



Office of P-20 Education Policy
Child Nutrition Program Administration
89 Washington Avenue Room 375 EBA Albany, NY 12234
www.cn.nysed.gov

2026-2027 School Year Food Service Management Company Contract

This solicitation document is an Invitation for Bid (IFB), also known as competitive sealed bidding, where the primary consideration is cost. The expectation of this IFB is that bids will be received, and an award will be made to the responsive and responsible bidder whose bid is the lowest price. An IFB is a formal method of procurement that uses sealed bidding and results in a fixed price contract.

School Food Authority: _____

LEA Code: _____

Street Address: _____

City, State, Zip: _____

Superintendent/CEO Name: _____

Telephone Number: _____

Email Address: _____

Program(s) included in the contract:

National School Lunch Program

School Breakfast Program

After School Snack Program

Summer Food Service Program

SFA Contract Manager Information:

SFA Contract Manager: _____

Title: _____

Telephone Number: _____

Email: _____

Food Service Management Company Information:

Food Service Management Company: _____

Street Address: _____

City, State, Zip: _____

Telephone Number: _____

Bid Price: \$ _____

NYSED Use Only

Contract Approved By:

Date:

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Required 2026-2027 Food Service Management Company Contract Checklist

School Food Authorities: Ensure that the packet contains all the items required by utilizing this checklist.

- ✓ Mark each item below to certify that it is included in the bid documents submitted to NYSED
- ✓ Sign and return with the entire packet for all pre-bids or executed contracts

Pre-Bid	Executed Contracts
Complete pre-bid contracts must be emailed to cn@nysed.gov at least 30 calendar days prior to letting bids. An email will be sent to the SFA once the pre-bid is approved.	Submit the following forms with the executed contract to cn@nysed.gov for review and approval. An email will be sent to the SFA once the contract is approved.
SFA Amendments to NYSED Prototype Contract, if applicable	All Information from Pre-Bid Section of This Checklist Completed
Bidding Requirements/Specifications Section Thoroughly Completed: Child Nutrition Programs included in contract marked Child Nutrition Programs anticipated marked Date bidder must request clarifications by listed Section 8: Prior School Year Participation and Revenue Section 9: 2026-2027 A La Carte Prices Section 10: Meal Service Locations & Times Section 13: Performance Security Option(s) Selected Section 14: Bid Form: Choose Programs Option A, B or C selected on Bid Form SFA Estimate of Meals and Equivalent Meals entered Schedule A: Menu: select SFA or FSMC If SFA, attach 21-day cycle menu If FSMC, select menus & enter plan Schedule A: Related Materials: select SFA or FSMC Schedule B: Food, Beverage and Smallware Product Specifications: select SFA or FSMC If SFA, attach specifications Schedule C: Attach SFA Wellness Policy Schedule D1 & D2: Cost Responsibility Schedule E: Inventory List Schedule F: Staff Schedules and Other Related Materials Schedule G: USDA Foods Schedule H: Additional Schedules, as applicable	Bid Form and Financial Budget Projection
	Schedule A – H, as applicable
	Non-Collusive Bidding Statement with FSMC Original Signature
	Corporate Affidavit for FSMC Signing Contract
	Required Forms: #1 & 1A: SFA Amendments to NYSED Prototype Contract, if applicable #2: Bid Summary #3: Board Minutes, if lowest bidder not awarded #4: Notarized Affidavit of Publication #5: FSMC Debarment Certification #6: Certification Regarding Lobbying #6A: Disclosure of Lobbying Activities, if applicable #7: Preparation of Bid Specifications #8: Certification of Insurance #9: Performance Security #10, 10A, 10B: Summer Food Service Program (SFSP), if applicable #11: FSMC Civil Rights Assurance
Agreement Section: Complete all Required Blanks	Agreement Section: Date of Agreement, SFA Name, FSMC Name Contract Term Complete all required blanks Original Signature of SFA Board President and Date Original Signature of FSMC/Title and Date

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:** _____

FORM #1 –2026-2027 SFA Amendments to NYSED Prototype Contract

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

Regulations require that any changes by the SFA to the New York State Education Department (NYSED) Contract Prototype be approved by the NYSED prior to executing the contract. Therefore, any changes by the SFA to the agreement section and/or the specifications section of the NYSED 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 contract to cn@nysed.gov for review and approval 30 days prior to letting bids. Once the amendments are approved by NYSED, 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 NYSED prototype contract for NYSED 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:** _____

