

Instructions:

This template will serve as both your product specifications sheet and eventual contract with the successful Food Service Management Company. You should delete this page before sending the document out to potential bidders.

**This is a word document, so be careful as you make your changes.**

Once you have made your changes you should submit it back to the Summer Food Service Team for review,

Once the document has been accepted, the final document will be returned to the sponsor for soliciting bids.

Red Text are instructions which should be deleted once the instructions have been followed.

Yellow highlighted text are areas where you should replace the text with your program specific information.

Questions should be directed to Jane McLucas, jane.mclucas@maine.gov

**Specifications and Contract**

**For**

**Food Service Management**

**of the**

**Summer Food Service Program**

**For**

**(Insert Sponsor Name)**

Reviewed and Approved by Maine Department of Education Child Nutrition.

Reviewer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# **USDA Non-Discrimination Statement for Child Nutrition Programs**

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA’s TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: https://www.fns.usda.gov/civil-rights/usda-nondiscrimination-statement-other-fns-programs, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant’s name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW Washington, D.C. 20250-9410; or

2. fax: (833) 256-1665 or (202) 690-7442; or

3. email: program.intake@usda.gov

This institution is an equal opportunity provider.

**State Non-Discrimination Statement**

The Maine Human Rights Act prohibits discrimination because of race, color, sex, sexual orientation, age, physical or mental disability, genetic information, religion, ancestry or national origin.

Complaints of discrimination must be filed at the office of the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333-0051. If you wish to file a discrimination complaint electronically, visit the Human Rights Commission website at <https://www.maine.gov/mhrc/file/instructions> and complete an intake questionnaire. Maine is an equal opportunity provider and employer

## **Assurance of Civil Rights Compliance**

The Sponsor hereby agrees that it will comply with:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);

iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);

v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);

vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);

vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);

viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);

ix. Food and Nutrition Service (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 the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.

x. The USDA non-discrimination statement that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, 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).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the SFA by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the SFA agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel 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 State agency, 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 behalf of the SFA.

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**General Information**

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1. **Program Responsibility**. In accordance with **Title 7 CFR 225.15(a)(3)** the Sponsor cannot contract out the management responsibilities of the SFSP. The Sponsor shall be responsible for ensuring that the food service operation conforms to all program requirements outlined in Title **7 CFR Part 225.**

2. **Intent.** This solicitation is for the purpose of entering into a **fixed price per meal contract** with a Food Service Management Company referred to as Food Service Management Company (FSMC), and: (Sponsor Name) hereinafter referred to as the Sponsor.

3. **Procurement method**. Procurement Method will be the Small Purchase Procedure for a firm, fixed price per meal contract with annual price adjustment as indicated in section 4.3.

4. **Award Criteria**. The contract will be awarded to the lowest responsive bid per the product specifications listed within below.

5. **Free and Open Competition**. Sponsors shall conduct all procurement transactions in a manner that provides maximum free and open competition consistent with Title 2, Code of Federal Regulations **(2 CFR), Part 200.319(b)(1-7).**

6. **Goals**. The Sponsor’s food service goals are to provide nutritious, high-quality meals to participants in the Summer Food Service Program, to accommodate special diets where medically necessary, improve the nutritional quality of meals, and maintain a financially viable food service program. General food service goals are to:

a. Provide an appealing and nutritionally sound program for participants as economically as possible;

b. Increase participation at all levels of the food service program by improving meal quality, seeking participant and parent input, offering menu variations, and improving planning;

7. **Proposal submission and award**.

a. Proposals are to be submitted by (Date and Time) to (Email Address).Proposals will not be accepted after this time. Proposal is to be submitted in an email with the subject line ***Food Service Management***  ***Proposal.***

b. Evaluation of proposals is expected to begin on (Date) and be completed by (Date). The projected award date for the contract is (Date). These dates are subject to change based upon the number and nature of received proposals, State Agency (SA) approval process, and any unforeseen factors.

c. To be considered, each proposer must submit a complete response to this solicitation using the forms provided. There must be no material change to the contract language.

d. The Sponsor will provide no relief for errors or omissions in the proposal submitted in response to this document.

e. All proposals shall remain valid and subject to acceptance for a period of ninety (90) days after the proposal opening date.

f. Award shall only be made to a responsible proposer whose proposal is responsive to this solicitation. A responsible proposer is one whose financial, technical, and other resources indicate an ability to perform the services required by this solicitation.

g. Proposers are expected to fully inform themselves as to the conditions, requirements and specifications before submitting proposals; failure to do so will be at the proposer's own risk. Sponsor is not liable for any cost incurred by the proposer prior to the signing of a contract by all parties. Paying FSMC from the Child Nutrition Program (CNP) funds is prohibited until the contract is signed.

If additional information is required, please contact:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

8. **Late proposals**. Any proposal received after the exact time specified above will not be considered.

9. **Sponsor Information**

a. Name of Organization: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

b. Mailing Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

c. Physical Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

d. Name of Primary Contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

e. Primary Contact Job Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

f. Primary Contact Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

g. Primary Contact Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## 1. **GENERAL SPECIFICATIONS**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

All bidders must meet the following specifications:

1.1 **Scope of Operations**. Only the programs checked below will be included in the awarded contract. Check all that apply.

