

Submitted by Department Head/Official to State's Attorney on 7 / 11 / 17 by JVG
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SAO approval: X returned for editing/comments: _____
Submitted by Department Head/Official to Commission Office on 7 / 12 / 17 by JVG
Placed on Commission Agenda for / / by _____, Commission Office

FOOD SERVICE MANAGEMENT COMPANY
FIXED PRICE
REQUEST FOR PROPOSAL (RFP)
FOR CONTRACT¹

RFP Number: MCJDC2017

Send Sealed Proposal to:

Minnehaha County Juvenile Detention Center
Jamie Gravett c/o Minnehaha County Auditor's Office
415 N. Dakota Avenue
Sioux Falls, SD 57104

All proposals must be received by:

Time: 5:00 PM
Date: August 8, 2017

To be filled in after contract awarded by SFA

FSMC awarded contract:

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I. INTRODUCTION

This document contains a Request for Proposal for providing food service management services for Minnehaha County Juvenile Detention Center School Food Authorities' (SFA) participation in the United States Department of Agriculture's (USDA) Child Nutrition Programs (CNP) and sets forth the terms and conditions applicable to the proposed procurement. Upon acceptance, this document shall constitute the contract between the offeror and the School Food Authority.

The SFA has full responsibility for ensuring that the terms of the contract are fulfilled. SFAs must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of the contract. The SD Department of Education (SDDOE) is never a party to any contract between a SFA and a food service management company (FSMC). CANS has no involvement with the enforcement of this contract; however, payment can be denied for all meals received / purchased under an invalid contract.

The SFA alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the SFA of any contractual responsibilities under its contracts. USDA will not substitute its judgment for that of the SFA unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

II. REQUEST FOR PROPOSAL/INSTRUCTIONS

A. Legal Notice

Notice is hereby given that Minnehaha County Juvenile Detention Center School Food Authority, hereinafter referred to as the SFA, intends to examine alternatives to its present food service program, including self-preparation.

No intent should be construed from this legal notice that SFA intends to enter into a contract with any party for alternative food service unless, in the sole opinion of SFA, it is in SFA's best interest to do so. All costs involved in submitting a response to this Request for Proposal (RFP) shall be borne in full by the interested party.

SFA reserves the right to accept any proposal which it determines most favorable to the interest of SFA and to reject any or all proposals or any portion of any proposal submitted which, in SFA's opinion, is not in the best interest of SFA.

The Offeror to this RFP will be referred to as the FSMC, and any contract that may arise from this Request for Proposal (RFP) will be between the FSMC and the SFA.

B. Request for Proposal

1. SFA will consider a Fixed-fee Proposal
2. In accepting proposals, Minnehaha County Juvenile Detention Center SFA reserves the right to reject any and all proposals and to waive any minor informality in order to take the action which it deems to be in the best interest of SFA.
3. Offerors must submit a complete response to this Request for Proposal (RFP), including all certifications, for consideration as a responsive proposal.
4. Contracts entered into on a basis of submitted proposals are revocable if contrary to law.
5. See Standard Terms and Conditions herein below

C. Procurement Method

1. Procurement Method will be the Competitive Proposal which differ from the traditional sealed bid method with the application of the following requirements:
2. The SD template is required for proposals. The SFA must incorporate all required changes to its solicitation documents before issuing those documents
 - a. Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
 - b. Proposals will be solicited from an adequate number of qualified sources;
 - c. SFA must have a written method for conducting technical evaluations of the proposals received and for selecting awardees;
 - d. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered;
 - e. Awards will be made only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
3. Discussions for the purpose of clarification may be conducted with responsible offerors who submit proposals determined to be considered for award selection, to assure full understanding of all terms and conditions of the RFP response and Contract requirements following state regulations and SFA policy.
4. In conducting these discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
5. All procurement transactions shall be conducted in a manner that provides maximum open and free competition consistent with 2 CFR § 200.319. Some of the situations considered to be restrictive of competition include but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business, requiring unnecessary experience and excessive bonding, Noncompetitive pricing practices between firms or between affiliated companies, noncompetitive awards to consultants that are on retainer contracts, organizational conflicts of interest, specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement, and any arbitrary action in the procurement process.
6. The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. (2 CFR 200.319(b))
7. The SFA must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. This applies if the SFA has a parent, affiliate, or subsidiary organization that is not a state, local government or Indian tribe.
8. SFA will maintain records sufficient to detail the significant history of the procurement to include, but not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