1.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:
2.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:
3.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:
4.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:
5.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:
6.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:

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

2026-2027 Amendments to NYSED Prototype Contract Continuation Sheet(s)

FORM #1A (Continuation Sheet):

Page #

of

School Food Authority:

LEA Code:

7.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:
			Section #:
8.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:
			Section #:
9.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:
			Section #:
10.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:
			Section #:
11.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:
			Section #:
12.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:
			Section #:
13.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:
			Section #:
14.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:
			Section #:
15.	The contract is amended as follows (check one):	☐ Agreement Section	☐ Bidding Requirements/Specifications
	<u>SFA proposed Amendment to this section:</u>	Page #:	Section Name:
			Section #:

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	FORM #2 <i>NYS Required 2026-2027</i> <i>Bid Summary Form</i>
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Form #2 – 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 #3 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

Date

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	<u>FORM #3</u> <i>NYS Required 2026-2027</i> <i>Board Minutes</i> <i>Board Minutes only need to be attached if FSMC was not</i> <i>the lowest bidder as indicated on Form #2</i>
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Form #3 – Board Minutes Form

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

School Food Authority: _____ LEA Code: _____

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Albany, NY 12234
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Web Address: www.cn.nysed.gov

FORM #4
NYS Required 2026-2027
Notarized Affidavit of Publication

Form #4 – Notarized Affidavit of Publication Form

Attach Notarized Affidavit of Publication Here

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

Please Note: This form, current advertisement and notarized affidavit of publication is required for all executed contracts.

- 1) Advertisements shall contain the time and place where bid will be received and publicly opened and read. At least 5 days shall elapse between the first publication of advertisement and the date for opening and reading bids. For example, bids advertised on the first of the month, may be opened on the 6th. NYSED recommends two weeks between advertisement and the bid opening.
- 2) If the advertisement was placed in more than one newspaper, an affidavit of publication must be attached here for each advertisement.
- 3) If the advertisement was placed on different dates for any reason, specify the reason for the different dates and attach each affidavit of publication here.
- 4) If the local newspaper does not provide an original advertisement, a scanned advertisement with the notarized affidavit is acceptable to be attached here.

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Web Address: www.cn.nysed.gov

FORM #5
NYS Required 2026-2027
FSMC Debarment Certification

Form #5 – FSMC Debarment Certification

Debarment and Suspension and Other Responsibility
Matters Primary Covered Transactions

Non-federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

1. The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - d. (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective primary 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

Date

Form #6– 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

Date

Instructions for Form #6A Disclosure of Lobbying Activities

(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 Assistance Listing Number (ALN) 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 #6A – Disclosure of Lobbying Activities

FORM 6A DISCLOSURE OF LOBBYING ACTIVITIES Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 (See reverse for public burden disclosure)		Form AD-1048 (1/92) Approved by OMB 0348-0046
1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/applications ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial filing ☐ b. material change for Material Change only: Year: _____ Quarter: _____ Date of last report: _____
4. Name and address of Reporting Entity: ☐ Prime ☐ Sub awardee Tier _____, if known: Congressional District, if known: _____		5. If Reporting Entity in #4 is Sub awardee, Enter Name and Address of Prime: Congressional District, if known: _____
6. Federal Department/Agency:		7. Federal Program Name/Description: ALN 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>		10b. Individuals Performing Services (including address if different from #10a.) <i>(last name, first name, MI):</i>
11. Amount of Payment (check all that apply): \$ _____ ☐ actual ☐ planned		13. Type of Payment (check all that apply): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (check all that apply): ☐ a. cash ☐ 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: Print Name: Title: Telephone: Date:
Federal Use Only:		Authorized for Local Reproduction Standard Form – LLL

Form #7 – 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 NYSED 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>(check the appropriate box)</i>	
			☐ Yes	☐ No
			☐ Yes	☐ No
			☐ Yes	☐ No
			☐ Yes	☐ No
			☐ Yes	☐ No
			☐ Yes	☐ No

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

SFA Representative:

Printed Name

Signature

Title

Date

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NEW YORK STATE EDUCATION DEPARTMENT
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Web Address: www.cn.nysed.gov

FORM #8
NYS Required 2026-2027
Certification of Insurance

Form #8 – 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: _____

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FORM #9
NYS Required 2026-2027
Performance Security

Form #9 – Performance Security

(A copy of the performance security documentation, as indicated on section 13 of the bid specifications section.)