☐ SFSP Breakfast

☐ SFSP Lunch

☐ SFSP AM Snack

☐ SFSP PM Snack

☐ SFSP Supper

1.2 **Number of Days**. The projected number of full feeding days is: (# of days);

1.3 **Ordering**. The Sponsor will (call or email) by (Time) each day with a meal count. The Order will include meal counts and locations for (Lunch, Snack, Supper, and the following day’s Breakfast). These numbers will be used for production and for invoicing.

1.4 **Delivery**. Meals will be (picked up by the Sponsor or delivered by the FSMC) by (Time) every operating day. The following day’s breakfast will be included.

1.5 **Milk**. Milk will be included in the following meals: Sponsor should check a box for each meal type as applicable. Delete rows for meal types that you do not offer.

|  |  |  |
| --- | --- | --- |
| **Meal Type** | **Includes Milk** | **Will NOT include Milk** |
| Breakfast |  |  |
| Lunch |  |  |
| Snack |  |  |
| Supper |  |  |

1.6 **Unitized Meals**. All meals will be provided unitized. (7 CFR 225.6(l)(3)) The sponsor may request an exemption from this requirement. SA Approval must be given prior to implementation.

1.7 **Meal Pattern**. The FSMC will follow the attached Cycle Menu (that the FSMC will submit) Summer Food Service Program meal pattern (included in this Contract), and the requirements of 7 CFR 225.16. Changes to the agreed-on menu will be made with the agreement of both parties. The FSMC will make sure that all meal patterns for reimbursable meals will be met if any changes have to be made in the menu due to unexpected unavailability of menu items. (7 CFR 225.15(m)(4)(v))

1.8 **Meal Quality**. In addition to meeting the SFSP meal pattern, meals will have the following qualities (7 CFR 225.15(m)(4)(vi)):

The following are some potential options. You should delete and add requirements to properly describe the meals you would like to see for your program.

a) Offer whole grain-rich grain products.

b) No flavored milk will be served with meals.

c) No juice will be served as a component.

d) If offering snack, provide a fruit/vegetable as one of the components daily.

e) Limit the serving of processed food items such as chicken nuggets, fish sticks and deli meats to no more than twice per week.

f) Offer two different vegetables at lunch at least twice per week.

g) Offer hot and cold menu options for all meal services.

1.9 **Point of Service**. Meals will be served by (the FSMC or the Sponsor). The point of service count will be the responsibility of (the FSMC or the Sponsor). A record of meals delivered must be kept on file by the FSMC.

1.**10 USDA Foods**. If the Sponsor desires to participate, or does participate, in the USDA Foods Program and the FSMC agrees to use USDA Foods in accordance with federal and state regulations, then the FSMC will credit the Sponsor for the value of USDA Foods used. USDA Foods is only available to Sponsors that contract with a School Food Authority.

## **2. SITE SPECIFICATIONS**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2.1 **Site Information.** The Sponsor shall provide to FSMC a list of SA approved food service sites, along with the approved level for the number of meals which may be claimed for reimbursement for each site, established under 7 CFR 225.6(d)(2), and shall notify FSMC of all sites which have been approved, cancelled, or terminated subsequent to the submission of the initial approved site list and of any changes in the approved level of meal service for a site.

Sponsor should fill in the table. Add rows as needed.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Site Name | Address | Age Range | Enrollment | Breakfast Serving Time | Snack Serving Time | Lunch Serving Time  | Supper Serving Time | # of Serving Days |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |

2.2 **Previous Year’s Meal Counts**. Sponsor should fill in the table. Delete any rows that do not apply.

|  |  |
| --- | --- |
| **Meal Type** | **Previous Year’s Meal Counts** |
| Breakfast |  |
| Lunch |  |
| AM Snack |  |
| PM Snack |  |
| Supper |  |

## **3. CONTRACT TERMS**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3.1 **Duration of Contract**. This contract shall be for a period of up to one (1) year, beginning on October 1, 20XX, and ending on September 30, 20XX, with four (4) renewals of one (1) year each with mutual agreement between Sponsor and FSMC.

3.2 **Independent Contractor**. FSMC shall be an independent contractor and not an employee of Sponsor. The employees of the FSMC are not employees of the Sponsor.

3.3 **Permanent Agreement**. FSMC shall operate in conformance with the Sponsor’s Permanent Agreement with the Maine Department of Education.

3.4 **Program Beneficiaries**. The food service provided shall be operated and maintained as a benefit to program participants.

3.5 **Maximum Participation**. The food service shall be managed to promote maximum participation in the Summer Food Service Program.

3.6 **Responsibility for Program**. Sponsor shall be legally and financially responsible for the conduct of the food service program and shall supervise the food service operations in such manner as will ensure compliance with the rules and regulations of the SA and USDA regarding the SFSP.

3.7 **Regulatory Compliance**. FSMC shall comply with the rules, regulations, policies, and instructions of the SA and USDA and any additions or amendments thereto, including **7 CFR 225 and 250, as well as 2 CFR 200, 400, and 415 as applicable.**

3.8 **Food Service Staff**. FSMC shall provide necessary staff to manage the food service operations as proposed and supervise all FSMC employees.

3.9 **Facilities**. If the FSMC uses the facilities of a school or other account they contract with to serve this Contract, the FSMC will provide the Sponsor and State Agency with written documentation demonstrating they have permission to use the facilities for the preparation of meals for this Contract.