D. Pre-Proposal Meeting / Timeline

A meeting with interested offerors to review the specifications, to clarify any questions, and for a walkthrough of the facilities with school officials will be at

Date/ Time: August 1, 2017/1:00 PM_

Location: Minnehaha County JDC, 4200 S. West Ave., Sioux Falls, SD 57103

Attendance is *not required*.

Vendor presentations will be scheduled at a *later date* for presentation to the committee.

E. Proposal Submission and Award

1. SFA must use the SD prototype FSMC Request for Proposal and Contract. SFAs not completing the required procurement procedures cannot be approved for participation in the USDA reimbursement programs.
2. *Three* copies of Competitive Proposals are to be submitted to:
Name of SFA Contact: Jamie Gravett,
Mailing Address: C/O Auditor's Office, 415 N. Dakota Ave.,
Physical Address: _____,
City: Sioux Falls,
State/Zip: South Dakota 57104,
3. Proposals must be submitted by:
Time: 5:00 PM, (*proposals will not be accepted after this time*)
Date: August 8, 2017
Proposal submitted marked "**Food Service Management Proposal, # MCJDC2017,**"
4. To be considered, each offeror must submit a complete response to this solicitation **using the forms provided**.
 - a. No other documents submitted with the RFP and Contract will affect the Contract provisions, and **there may be no modifications to the RFP and Contract language**.
 - b. In the event that Offeror modifies, revises, or changes the RFP and/or Contract in any manner, SFA may reject the offer as non-responsive.
5. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered (2 CFR 200.320)
 - a. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible offeror is one whose financial, technical, and other resources indicate an ability to perform the services required.
 - b. Offeror shall submit for consideration such records of work and further evidence as may be required by the SFA's Board.
 - c. Failure to furnish such records and evidence, or the inclusion of any false or misleading information therein shall be sufficient cause for the rejection of the proposal or termination of any subsequent contract.
 - d. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.
6. The qualification data shall be submitted by each offeror along with the proposal, and shall include information that offeror is doing business with like school systems and is familiar with the regulations pertaining to operations in such environments, if applicable. FSMCs are not required to be doing business already in like SFAs.
7. Offerors or their authorized representatives must fully inform themselves as to the conditions, requirements, and specifications before submitting proposals; failure to do so will be at the offeror's own risk who cannot secure relief on plea of error.
8. Any person that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions or other documents for use by the SFA in conducting a procurement under the USDA entitlement programs specified in 2 CFR 200.319 shall be excluded from competing for such procurements. Such persons are ineligible for contract awards resulting from such procurements regardless of the procurement method used.
9. The SFA is not liable for any cost incurred by the offeror in submitting a proposal. **Paying the FSMC from Child Nutrition Program (CNP) funds is prohibited until after July 1, 2017 and the Contract is approved by CANS and signed by the SFA.**

10. If additional information is requested, please contact [Jamie Gravett, jgravett@minnehahacounty.org](mailto:jgravett@minnehahacounty.org). Any additional information provided to one offeror will be available to all. **Please submit requests via e-mail only.** *In order to assure understanding of the question and to facilitate prompt sharing of information, **no phone calls will be accepted.***

11. Award Criteria:

- a. Proposals will be evaluated by the SFA committee based on the offer per meal/meal equivalent and the criteria, categories and assigned weights as stated herein below (to the extent applicable).
- b. Committee members must consist of SFA employees familiar with the regulations and requirements of the child nutrition programs.
- c. If a committee member is an agent for, employee of or in any manner associated with a FSMC, that FSMC may not participate in the RFP and subsequent contract or comply with the conflict of interest policies of the SFA or district.
- d. Each area of the award criteria must be addressed in detail in the Proposal.
- e. SFA will maintain records sufficient to detail the significant history of a procurement to include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