School Food Authority: _____

LEA Code: _____

Form #10 – Summer Food Service Program

☐ Check if Not Applicable (N/A)

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>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 #10A – 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)
		☐ Yes ☐ No					Breakfast			
		☐ Yes ☐ No					AM Snack			
		☐ Yes ☐ No					Lunch			
		☐ Yes ☐ No					PM Snack			
		☐ Yes ☐ No					Supper			
		☐ Yes ☐ No					Breakfast			
		☐ Yes ☐ No					AM Snack			
		☐ Yes ☐ No					Lunch			
		☐ Yes ☐ No					PM Snack			
		☐ Yes ☐ No					Supper			
		☐ Yes ☐ No					Breakfast			
		☐ Yes ☐ No					AM Snack			
		☐ Yes ☐ No					Lunch			
		☐ Yes ☐ No					PM Snack			
		☐ Yes ☐ No					Supper			

Form #10B – 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)
		☐ Yes ☐ No					Breakfast			
		☐ Yes ☐ No					AM Snack			
		☐ Yes ☐ No					Lunch			
		☐ Yes ☐ No					PM Snack			
		☐ Yes ☐ No					Supper			
		☐ Yes ☐ No					Breakfast			
		☐ Yes ☐ No					AM Snack			
		☐ Yes ☐ No					Lunch			
		☐ Yes ☐ No					PM Snack			
		☐ Yes ☐ No					Supper			
		☐ Yes ☐ No					Breakfast			
		☐ Yes ☐ No					AM Snack			
		☐ Yes ☐ No					Lunch			
		☐ Yes ☐ No					PM Snack			
		☐ Yes ☐ No					Supper			
		☐ Yes ☐ No					Breakfast			
		☐ Yes ☐ No					AM Snack			
		☐ Yes ☐ No					Lunch			
		☐ Yes ☐ No					PM Snack			
		☐ Yes ☐ 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 #11 – 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

Title

Date

Agreement Section

THIS AGREEMENT, made this _____ day of _____ by and between the

(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

WHEREAS, the SFA has advertised for sealed bids for Food Service Management to the facilities listed in service locations and times in accordance with the specifications attached hereto and made a part hereof as if same were set forth in full, and,

WHEREAS, the FSMC submitted a bid for a Food Service Management Company to said facilities dated _____ and has been awarded a contract by the SFA.

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 New York State Education Department (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 NYSED 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 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, 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 provide reimbursable lunches that meet Meal Pattern requirements, including dietary specifications, pursuant to the National School Lunch Program regulations 7 CFR Part 210. 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 lunches, subject to approval of the SFA.
- c) The FSMC shall provide reimbursable breakfasts that meet Meal Pattern requirements, including dietary specifications, pursuant to the School Breakfast Program regulations 7 CFR Part 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.
- d) The FSMC shall provide reimbursable snacks that meet meal pattern requirements pursuant to the National School Lunch Program regulations 7 CFR Part 210. 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 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 medical statement from a State licensed healthcare professional or registered dietitian for a child with a disability which substantially limits one or more major life activities, which includes how the disability restricts the diet, an explanation of how to accommodate the child's disability and 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 State licensed healthcare professional or registered dietitian.
- g) The FSMC may use fillers or extenders, such as "textured vegetable protein," in foods served upon approval of the SFA and regulated by USDA.
- h) 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 **Choose**.

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 F.
- 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 **Choose** 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 220.16, 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.
- n) The FSMC must disclose ingredients lists and nutritional information to the SFA for all meals provided. The FSMC shall be required to consolidate nutritional information for any meal that is comprised of separate individual ingredients.
- o) The SFA shall publish and publicly share on the SFAs website the ingredients lists and nutritional information provided by the FSMC.