3.10 **Special Dietary Needs**.

a. FSMC shall make modifications in the food components of the meal pattern to accommodate participants with disabilities. A medical statement from a professional licensed to write prescriptions must accompany any meal modification made outside of the meal pattern requirements. Modifications shall be made in accordance with guidance provided by the [Accommodating Children With Disabilities in the School Meal Programs Manual.](https://www.maine.gov/doe/sites/maine.gov.doe/files/inline-files/USDA%20Accommoding%20Children%20with%20Disabilities.pdf)

 i. Please reference the [Policy Memorandum](https://fns-prod.azureedge.us/sites/default/files/cacfp/CACFP14-2017_SFSP10-2017os.pdf) on Modifications to Accommodate Disabilities in the Child and Adult Care Food Program and Summer Food Service Program.

b. There will be no additional charge to the participant for meal modifications which have been made to accommodate disabilities per this section of the contract.

3.11 **Program Records**. The FSMC shall maintain such records (supported by invoices, receipts or other evidence) as the Sponsor will need to meet its responsibilities to the State Agency and shall promptly submit invoices and delivery reports to the institution no less frequently than monthly. (7 CFR 225.15(c)(1))

3.12 **Records Retention**. The books and records of the food service management company pertaining to the Sponsor’s food service operation shall be available for inspection and audit by representatives of the State agency, of the Department, and of the U.S. General Accounting Office at any reasonable time and place, for a period of 3 years from the date of receipt of final payment under the contract, or in cases where an audit requested by the State agency or the Department remains unresolved, until such time as the audit is resolved.

3.13 **Year-End Statement**. FSMC shall provide Sponsor with a year-end statement.

3.14 **Health Certification**. The FSMC shall have Federal, State or local health certification for the plant in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the State agency may require the food service management company to provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being prepared. These bacteria 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 prepared or served by other establishments in the locality. Results of these inspections shall be submitted to the Sponsor and to the State agency.

3.15 **Gifts from FSMC**. Sponsors shall maintain a written code of standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Program payments. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved;

a. The employee, officer or agent;

b. Any member of his immediate family;

c. His or her partner; or

d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

3.16 **Changes/Amendments**. Once approved by the SA, any further changes or amendments to this contract must be approved by the SA prior to execution.

3.17 **Bonding Requirement.** FSMC shall comply with the appropriate bonding requirements, as set forth in **7 CFR 225.15(m)(5) through (m)(7)**. Note: this clause only applies to contracts that exceed $250,000 in value.

1. If the estimated SFSP reimbursement based on this RFP exceeds $250,000, FSMC shall obtain and submit a proposal bond in the amount of 5% (not less than 5 percent and no more than 10 percent of the value as determined by the sponsor of the contract for which the bid is made) of the expected contract value, as determined by the State agency, along with its proposal. A copy of the bid bond shall accompany each bid.

2. If the estimated contract value exceeds $250,000, FSMC shall obtain a performance bond from a surety company in the amount of 10% of the expected contract value as determined by the State agency. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds the simplified acquisition threshold in 2 CFR part 200, as applicable. Sponsors shall require the food service management company to furnish a copy of the performance bond within ten days of the awarding contract. FSMCs are prohibited from posting any alternative forms of performance bonds. Cash, certified checks, letters of credit, and escrow accounts are not acceptable substitutes for performance bonds.

## **4. FEES AND FINANCIAL TERMS**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4.1 **Payment**. The food service management company shall be paid by the Sponsor for all meals delivered in accordance with the contract. However, neither the United States Department of Agriculture nor the State agency assumes any liability for payment of differences between the number of meals delivered by the food service management company and the number of meals served by the sponsor that are eligible for reimbursement. **[7 CFR 225.6(l)(2)(ix)]**

4.2**Non-compliant meals**. The food service management company shall not be paid for meals which are delivered outside of the agreed upon delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements contained in the contract.

4.3 **Reporting**. The food service management company shall submit records of all costs incurred in the Sponsor’s food service operation in sufficient time to allow the sponsor to prepare and submit the claim for reimbursement to meet the 60-day submission deadline.

4.4 **Failure to Comply.** If reimbursement is denied as a direct result of the failure of the FSMC to comply with the provisions of the Contract, the FSMC shall assume responsibility for the amount denied.

4.5 **Annual Escalator**. The fixed price per meal/lunch equivalent is subject to an annual escalator provision as stipulated in this contract by the Sponsor for annual renewals. Adjustment factors must reflect changes in federal Consumer Price Index for Food Away from Home as of the February preceding the year of renewal, if applicable. This escalator provision is for the fixed meal rate only, it does not apply to any management or administrative per meal fees.

## **5. NONDISCRIMINATION**

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5.1 **Nondiscrimination**. As noted in the USDA Non-Discrimination Statement for Child Nutrition Programs and the Maine Human Rights at the beginning of this Contract:

1.**USDA Non-Discrimination Statement for Child Nutrition Programs**

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA’s TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.fns.usda.gov/civil-rights/usda-nondiscrimination-statement-other-fns-programs>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant’s name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

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

2. fax: (833) 256-1665 or (202) 690-7442; or

3. email: program.intake@usda.gov

This institution is an equal opportunity provider.