12. Weight Criteria

- a. After determining that a response satisfies the mandatory requirements stated in the RFP, the SFA shall use both objective analysis and subjective judgment in conducting a comparative assessment of the response. While price alone is not the sole basis for award, price remains the **primary consideration** when awarding a contract under this competitive request for proposal.
- b. In addition, after the initial screening process and review of references, a question and answer interview may be conducted with the FSMC. The FSMC may also be asked to make an oral presentation of their proposal as submitted with no modifications made to the RFP and contract language.
- c. The SFA's officers, employees, board members, or agents shall neither solicit nor accept gratuities, favors, gifts, nor anything of monetary value from contractors nor potential contractors in accordance with all laws, regulations, and policies. (2 CFR 200.318). To the extent permissible under state law, rules, or regulations, such standards shall be provided for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards.

Points	Criteria
50	Cost
15	Service Capability Plan (Proposed food service team such as Director and describes FSMC' s ability to provide services as stated in the RFP)
20	Experience, References with like school systems and familiarity with regulations pertaining to such operations OR Plans for operation if this is a new company
5	Financial Condition/Stability, Business Practices
5	Accounting and Reporting Systems
5	Personnel Management
100	TOTAL

F. Late Proposals

Any proposal submitted after the time specified for receipt will not be considered and will be returned unopened.

G. Altering, Amending or Withdrawing Proposal No proposal may be altered, amended or withdrawn after the specified time for opening proposals.

H. Calculation of Time

Periods of time, stated as a number of days, shall be calendar days.

I. Firm Offer

- a. By submitting a response to this Request for Proposal, and if such response is not withdrawn prior to the time for opening proposals arrives, offeror understands and agrees that they are making a firm offer to enter into a contract, which may be accepted by the SFA and which will result in a binding contract.
- b. Such proposal is irrevocable for a period of ninety (90) days after the time of opening the proposal has passed. _____ **(FSMC must initial and date to show agreement)**

J. Final Contract

A duplicate copy, preferably electronic, of the submitted proposal and all required documents listed below must be provided to the SFA for submission to CANS. The complete contract to submit to CANS for approval includes:

- a. All documents included by the SFA in the CANS approved RFP template
- b. The FSMC responses and documents.
- c. Any additional negotiations that have been completed and terms that are included in additional documents, including guaranty, future financing of equipment or IT systems that are not included in the CANS RFP/contract template
- d. All documents submitted by the FSMC that have been mutually agreed upon by both parties (i.e. worksheets, attachments submitted by the FSMC in the proposal, and operating cost sheets) and identified in the terms and conditions of this RFP.
- e. All of the above terms need to be added to the original CANS approved RFP/ contract and signed by all parties.

III. SCHOOL FOOD AUTHORITY (SFA) INFORMATION – (SFA COMPLETE SECTION III)

A. Provisions

1. This contract shall become effective September 1, 2017, and terminate on June 30, 2018. The effective date may be different from July 1, but the termination date must be June 30. The effective date may not occur prior to the date on which the contract is signed by both parties and approved by the State agency (7CFR 201.15(a)(10))
2. The FSMC shall conduct the food service in such a manner as will ensure compliance with the laws, rules, and regulations of the state of South Dakota (SD), the SD Department of Education’s Child & Adult Nutrition Services, hereinafter referred to as the State Agency (SA), and the United States Department of Agriculture (USDA) regarding Child Nutrition Programs.
3. The SFA currently operates or desires to add management of the following programs/services. If a program is added after the contract is in place (for example, breakfast program), the appropriate procurement procedures will be followed.