6) Production Records/ Standardized Recipes

- a) Production records (7CFR 210.10(a)(3), (7CFR 220.8(a)(3) and standardized recipes (7CFR 210.10(c)(5)) 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 FSMC 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 **Choose** 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. USDA allows no more than ten percent (10%) of the total grant awarded to the SFA to be used for administrative expense (which includes equipment purchases). Refer to the USDA FFVP guidance material at the following link: <https://www.fns.usda.gov/ffvp/resource-center>

8) Pricing

- a) The SFA shall be responsible for establishing all selling prices for all 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 adult meal price established by NYSED annually. 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 of the lunch program at each site no later than February 1 of each year as required by 7 CFR 210.8. Additionally, the SFA must conduct an on-site review of the counting and claiming system of the breakfast program at a minimum of 50 percent of the sites no later than February 1 of each year, with the breakfast program at every site being reviewed at least every two years, as required by 7 CFR 220.11(d)(1). 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 will comply with the Competitive Food Service and Standards regulations at 7 CFR 210.11 and 7 CFR 220.12
- b) The FSMC shall not sell, dispense, or cause to be on premises, the items listed as part of the SFA's Local Wellness Policy

and/or prohibited by federal and/or State regulations.

- c) A la carte items must meet the SFA's standards indicated in Schedules A, B and C.

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 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 G 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. 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 **Choose** 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.
- j) The FSMC must comply with the Buy American Provision requirements found in program regulations, 7 CFR 210.21(d) and 220.16(d), that require SFAs to purchase, to the maximum extent practicable, domestic commodities or products which are defined as agricultural commodities that are produced in the United States (U.S.) and food products that are processed in the U.S. substantially using agricultural commodities produced in the U.S.. The FSMC must maintain documentation to demonstrate compliance with the Buy American Provision, including documentation to demonstrate compliance with the limited exceptions for purchases on non-domestic items found at 7 CFR 210.21(d)(5)(i) and 7CFR 220.16(d)(5)(i) and the cap on non-domestic purchases found at 7 CFR 210.21(d)(5)(ii) and 7 CFR 220.16(d)(5)(ii).

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 NYSED.

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 **Choose** 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 Child Nutrition Program 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 **Choose** 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 **Choose** 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 **Choose** shall clean the grease traps in the food service area to be in good working order.
- e) The **Choose** 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 **Choose** 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 NYSED.
- i) The **Choose** 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 will be adhered to by the FSMC.
- 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/FSMC 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.

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 **Choose** 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 **Choose** 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 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 F 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 F.
- 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, NYSED 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 F (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 F.
- p) The FSMC will adhere to additional FSMC staff training requirements by the SFA in Schedule F.
- 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 F.

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 State/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 NYSED.
- 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 **Choose** 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 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: _____
- c) 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.
- d) 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 b), 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.
- e) 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.
- f) 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.
- g) 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 #8, 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) This contract may be extended by the SFA and the FSMC under the rules and regulations prescribed by the Commissioner of Education; however, pursuant to federal regulations CFR Part 210.16 (d), the contract between a school food authority and food service management company shall be of a duration of no longer than (1) one year; with the option to renew/extend annually with a maximum of (4) four years. Such renewals/extensions shall be executed prior to termination of the preceding contract period and shall not extend the original contract period beyond five years.
- 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) Contract Cost Adjustment: The SFA may negotiate at the end of each one year contract period for a cost increase not to exceed the annual percentage increase of the New York - Northeastern New Jersey Consumer Price Index for all Urban Consumers for the preceding year, provided it has been satisfactorily established by the FSMC that there has been at least an equivalent increase in the amount of its cost of operation during the period of the contract.

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 must comply with the cost responsibilities detailed on Schedule D1 and D2.
- e) 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.
- f) The SFA reserves the right to reject any and all items which do not comply with the requirements set forth herein.
- g) 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.
- h) No waiver of any default shall be construed to be or constitute a waiver of any subsequent default.
- i) 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.
- j) This contract shall not be renegotiated throughout the term of this contract. If renegotiations and/or material changes occur any time during the five-year term, rebidding is required.
- k) NYSED reserves the right to deny reimbursement due to a SFA's failure to follow proper bidding procedures.
- l) 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.
- m) 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.
- n) It is further agreed between the SFA and the FSMC that the clauses attached hereto and designated as, required Forms #1-#11, Schedules A-H and Appendices A-B are hereby in all respects made a part of this contract.
- o) 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.
- p) In the event fiscal action is taken by NYSED 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>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: _____

Affix Corporate Seal Here:

(Date)

AFFIX NOTARY PUBLIC SEAL HERE

Bidding Requirements/ Specifications Section

1. Bid Purpose

- a. The purpose of this solicitation is to provide for the successful operation of a nutritious, quality food service program and to create a level playing field for all potential bidders. The FSMC will assume responsibility for the efficient management of the SFA's food service program including purchasing, receiving, storing, setting up cafeteria lines, counter service, dining room service, clean-up, sanitation, training, hiring and supervising personnel, and presenting food in a way to create optimum student participation. The responsibility will include the proper use of federally donated commodities.
- b. The Bidder under these specifications will be referred to as the Food Service Management Company (FSMC) and the contract will be between the FSMC and the School Food Authority (SFA). Please refer to Appendix A for standard definitions and Appendix B for standard clauses referenced in the NYSED Prototype Bid Specifications.
- c. The FSMC, as the independent contractor, shall have the exclusive right to operate the SFA's Child Nutrition meal service operations that the SFA is currently participating in, as indicated below:

- | | |
|---|---|
| ☐ National School Lunch Program (NSLP) | ☐ School Breakfast Program (SBP) |
| ☐ Special Milk Program (SMP) | ☐ Summer Food Service Program (SFSP) |
| ☐ Afterschool Snack Program (Snack) | ☐ Fresh Fruit and Vegetable Program (FFVP) |

The SFA shall specify below any of the above programs it does not currently participate in, but that it anticipates entering during the course of this contract and that are consequently included as a part in this contract:

- | | |
|---|---|
| ☐ National School Lunch Program (NSLP) | ☐ School Breakfast Program (SBP) |
| ☐ Special Milk Program (SMP) | ☐ Summer Food Service Program (SFSP) |
| ☐ Afterschool Snack Program (Snack) | ☐ Fresh Fruit and Vegetable Program (FFVP) |

It is important to note that this is a multiple-year contract; therefore, specifications should be prepared with that in mind. However, if the SFA decides not to include these programs as a part of this contract term at this time, any future inclusion of additional programs or termination of existing programs during the course of this contract, or any extension resulting in an increase or decrease to costs of the contract that would have caused contract bidders to bid differently or impact procurement thresholds, will constitute material changes requiring the contract to be rebid.

All costs resulting from contracts that do not meet the requirements of 7CFR part 210.16 are unallowable nonprofit school food service account expenses. When the SFA fails to incorporate NYSED required changes to contract documents, all costs resulting from the subsequent contract award are unallowable charges to the nonprofit school food service account.

2. Bid Specification Development

- a. A potential and/or incumbent FSMC can help an SFA develop bid specifications, but, if they do so, they cannot submit a bid.
- b. A consultant can be hired to assist in the development of bid specifications, but NYSED holds the SFA responsible for the proper submission of contract documents.

3. Advertisement of Bids

- a. Advertisements shall contain the time and place where bids will be received and publicly opened and read. At least 5 days shall elapse between the first publication of advertisement and the date for opening and reading bids. For example, bids advertised on the first of the month, may be opened on the 6th. NYSED recommends two weeks for advertising and the bid opening.
- b. The vendor conference and walk-through must be scheduled after the bid has been advertised and the bid specifications are ready for distribution.

4. Submission of Bids

- a. Bids will be received as stated on the cover sheet, for the privilege and right to conduct/operate food service within facilities listed in service locations and times.
- b. Bids shall be submitted on the forms provided by the SFA. Bids may not be faxed or sent by electronic mail.

Delivery of bids at the appointed time is the responsibility of the bidder.

- c. Bidders requiring clarification or interpretation of the bidding documents shall make a request to the SFA by: _____, which is prior to the date fixed for the opening of bids.
- d. The SFA will not consider any bid received after the exact time specified for receipt.
- e. The SFA must respond to all bidders' questions, whether verbal or in writing, whether the question is asked at a vendor conference or if the question is in writing from a potential bidder. Any answers to questions, clarification, interpretation and/or correction of this document shall be submitted to all prospective bidders by the SFA prior to the opening of bids. All answers to questions must be provided in a uniform method to ensure an equal and level playing field.
- f. Along with their completed bids, bidders will provide evidence demonstrating their ability to administer school food service programs, including, if applicable, a list of any and all SFAs for which they have operated during the past three years, along with a summary of those same years indicating that the bidder successfully operated a complex food service program requiring nutritional meals in compliance with the USDA regulations. In lieu of organizational experience, staff expertise must be demonstrated.
- g. It is the understanding of any FSMC submitting a bid that they agree to all terms and conditions of the bid specification.