2. **Maine Human Rights**

The Maine Human Rights Act prohibits discrimination because of race, color, sex, sexual orientation, age, physical or mental disability, genetic information, religion, ancestry or national origin.

 Complaints of discrimination must be filed at the office of the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333-0051. If you wish to file a discrimination complaint electronically, visit the Human Rights Commission website at <https://www.maine.gov/mhrc/file/instructions> and complete an intake questionnaire. Maine is an equal opportunity provider and employer

5.2 **Civil Rights**. In the operation of the Program, no child shall be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex (including gender identity and sexual orientation), or disability. State agencies and school food authorities shall comply with the requirements of: Title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a, and 15b); and FNS Instruction 113-1.

5.3 **Additional Rights**. Both the Sponsor and FSMC further agree that no child who participates in a Child Nutrition program will be discriminated against on the basis of creed, marital status, gender identity, or sexual orientation in employment or in any program or activity conducted or funded by the State of Maine.

## **6. EMERGENCY CLOSING**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

6.1 **Utility Interruption**. Sponsor shall notify FSMC of any interruption in utility service of which it has knowledge.

6.2 **School Closing**. Sponsor shall notify FSMC of any delay in the beginning of a site’s day or the closing of site(s) due to emergency conditions.

## **7. TERMS AND TERMINATION**

7.1 **Remedies for Nonperformance**. In the event of FSMC's nonperformance under this contract and/or the violation or breach of the contract terms, Sponsor shall have the right to pursue all administrative, contractual, and legal remedies against FSMC and shall have the right to seek all sanctions and penalties as may be appropriate.

7.2 **Costs Incurred due to Nonperformance**. In cases of nonperformance or noncompliance on the part of the FSMC, the company shall pay the sponsor for any excess costs, which the sponsor may incur by obtaining meals from another source. **[7 CFR 225.6(l)(2)(xiii)]**

7.3 **Fiscal Penalties**. FSMC shall reimburse Sponsor for the full amount of any fiscal penalties resulting from adjusted or disallowed claims which are attributable to FSMC's negligence, including those fiscal penalties based on reviews or audit findings that occurred during the effective dates of original and renewal contracts.

7.4 **Force Majeure**. Neither FSMC nor Sponsor 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, flood, acts of God, or for any acts not within the control of FSMC or Sponsor, respectively, and which, by the exercise of due diligence, it was unable to prevent.

7.5 **Termination for Cause**. In the event either party commits a material breach, including, but not limited to, violation of program regulations, the non-breaching party may terminate this agreement for cause by giving 60 days written notice. If the breach is remedied prior to the proposed termination date, the non-breaching party may elect to continue this agreement.

7.6 **Termination for Convenience**. At any time the Sponsor may terminate the contract by giving 60 days written notice to FSMC. Following any termination for convenience, the FSMC shall be entitled to compensation for services completed upon submission of invoices and proof of claim for services provided under the Contract up to and including the date of termination. The Sponsor shall have the right to receive services from the FSMC through the effective date of the notice of termination, and may, at its election, procure such work from other contractors as may be necessary to complete the services.

7.7 **Loss of Funding Source**. Notwithstanding any provision to the contrary in the Contract, obligations of the Sponsor will cease immediately without penalty of further payment being required if sufficient funds for the Contract are not appropriated by the Vermont General Assembly or a federal funding source, or such funds are otherwise not made available to the Sponsor for payments in accordance with the Contract.

7.8 **Immediate Termination**. Notwithstanding the notice period in paragraph 20.5, the Sponsor may immediately terminate the Contract, in whole or in part, upon notice to the FSMC if the Sponsor determines that the actions, or failure to act, of the FSMC, its agents, employees or subcontractors have caused, or reasonably could cause jeopardy to health, safety, or property; or if the Sponsor determines that the FSMC lacks the financial resources to perform under the Contract.

7.9 **Rights Beyond Termination**. The right of termination referred to in the Contract is not intended to be exclusive and is in addition to any other rights available to either party at law or in equity. If the FSMC breaches a material provision of the Contract and fails to cure such breach within thirty (30) days after receiving written notice of such breach the Sponsor may elect to pursue any available legal, contractual or administrative remedy or the following sanctions:

(i) for a first violation, a written reprimand;

(ii) for a second violation, a $ X penalty;

(iii) for a third violation, a $ Y penalty.

For the purposes of the foregoing, a single violation means an event of the same or similar kind, without regard for the duration or number of personnel, equipment, participants or meals involved. **[2 CFR 200]**

7.10 **Contract Authority**. Sponsor is the responsible authority without recourse to USDA or the SA to the settlement and satisfaction of all contractual and administrative issues arising from the transaction. Such authority includes, but is not limited to: source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violations of the law will be referred to the local, state, or federal authority that has proper jurisdiction.

7.11 **Notification of Termination:** The Maine Department of Education shall be notified immediately by the Sponsor of termination action and reason for termination.