	Currently Operates	Considering Addition
National School Lunch Program (NSLP)		
Lunch (Full Year)	X	<input type="checkbox"/>
Afterschool Snack (School Year)	X	<input type="checkbox"/>
School Breakfast Program (SBP)		
Full Year	X	<input type="checkbox"/>

4. The contract charge for meal service is based on an estimated minimum number of **365** full serving days. The school typically operates 7 days per week. The school is or X is not considering a switch to a four-day school week.
5. The FSMC shall provide meals that fully meet requirements for the appropriate program, with the exception that School Lunch and School Breakfast shall follow the phased-in menu-planning requirements as specified in USDA regulation.
6. Respondents should supply a proposal which offers a proposed contract priced for delivery of meals ready to be dished and served by SFA staff, as well as a contract priced for the delivery of meals already placed on a tray and delivered in a temperature controlled cart ready to be served.
7. The SFA X will will not require the FSMC to perform a security (background) check on any FSMC employee.
8. SFA has no employees for specific meal related only jobs. Our Officers serve the meals.
9. SFA X FSMC shall be responsible for any allowable costs for the storage and delivery of federally donated foods used by the food service program
10. SFA X FSMC shall be responsible for any costs resulting from the processing of federally donated foods.
11. The SFA serves meals seven days a week. Meals served are Breakfast, Lunch, Afternoon Snack, Supper, and an Evening Snack.
12. Attached is a sample 21-day cycle menu prepared by the SFA for all meals to be served under this contract. This menu must be used for the first 21-days of the new school year. Changes after that must be approved by the SFA.
 X Respondents should develop and submit a 21-day menu cycle for all appropriate meals to be served under this contract. This menu must be used for the first 21-days of the new school year. Changes after that must be approved by the SFA.

Questions and requests for additional information should be referred to Jamie Gravett_ at _(605) 367-4313_ or jgravett@minnehahacounty.org_.

B. Contract Additional Provisions

1. *Menus with serving sizes must be submitted to the SFA three weeks in advance of service to determine compliance with established meal patterns.*
2. *The menus shall include a nutrient analysis to demonstrate compliance with the nutrient standards;*
3. *Records shall be maintained at FSMC for a period of three years from the close of each year's operation. All records pertaining to the operations of food service shall be readily available and open for inspection and/or audit by the County and USDA.*
4. *Meals will be delivered on a daily basis to the program location according to an agreed-upon schedule. The meals shall be delivered no later than 10 minutes prior to meal time and no earlier than 20 minutes prior to serving time*
5. *Meal service times shall be established at least annually. The FSMC is responsible to have meals ready to serve during those times.*
6. *The daily number of meals to be delivered to the site may be made by the school no later than two hours prior to the meal scheduled..*
7. *Billing will be submitted at least monthly, an invoice for meals served to youth at the program location. A breakdown of types of meals served, number of meals served, special meals, and partial day meals must be included. Specific counts for each day must be included. Snacks must be identified separately*
8. *Company agrees to meet USDA requirements so SFA receives additional performance-based per meal reimbursement.*
9. *The FSMC is responsible for the required signage regarding meals and choices. Equipment and maintenance of the signage is the responsibility of the FSMC. Plans to fasten signs to the wall must be cleared with the SFA.*
10. *FSMC shall maintain country of origin labels for products*

C. Division of Responsibilities for Food Service Program

<i>Those marked with an "X" are allowable costs that will be the responsibility of the FSMC and allowable costs that will be the responsibility of the SFA.</i>	FSMC	SFA
Food Cost (food, condiments, beverages)	X	
• Food Purchasing	X	
• Processing of Invoices	X	
• Payment of Invoices	X	
• Donated Food Inventory Control	X	
• Storage/Delivery Charges of Donated Foods	X	
• Inter-SFA Delivery of Donated Foods	X	
Labor Cost		
• Payment of Managers, and/or Supervisors:	X	
• Payment of Hourly Wage Employees	X	

