminal Penalties**—Section 104(b) amended section 12(g) of the NSLA (42 U.S.C. 1760(g)) to increase to \$25,000 the maximum fine for embezzling, willfully misapplying, stealing or obtaining by fraud funds, assets or property acquired under the NSLA or CNA.
10. **Buy American**—Section 104(d) amended section 12 of the NSLA (42 U.S.C. 1760) to require SFAs participating in the NSLP and SBP to purchase for those programs, to the maximum extent practicable, domestic commodities or products. For purposes of this provision, the term "domestic food commodity or product" means agricultural commodities produced in the U.S. and food products processed in the U.S. substantially using agricultural commodities that are produced in the U.S. (over 51 percent of the processed food comes from American produced products). The FSMC shall certify the percentage of U.S. content in the products supplied to the SFA. The SFA reserves the right to review vendor purchase records to ensure compliance with Buy American provision. The FSMC shall comply with the Buy American provision for contracts that involved the purchase of food as required by Title 7 CFR, part 210.21(d).
11. **Procurement Contracts**—Section 104(e) amended section 12 of the NSLA (42 U.S.C. 1760) to stipulate that, when acquiring goods and services for programs under the Child Nutrition Programs SFAs may contract with persons and companies which have provided specification information to SFA for use in drafting procurement specifications. This provision is intended to encourage program administrators to obtain information from as many sources as possible to assist them in drafting procurement documents. A potential contractor or other interested party may not participate in the procurement process by way of drafting the procurement specifications, procedures or documents, such as requests for proposals, invitations for bids and contracts. This provision is intended to ensure that program operators have sufficient flexibility in contracting matters while maintaining maximum open and free competition.
12. **Food Safety Inspections**—Section 102(c) amended section 9 of the NSLA (42 U.S.C. 1758) by adding subsection (h) to require schools participating in the NSLP or the SBP to obtain food safety inspections conducted by a State or local governmental agency responsible for such inspections at least twice a year if a State or local governmental agency does not otherwise require inspections.
13. **Clean Air Act** (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
14. **Debarment and Suspension** (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
15. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must disclose lobbying activities and file the required certification attesting that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

Food Service Management Companies who bid for an award exceeding \$100,000 must disclose lobbying activities in connection with school nutrition programs. If no activities occur, the form should not be completed. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis. (Only required if money is spent on lobbying activities). A copy of the disclosure form is provided, as Appendix D.

16. **Procurement of recovered materials.** In accordance with 2 CFR § 200.322, a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
 17. **Women/Minority owned Businesses.** In accordance with federal and state requirements, the FSMC must take all necessary affirmative steps to assure that minority business enterprises, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists; (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce or any state agency responsible for promoting women and minority businesses.
 18. **Water**—Plain potable water must be available to students free of charge in the place where lunch meals are served.
 19. **Non-program Foods**—SFA must ensure that the overall revenue from non-program food is proportional to the cost of obtaining these foods. If non-program foods are purchased with the non-profit school food service account, all revenue must accrue back to the account.
 20. **Outreach Overview**—SFA are required to promote the availability of the breakfast program, if applicable.
 21. **Iran Divestment Act of 2012**—The Iran Divestment Act of 2012 (“ACT”), Chapter 1 of the 2012 Laws of New York, added State Finance Law (SFL), 165-a and General Municipal Law 103-g, effective April 12, 2012. Under the Act, the Commissioner of the New York State Office of General Services (“OGS”) developed a list (“Prohibited Entities List”) of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law). In accordance with SFL 165-a(3), the Prohibited Entities list may be found on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/listofentities.pdf>.
- SFAs reserve the right to reject any bid, proposal, contract or request for assignment for an entity that appears on the Prohibited Entities List prior to the award or execution of a contract or any renewal thereof, as applicable, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities List after a contract award.
22. **Gifts from FSMC**—The SFAs or SFAs officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from FSMC or potential FSMC. 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 either by the SFA or SFAs officers, employees, or agents or by the FSMC or their agents.
 23. **Conflict of Interest**—If the FSMC is aware of any prohibited conflict of interest, real or apparent, and knows the conflict has gone unreported, the contract may be void under applicable federal, State or local laws.

24. Any silence, absence, or omission from the Agreement concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.
25. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

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

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

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;

(2) fax: (202) 690-7442; or

(3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

Non-Collusive Bidding Certification Form

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, in the case of a joint bid each party thereto certified as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit to bid for the purpose of restricting competition.

Name of Bidder/Company

*Name of Company Official-- *See Below*

Signature of Company Official (Sign in Blue Ink Only)

Print Name

Date

Email Address

***Article IX, Section 139-d of NYS Finance Law provides that any bid made to the State or any public department, agency, or official thereof by a corporate bidder, where competitive bidding is required by statute, rule or regulation, and where such bid contains a signed certification of non-collusive bidding is deemed to have been authorized by the board of directors of the bidder, and is deemed to include the signing and submission of the bid and the certificate as to non-collusion as the act and deed of the corporation.**