## **8. TRADE SECRETS AND PROPRITARY INFORMATION**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

8.1 **FSMC Trade Secrets**. During the term of the Agreement, FSMC may grant to Sponsor a nonexclusive right to access certain proprietary materials of FSMC, including menus, recipes, signage, food service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed by FSMC), and similar compilations regularly used in FSMC's business operations (trade secrets). Sponsor shall not disclose any of FSMC's trade secrets or other confidential information, directly or indirectly, during or after the term of the Agreement. Sponsor shall not photocopy or otherwise duplicate any such material without the prior written consent of FSMC. All trade secrets and other confidential information shall remain the exclusive property of FSMC and shall be returned to FSMC immediately upon termination of the Agreement. Without limiting the foregoing and except for software provided by Sponsor, Sponsor specifically agrees that all software associated with the operation of the food service, including without limitation, menu systems, food production systems, accounting systems, and other software, are owned by or licensed to FSMC and not Sponsor. Furthermore, Sponsor’s access or use of such software shall not create any right, title interest, or copyright in such software and Sponsor shall not retain such software beyond the termination of the Agreement. In the event of any breach of this provision, FSMC shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. This provision shall survive the termination of the Agreement.

8.2 **Right to Inventions.** Any discovery, invention, software, or programs paid for by Sponsor shall be the property of Sponsor to which the SA and USDA shall have unrestricted rights including copyrights.

8.3 **Confidential Information**. Each Party, including its agents and subcontractors, to the Contract may have or gain access to confidential and proprietary data or information of the other Party including, without limitation, other technical information (including functional and technical specifications, designs, drawings, analysis, research, processes, computer programs, methods, ideas, "know how,” and the like), business information (sales and marketing research, materials, plans, accounting and financial information, personnel records, and the like), all participant data and information, and other information designated as confidential expressly or by the circumstances in which it is provided ("Confidential Information"). No Confidential Information collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the disclosing Party, either during the Term of the Contract or thereafter. The recipient must return any and all Confidential Information used in the course of the performance of the Contract, in whatever form it is maintained, promptly upon termination of the Contract, or earlier at the request of the disclosing Party, or notify the disclosing Party in writing of its destruction, if destruction is permitted by the disclosing Party. Confidential Information does not include data or information lawfully in the recipient’s possession prior to its acquisition from the disclosing Party; received by the recipient from a third party who was free to disclose it; publicly known through no breach of confidentiality obligation by the recipient; or independently developed by the recipient without the use or benefit of the disclosing Party’s Confidential Information.

## **9. INSURANCE**

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9.1 **Required Coverage**. FSMC shall maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the state of Maine. A Certificate of Insurance of FSMC's insurance coverage indicating these amounts must be submitted at the time of the award. The information below must be completed by Sponsor. (This is suggested language for insurance coverage; each Sponsor should consult with their insurance agent to ensure appropriate coverage)

a. Comprehensive General Liability - includes coverage for:

a. Premises – Operations;

b. Products - Completed Operations;

c. Contractual Insurance;

d. Broad Form Property Damage;

e. Independent Contractors;

f. Personal Injury.

$2,000,000 Combined Single Limit;

b. Automobile Liability: $1,000,000 Combined Single Unit;

c. Workers' Compensation-Statutory; Each party shall maintain Workers' Compensation Insurance coverage as required by state law, and Employers' Liability in the amount of one million dollars ($1,000,000.00) for each accident covering all employees employed in connection with child nutrition program operations;

d. Excess Umbrella Liability: $2,000,000 Combined Single Unit.

9.2 **Sponsor as Additional Insured**. Sponsor shall be named as additional insured on General Liability, Automobile, and Excess Umbrella. This is recommended, but optional. Delete if you do not want to include.

9.3 **FSMC Property Coverage**. 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 Sponsor, including but not limited to, equipment, supplies, clothes, garments and other articles owned by their employees.

9.4 **Notice to Sponsor**. The contract of insurance shall provide for notice to Sponsor of cancellation of insurance policies 30 days before such cancellation is to take effect. Sponsor may ask for proof of such direction in the form letter from the insurance company.

## **10. CERTIFICATIONS**

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10.1 **Energy Efficiency**. FSMC shall comply with the standards and policies relating to energy efficiency issued in compliance with the Energy Policy and Conservation Act (P.L.94-163, 89 Stat. 871).

10.2 **Health Certification**. The FSMC shall have state or local health certification for any facility outside the Sponsor in which it proposes to prepare meals, if applicable, and must maintain this health certification for each Contract Term.

10.3 **Contract Work Hours and Safety Standards Act**. FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act 40 U.S.C. §327-330, as supplemented by Department of Labor regulation, 29 CFR 5. Under Section 103 of the Act, FSMC shall be required to compute the wages of every laborer based on a standard workday of eight hours, and a standard work week of 40 hours. Work in excess of the standard workday or standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or 40 hours in any work week.

10.4 **Equal Employment Opportunity**. FSMC shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, 41 CFR 60. The [non-Federal entity](https://www.law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=e70d4d5b3d21f635ea2aec391214bde6&term_occur=999&term_src=Title:2:Subtitle:A:Chapter:II:Part:200:Subpart:D:Subjgrp:31:200.321) must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, small businesses, and labor surplus area firms are used when possible.

10.5 **Civil Rights Law**. FSMC shall comply with the following civil rights laws, as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFRs 15, 15a, and 15b; the Americans with Disabilities Act; FNS Instruction 113-1, Civil Rights Compliance and Enforcement in School Nutrition Programs; 28 CFR Part 35, Title II, Subtitle A; and the ADA Amendments Act of 2008.