• Payroll Taxes of all Employees	X	
• Preparation of all Employee Payroll	X	
• Processing of all Employee Payroll	X	
• FICA	X	
• Retirement for Contractor's employees	X	
• Unemployment Insurance for Contractor's employees	X	
• Workers' Compensation for Contractor's employees	X	
• Health Insurance for Contractor's employees	X	
• Life Insurance and Disability for Contractor's employees	X	
• Holidays for Contractor's employees	X	
• Labor Charges for Supervision of Outside Groups using Facilities	X	
• Student Labor (IF Any)	X	
Other Purchased Services		
• Telephone, local service		X
• Telephone, long distance		X
• Internet service		X
• Utilities (heat, power, water)		X
• Extermination		X
• Laundry	X	
• Removal of Trash and Garbage from Kitchen	X	
• Removal of Trash and Garbage from Premises		X
• Other (Specify _____)		
Supplies		
• Disposable Service ware	X	
• Cleaning Supplies	X	
• Paper Supplies	X	
• Uniforms	X	
• Menu Paper	X	
• Menu Printing	X	
• Promotional Materials	X	
• Nutrition Education and Materials	X	
• Office Supplies	X	
• Postage	X	
Equipment and Facilities		
• Replacement of Capital/Major Equipment		X
• Replacement of Expendable/Minor Equipment	X	
• Repair of Equipment (Normal wear and tear)	X	
• Routine Cleaning of Cafeteria Walls and Floors		X
• Routine Cleaning of Kitchen Walls and Floors		X
• Periodic Waxing and Buffing of Floors		X
• Sanitation and Proper Use of Equipment		X
• Daily Cleaning of Cafeteria Tables and Chairs		X
• Sanitary Toilet Facilities		X

Capital Improvement		
• Building Structural Changes		X
• Painting		X
• Other		
• NSLP Application Agreement Forms		
• NSLP Free/Reduced Application Distribution		X
• NSLP Free/Reduced Application Approval and Direct Certification		X
• NSLP Free/Reduced Application Verification		x
• Records Supporting Reimbursement Claims	X	X
• Claims for Federal & State Reimbursement		X
• Point-of-Sale Accountability		X
• Receipt of Federal & State Reimbursement		X
• Pricing of NSLP Meals		N/A
• Collection and deposit of Daily Cash Receipts	N/A	
• Menu Development	X	
• Menu Distribution	X	
• Pricing of A la Carte Offerings	N/A	
• Inter-SFA Deliver to Satellite Areas	N/A	
• Vehicle Lease or Purchase	X	
• Vehicle Maintenance	X	
• Vehicle Fuel and Oil	X	
• Vehicle Taxes	X	
• Vehicle Insurance	X	
• Vehicle Licenses	X	
• Vehicle Registration	X	
• Vehicle Depreciation	X	
• Audit fees	X	
• Licenses/Permits	X	X
• Mileage for Employee training, meetings, etc.	X	
• Employee Physicals	X	
• Sales Tax	X	
• Performance Bond (if applicable)	X	
• Liability Insurance	X	
• Promotions	X	
• Signage	X	
• Miscellaneous (Specify _____)		

D Labor Worksheet – *The SFA does not employ specific food service employees, so there are none to be retained. The SFA utilizes correctional staff to serve meals. The SFA does not require the FSMC to provide staff during meal times at the SFA’s location other than for the delivery of meals.*

E. SFA SITE/BUILDING LISTING – GENERAL DATA

School	Address	Enrollment by Grade Levels			Type of Meal Service (ex. on-site prep)	No. of serving periods	Beginning and Ending Times of Meal Service			No. Serving Days per week
		K-5	6-8	9-12			Breakfast Snack	Lunch		
Minnehaha Co. JDC	4200 S. West Ave. Sioux Falls, SD 57105	X	X	X	Off Site Prep, Meal Delivery	5	0730-0800	1130-1200	1415-1430	7 (year round)
							Supper 1800-1830	Even. Snack 2000-2015		

IV. FSMC INFORMATION – (FSMC Complete Section IV)

Fixed Price Financial Agreements

The fixed price per meal, meal equivalency, and outside catered events will be subject to the percent change in the Consumer Price Index (CPI) for all Urban Consumers from May of the previous year to May of the current year, at the time of contract renewal. The specific CPI used will be published by Bureau of Labor Statistics.

The financial arrangements between the SFA and FSMC for the management of the school food services are as follows. If prices vary by age group, follow the same format and provide clear explanation.