5. Rejection of Bids

- a. The SFA reserves the right to reject any and all bids, if deemed to be in the best interest of the SFA, and to consult with the school attorney when necessary.
- b. Failure of the SFA to follow proper bidding procedures may also result in the rejection of all bids and be subjected to rebidding by NYSED.
- c. Any or all zero bids submitted by a potential and/or incumbent bidder shall be rejected and rebidding will be required.

6. Bid Protests

- a. Any action which diminishes open and free competition seriously undermines the integrity of the procurement process and may subject the SFA to bid protests. SFAs are responsible for properly responding to protests and concerns raised by potential contractors and must have procedures in place to handle and resolve disputes relating to their procurements and must in all instances disclose all information regarding a protest to NYSED.

7. Bidder's Responsibility

- a. The bidder is responsible for personally examining the SFA's participation data, job sites, pricing, food and beverage procurement specifications, menus, serving times, the SFA's local wellness policy and the cost responsibility detail sheet (Schedules D1 & D2) as they relate to the conditions existing at each job site. No pleas of ignorance relating to any data, conditions or requirements that exist or that may be encountered under this contract will be accepted as a result of failure or omission on the part of the FSMC to fulfill in every respect all the requirements, nor will the same be accepted as a basis for any claim whatsoever for extra charges for food services.

8. Prior School Year Information:

SFA's Average Daily Participation (ADP) & Revenue Information for the 2025-2026 School Year:

a.

[illegible]

b.

2025-2026 School Year	
Year to Date Revenue: to	
i. A la Carte Sales to students and adults:	Total \$
ii. Child Nutrition Reimbursement (reimbursement received for breakfast, lunch, snacks and milk):	Total \$
Combined Total Revenue \$	

9. Prices to be charged for a la carte items in the 2026-2027 School Year

[illegible]

10. Meal Service Locations and Times

The following will be covered under the contract terms and conditions:

[illegible]

11. 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 contains 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 21-day cycle menu included in this bid specification will reflect those choices along with the description of the food item outlined in the Product Specifications in Schedule B.

12. Purchase Specifications

- a. Food and beverage procurement specifications must be established according to product specifications indicated in Schedule B.
- b. A la carte items must meet the SFA's standards indicated in Schedules A, B and C.
- c. The FSMC must comply with the Buy American Provision requirements found in program regulations, 7 CFR 210.21(d) and 220.16(d), that require SFAs to purchase, to the maximum extent practicable, domestic commodities or products which are defined as agricultural commodities that are produced in the United States (U.S.) and food products that are processed in the U.S. substantially using agricultural commodities produced in the U.S.
- d. 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, product specifications must be clear and include the following information: grades, purchase units, style, condition, weight, ingredients, formations and delivery times. The SFA should ensure product specifications are being met.
- e. The FSMC will comply with the Competitive Food Service and Standards regulations at 7 CFR 210.11 and 7 CFR 220.12 and will comply with any accepted or prohibited items listed as part of the SFA's Local Wellness Policy in Schedule C.

13. 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 9.

☐ 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 9.

☐ 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.

14. Bid Form

a. The SFA will require separate bids for the following programs (check all that apply):

- ☐ Breakfast
- ☐ Lunch
- ☐ Snack

b. Each bidder must complete the bid form and the annual financial budget projection

c. The bid amount should take into account the value of USDA foods, as specified in Schedule G

d. 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.

2026-2027 Bid Form

The contract will be awarded based on the lowest responsible bid proposal for the combined grand total of breakfast, lunch, and snack, as applicable, 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.

To Be Completed by the FSMC		To Be Completed by the SFA		To Be Completed by the FSMC	
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 that is selected by the SFA below.					