10.6 **Independent Price Determination.** FSMC has signed the Certification of Independent Price Determination, which is included in this document and made a part of this contract.

10.7 **Disbarment, Suspension, Ineligibility, and Voluntary Exclusion**. FSMC certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. **(2 CFR sections 180 and 417)**. Contract renewals that do not include this certification will not be accepted for consideration.

10.8 **Clean Air Act**. FSMC shall 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).

10.9 **Lobbying Certification**. FSMC has signed the Lobbying Certification, which is included in this document and made a part of this contract. If applicable, FSMC has also completed and submitted Standard Form-LLL, Disclosure Form to Report Lobbying. The Certification Regarding Lobbying and a Disclosure of Lobbying Activities form (2 CFR Section 418) must accompany each subsequent four (4) additional one-year renewals (2 CFR sections 180 and 417). Contract renewals that do not include this certification will not be accepted for consideration.

10.10 **Copeland Act**. FSMC shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C.874) as supplemented in Department of Labor regulations (29 CFR 3).

10.11 **Davis-Bacon Act**. FSMC shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR 5).

10.12 **Other Pertinent Laws**. FSMC shall comply with all other pertinent state and federal laws.

## **11. MISCELLANEOUS**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

11.1 **Proposal Specifications**. FSMC shall comply with the provisions of the proposal specifications, which are hereby in all respects made a part of this contract including all agreed to negotiations between Sponsor and selected FSMC which have been approved in writing by the SA.

11.2 **Subcontracting Prohibited**. No provision of this contract shall be assigned or subcontracted. **[7** **CFR 225.6(l)(2)(ii)]**

11.3 **Best Commercial Practices**. Any silence, absence, or omission from the contract specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only materials (e.g. food, supplies, etc.) and workmanship of a quality that would normally be specified by Sponsor are to be used.

11.4 **Claims for Adjustment**. Payments on any claim shall not preclude Sponsor from making a claim for adjustment on any item found not to have been in accordance with the provisions of this contract and proposal specifications.

11.5 **Program Review Findings**. Sponsor shall be responsible for ensuring the resolution of program review and audit findings.

11.6 **State Agency Review**. This contract is subject to review and approval by the SA.

11.7 **Financial Soundness**. Sponsor and FSMC shall work together to ensure a financially sound operation.

11.8 **Unallowable Charges**. All costs resulting from contracts that do not meet the requirements of 7 CFR 225 are unallowable costs. nonprofit school food service account expenses. When Sponsor fails to incorporate the SA required changes to solicitation or contract documents, all costs resulting from the subsequent contract award are unallowable charges to the SFSP.

11.9 **Execution**. After the complete RFP/contract is approved by the SA, the contract must be signed by all local parties. Changes or amendments are not valid unless approved in writing by the SA prior to execution.

11.10 **Contract Entirety**. This solicitation/Contract, exhibits, and attachments constitute the entire contract between the Sponsor and FSMC and may not be changed, extended orally, or altered by course of conduct. No other FSMC contracts will be signed by the Sponsor. It is further agreed between the Sponsor and FSMC that the exhibits, attachments, and clauses attached and designated are hereby in all respects made a part of the Contract.

11.11 **Binding Contract**. Each party to the Contract represents and warrants to the other that: (a) it has the right, power and authority to enter into and perform its obligations under the Contract and (b) it has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract, and (c) the Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

11.12 **No Waiver**. No course of dealing or failure of the Sponsor to enforce strictly any term, right, or condition of the Contract shall be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of the Contract shall operate as a waiver of any other term, right, or condition.

11.13 **Civil Rights Act**. The FSMC shall comply with Title VI of the Civil Rights Act of 1964, as amended; USDA regulations implementing Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency; Age Discrimination Act of l975; 7 C.F.R. Parts 15, 15a, and 15b; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement—Nutrition Programs and Activities, and any additions or amendments.

11.14 **Parties to the Contract**. Neither the Maine Department of Education nor the United States Department of Agriculture are parties to the Contract and are not obligated, liable, or responsible for any action or inaction by the Sponsor or the FSMC. The Sponsor has full responsibility for ensuring the terms of the Contract are fulfilled.

11.15 **Hold Harmless**. To the fullest extent permitted by law, the FSMC agrees to indemnify, defend, and hold harmless the Sponsor and its respective agents, officers and employees from and against any and all claims, demands, suits, liabilities, injuries (personal or bodily), property damage, causes of action, losses, costs, expenses, damages, or penalties, including, without limitation, reasonable defense costs, and reasonable legal fees, arising or resulting from, or occasioned by or in connection with (i) any bodily injury or property damage resulting or arising from any act or omission to act (whether negligent, willful, wrongful, or otherwise) by the FSMC, its subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable; (ii) failure by the FSMC or its subcontractors to comply with any Laws applicable to the performance of the Services; (iii) any breach of the Contract, including, without limitation, any representation or warranty provided by the FSMC herein; (iv) any employment actions of any nature or kind including but not limited to, workers compensation, or labor action brought by the FSMC’s employees; or (v) any identity breach or infringement of any copyright, trademark, patent, or other intellectual property right. This clause shall survive termination of the Agreement.

11.16 **Student Records**. The FSMC will comply with the relevant requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and the Maine Public Records Law regarding the confidentiality of student “education records” as defined in FERPA. Any use of information contained in student education records to be released must be approved by the Sponsor. To protect the confidentiality of student education records, the FSMC will limit access to student education records to those employees who reasonably need access to them in order to perform their responsibilities under the Contract. Any student records in FSMC’s possession shall be returned to Sponsor when no longer needed for the purposes for which they were provided, or at Sponsor’s written request, they shall be permanently destroyed and the FSMC shall provide written confirmation to the Sponsor upon the destruction of student records.

11.17 **Assumptions**. Financial terms of the Agreement are based upon existing conditions and the following assumptions. If there is a material change in conditions, including, without limitations, changes to the following assumptions, the contract (1) may be terminated at the end of the current term or (2) continue under the same terms as written, whichever is mutually agreed upon.

1. Sponsor 's policies, practices, and service requirements shall remain materially consistent throughout the contract term and any subsequent contract renewals;

2. Legislation, regulations, and reimbursement rates that create changes in the SFSP shall remain materially consistent throughout the year;

3. The government reimbursement rates in effect shall remain materially consistent throughout the year;

4. Meal components and quantities required for applicable CNPs remain consistent with prior years;

5. Service hours, service requirements, and type or number of facilities selling food and/or beverages on Sponsor's premises shall remain materially consistent throughout the year;

6. The state or federal minimum wage rate and taxes in effect shall remain materially consistent throughout the year;

7. Sponsor revenue credited to the nonprofit food service program shall include all state and federal amounts received specifically for child nutrition operations.

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

#### **Summer Food Service Program (SFSP) Meal Pattern** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

#### Breakfast Meal Pattern

#### Select All three Components for a Reimbursable Meal

|  |  |  |
| --- | --- | --- |
| 1 milk | 1 cup | fluid milk |
| 1 fruit/vegetable | ½ cup | juice[[1]](#footnote-1), and/or vegetable |
| 1 grain/bread[[2]](#footnote-2) | 1 slice1 serving¾ cup½ cup½ cup | Bread orCornbread or biscuit or roll or muffin orCold dry cereal orHot cooked cereal orPasta or noodles or grains |

1 Fruit or vegetable juice must be full-strength.2Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole-grain or enriched or fortified.

*Lunch or Supper Meal Pattern*

#### Select All Four Components for a Reimbursable Meal

|  |  |  |
| --- | --- | --- |
| 1 milk | 1 cup | fluid milk |
| 2 fruits/vegetables | ¾ cup | Juice , fruit and/or vegetable |
| 1 grains/bread [[3]](#footnote-3) | 1 slice1 serving½ cup½ cup | Bread orCornbread or biscuit or roll or muffin orHot cooked cereal orPasta or noodles or grains |
| 1 meat/meat alternate | 2 oz2 oz2 oz1 large½ cup4 Tbsp1 oz8 oz | Lean meat or poultry or fish orAlternate protein product orCheese orEgg orCooked dry beans or peas orPeanut or other nut or seed butter orNuts and/or seedsyogurt |

1 Fruit or vegetable juice must be full-strength. Full strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.

2 Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole-grain or enriched or fortified.

3 A serving consists of the edible portion of cooked lean meat or poultry or fish.

4 Nuts and seeds may meet only one-half of the total meat/meat alternate serving and must be combined with another meat/meat alternate to fulfill the lunch or supper requirement.

5 Yogurt may be plain or flavored, unsweetened or sweetened.

#### Snack(Supplement) Meal Pattern

#### Select Two of the Four Components for a Reimbursable Snack

|  |  |  |
| --- | --- | --- |
| 1 milk | 1 cup | fluid milk |
| 2 fruits/vegetables | ¾ cup | Juice , fruit and/or vegetable |
| 1 grains/bread [[4]](#footnote-4) | 1 slice1 serving¾ cup½ cup½ cup | Bread orCornbread or biscuit or roll or muffin orCold dry cereal orHot cooked cereal orPasta or noodles or grains |
| 1 meat/meat alternate | 1 oz1 oz1 oz1/2 large1/4 cup2 Tbsp1 oz1 oz | Lean meat or poultry or fish orAlternate protein product orCheese orEgg orCooked dry beans or peas orPeanut or other nut or seed butter orNuts and/or seedsyogurt |

1 Fruit or vegetable juice must be full-strength. Juice cannot be served when milk is the only other snack component.

2 Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole-grain or enriched or fortified.

3 A serving consists of the edible portion of cooked lean meat or poultry or fish.

4 Yogurt may be plain or flavored, unsweetened or sweetened

## **21 Day Cycle Menu**

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The Sponsor must include a 21 Day Cycle Menu for each of the programs being requested (Breakfast, Lunch, Supper, and/or Snack). Page 34 of the USDA SFSP Nutrition Guide has examples that can be used/adapted.

## **FSMC Bid-Rigging Certification**

To be completed by the FSMC.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_a duly (Authorized Representative/Agent)

authorized agent of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

(Contractor)

do hereby certify that neither \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

(Contractor)

nor any individual presently affiliated with\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

(Contractor)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, has been barred from bidding on a public contract as a

result of a violation of Title 17-A, § 151: Criminal Conspiracy of the Maine State Statutes.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(signed) Authorized Agent / Representative (signed) Contractor

## **Certificate of Independent Price Determination**

To be completed by the FSMC. Sponsor must also sign if accepting the bid.