To be Completed by SFA – Select one option below and fill in blank amount where applicable	To be completed by the FSMC- based on option selected by SFA Grand Total Bid Amount
Option A - Guaranteed Return to SFA The FSMC will guarantee a return to the nonprofit food service account of no less than *\$_____ after all contract related expenses. This amount will accrue from program income including all cash receipts from the sale of a la carte items, special milk program, adult meals, and federal and State reimbursement. Any deficit will be assumed by the FSMC.	
Option B - Break Even After all contract related expenses, the nonprofit food service account will remain at a break-even minimum balance. Program income will accrue from all cash receipts from the sale of a la carte items, special milk program, adult meals, and federal and State reimbursement. Any deficit will be assumed by the FSMC.	
Option C - General Fund Subsidy A General Fund Subsidy of *\$_____ will be transferred to the nonprofit school food service account to cover the operating costs which exceed cash receipts from the sale of a la carte items, special milk program, adult meals, and federal and State reimbursement. The SFA shall not be liable from the General Fund over and above this subsidy. Any deficit over the General Fund Subsidy will be assumed by the FSMC.	

*To be completed by the SFA

The minimum conversion factor to be used to convert a la carte sales is \$5.22. **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 New York State Education Department at the time of bid advertisement and must be used at the time of the bid proposal.

BID SUBMITTED BY:

We, the undersigned agree to operate the food service management program as described in the bid specifications for the 2026-2027 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.

Name of FSMC:	Authorized Signature:
	Printed Name:
Address:	Title:
	Date:

2026-2027 Annual Financial Budget Projection

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, LUNCH & SNACK

1. Cash Sales	
a. Adult and Student A La Carte Sales	
b. Special Milk Sales	
2. Federal and State Reimbursements	
3. General Fund Subsidy (if applicable)	
4. Total Projected Receipts	

(B) PROJECTED EXPENSES FOR BREAKFAST, LUNCH & 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 must equal or exceed the guaranteed return to the SFA as specified by the SFA under bid Option A.	

(C) PROJECTED MEALS FOR BREAKFAST, LUNCH & SNACK

1. Student Reimbursable Meals	
a. Breakfast	
b. Lunch	
c. Snack	
Total Reimbursable Meals (1. a+b+c)	
2. A La Carte Sales (\$)	
÷	
A La Carte Conversion Factor**	\$5.22
=	
Equivalent Meals (C2 divided by \$5.22)	
3. Total Projected Meals (C1 total + C2 Equivalent Meals)	

(D) PROJECTED MEALS PER LABOR HOUR FOR BREAKFAST, LUNCH & SNACK

1. Total Projected Meals (Item C3)	
÷	
2. Total Projected Labor Hours	
=	
3. Projected Meals per Labor Hour	

*** See bid for conversion factor explanation*

16. 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.

ATTACH MENU(S) AND OTHER RELATED MATERIALS HERE

SFA will select **one** option below:

The **FSMC** must submit a 21-day cycle menu for the following program(s) and age/grade groups:

The SFA will evaluate the FSMC's 21-day cycle menu(s) to ensure compliance with the meal pattern for components and quantities, dietary specifications, affordability, nutrition requirements, and appeal to students using the following plan:

SFA: describe plan below	

The **SFA** has attached the following related materials that must be used by the FSMC and used in the preparation of the bid:

The **FSMC** must attach the following related materials:

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Schedule B

ATTACH FOOD, BEVERAGE and SMALLWARE PRODUCT SPECIFICATIONS HERE

SFA will select one option below:

- ☐ SFA has attached product specifications that must be adhered to by the FSMC and used in the preparation of the bid.
- ☐ FSMC must identify the specifications for the food products that will be served on the 21-day cycle menu using specifications such as grading, weight, item labels, nutritional qualities, etc.

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
- Geographic Preference

Schedule C

ATTACH SFA LOCAL WELLNESS POLICY

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.

*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.

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			
	Silverware - initial inventory replacement			
	Silverware - 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)			

Schedule D2

DETAILED EXPLANATIONS FROM COST RESPONSIBILITY DETAIL SHEET

Schedule E

ATTACH ITEMIZED INVENTORY LIST

Schedule F

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.
- 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 F listing the title and salary of each employee.

Schedule G
USDA Foods Entitlement Value for 2026-2027 School Year

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

Schedule H

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.

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, licensor, 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 USDA civil rights regulations and policies, the USDA, its agencies, offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the state or local agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027(link is external), found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992.

Submit your completed form or letter to USDA by:

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

Fax: (202) 690-7442; or

Email: program.intake@usda.gov

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

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

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.