Both the Sponsor and the Food Service Management Company (offeror) shall execute this Certificate of Independent Price Determination.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Food Service Managment Co. Name of Sponsor

A. By submission of this offer, the offeror certifies and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

1. The prices in this offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;

2. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening in the case of an advertised procurement, or prior to award in the case of a negotiated procurement, directly or indirectly to any other offeror or to any competitor; and

3. No attempt has been made or will be made by the offeror to induce any person or firm to submit or not to submit, an offer for the purpose of restricting competition.

B. Each person signing this offer on behalf of the Food Service Management Company certifies that:

1. He or she is the person in the offerors organization responsible within the organization for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above; or

2. He or she is not the person in the offeror's organization responsible within the organization for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate, in any action contrary to (A)(1) through (A) (3) above, and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above.

**To the best of my knowledge, this Food Service Management Company, its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Signature of FSMC Authorized Representative Title Date

**In accepting this offer, the Sponsor certifies that no representative of the Sponsor has taken any action which may have jeopardized the independence of the offer referred to above. *Note: Accepting a bidder's offer does not constitute award of the contract.***

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Signature of Sponsor’s Authorized Representative Title Date

## **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion**

To be completed by the FSMC.

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

• Checking the Excluded Parties List found at the System for Award Management [www.sam.gov](https://www.sam.gov);

• Collecting a certification that the entity is neither excluded nor disqualified. Since a Federal certification form is no longer available, the grantee or sub-grantee electing this method must devise its own;

• Including a clause to this effect in the sub-grant agreement and in any procurement, contract expected to equal or exceed $25,000, awarded by the grantee or a sub-grantee under its grant or sub-grant;

• Sub-grantee and contractors must obtain a UEI Number. All Federal Government awards are required to have an UEI number. To obtain an UEI number, please visit SAM.gov. There is no charge for a UEI number. The UEI number serves as a means of tracking and identifying applications for Federal assistance and is required on all applications for Federal assistance...

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

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON THE NEXT PAGE)

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Organization Name PR/Award Number or Project Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Signature(s)

Instructions for Certification

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant

knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," 'lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and /or debarment.

## **Certification Regarding Lobbying**

To be completed by FSMC if the bid exceeds $100,000.

This certification is applicable to Grants, Sub-grants, Cooperative Agreements, and Contracts Exceeding $100,000 in Federal funds. Contractors that apply or bid for such an award must file the required certification.

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. 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, an employee of a Member of Congress, or any Board Member, officer, or employee of [School] Independent School District 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, an officer or employee of Congress, an employee of a Member of Congress, or any Board Member, officer, or employee of [School] Independent School District 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 sub-recipients shall certify and disclose accordingly.

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Food Service Management Company Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Food Service Management Company Address

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date

## **FSMC Bid Summary**

[Sponsor to complete Column A] [FSMC to complete Columns B and C]

This document contains a bid solicitation for the furnishing of management services for the operation of the nonprofit food service programs and sets forth the terms and conditions applicable to the proposed procurement. Upon acceptance, this document shall constitute the contract between the bidder and the Sponsor for the period beginning July 1, 20xx and ending June 30, 20xx, and sets forth the terms and conditions applicable to the procurement.

Bids should be made as if no USDA Foods were to be used in meals.

The bidder shall not plead misunderstanding or deception because of such estimate of quantities, or of the character, location, or other conditions pertaining to the bid solicitation or the contract

|  |  |  |  |
| --- | --- | --- | --- |
|  | Column A | Column B | Column C |
| **Meal Type** | **Sponsor Projected Annual Units for** **SY 25** | **FSMC Bid Price** **Per Meal** | **Total**(projected annual units x per meal bid price) |
| SFSP Breakfast |  |  |  |
| SFSP Lunch |  |  |  |
| SFSP Snack |  |  |  |
| SFSP Supper |  |  |  |
| **Total Bid Price ( sum total of Column C)** |  |

Annual Escalator: Upon renewal, an annual per meal rate change not to exceed the CPI rate for Food Away from home per the contract language in Section 4.4 will be applied.

By submission of this bid, the bidder certifies that, in the event the bidder receives an award under this solicitation, the bidder shall operate in accordance with all applicable current program regulations. This agreement shall be in effect for the period specified, not to exceed one year, and may be renewed by mutual agreement for four additional one-year Contract Terms.

\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Signature of Bidder Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name of Bidder

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Street Address

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City State Zip Code

## **Final Contract**

Once the contract is approved by the Maine Department of Education and signed by all local parties, any changes or amendments are not valid unless approved in writing by the DOE prior to contract execution.

For FSMCs that will prepare meals for this contract at a facility which the FSMC does not own (e.g., a school), clear written consent from the owner of the preparation facility to use their kitchen must also be included. This may be a letter or email.

ACCEPTANCE OF CONTRACT

\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Agreement Number Name of Organization

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Signature of Sponsor Title

Authorized Representative

Maine Department of Education, Child Nutrition Programs Approval

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Signature of ME DOE Representative Title

1. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. [↑](#footnote-ref-4)