A. FSMC COMPLETE THE INFORMATION BELOW FOR NSLP/SBP

AND OTHER PROGRAM INFORMATION AS REQUESTED

Fixed price per student lunch for the 2017-2018 regular school year:	\$
Fixed price per student breakfast for the 2017-2018 regular school year:	\$
Fixed price per after school snack for the 2017-2018 regular school year:	\$

1. The said invoices submitted shall be payable monthly by the SFA..
2. The solicitation and any resulting contract shall be governed in all respects by the laws of the State of South Dakota. The contractor shall comply with applicable federal, state, and local laws and regulations. Any claim or action arising under this agreement/contract shall have a venue in Minnehaha County, South Dakota.
3. The FSMC shall provide the SFA with a schedule of employees, positions, assigned locations, salaries, and hours to be worked on the Labor Worksheet.
4. **General Rate Information for all RFP/Contracts:**
 - a) All fee/rate increases shall be effective on a prospective basis on each anniversary date of this Contract and will be allowed only if approved in advance by SFA.
 - b) CPI Fee increases for the upcoming Contract renewal year must be submitted to SFA by April 1 of each year.
 - c) No other fee increases will be allowed.
 - d) For the purpose of computing the foregoing meal counts, the number of National School Lunch Program meals served to children shall be determined by actual count.
5. The FSMC will provide necessary documents to the SFA to show proof of financial stability.

B. Description and History of FSMC

Each FSMC shall furnish as part of their proposal a complete general description of experience in the field of school food service operations on additional sheets. Include the following:

1. Name and address of FSMC.
2. The duration and extent of experience in the operation of school food services, if available.
3. A list of operations and locations where FSMC is operating or has operated school food services. Include other program and services if included in this response. Give length of time service was provided. Provide the name, address, and telephone number of contact person of each operation.
4. A summary of the FSMC's experience during the past 3 years of successfully operating a school food service program requiring nutritious meals that comply with applicable regulations OR, if new, plans to successfully operate a food service program. Include a description of how changes to meal patterns and other requirements will be managed.

5. A table of FSMC organization and a plan for the administrative management, supervision, and staffing proposed under the specifications of this contract.

V. General Information - Terms and Conditions to be Included in RFP and contract

A. Definitions

The following definitions shall apply within this document and its attachments:

1. "Accounting Periods" means _____ (enter accounting period to use (e.g., first day of the month through the last day of the month).
2. "Allowable Cost" means costs that are allowable under 2 CFR 200 Subpart E, as applicable.
3. "Applicable Credit" " refers to the meaning established in 2 CFR 200.406.
4. "Buy American"—The term 'domestic commodity or product' means an agricultural commodity that is produced in the United States; and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.
5. "CANS" means Child & Adult Nutrition Services, the State agency responsible for administration of USDA child nutrition and food distribution programs.
6. "Charge" means any charge for an Allowable Cost that is:
 - i. Incurred by FSMC in providing the goods and services that are identified in SFA's Food Service Budget;
 - ii. Not provided for in the General and Administrative Expense Fee; and
7. "Child Nutrition Program (CNP) " means the USDA Child Nutrition Programs in which SFA participates
8. "Contract" means this RFP and Contract, the exhibits attached to this RFP and Contract and FSMC's Proposal.
9. "Direct Cost" means any Allowable Cost that is:
 - i. incurred by FSMC in providing the goods and services that are identified in SFA's Food Service Budget; and
 - ii. Reasonably necessary in order for FSMC to perform the Services hereunder. The term "Direct Cost" does not include any cost allocated to SFA as Charges, the General and Administrative Expense Fee, or any Management Fees.
10. "Effective Date" means **September 1, 2017**.
11. "Fixed Fee" Contracts that provide for fixed fees such as those that provide for management fees established on a per meal basis are allowed. The offer amount should be based on assumption that no donated USDA Foods will be available for use and includes all expected rebates, discounts and other applicable credits.
12. "FSMC's Proposal" means Food Service Management Company's response to the RFP and Contract.
13. "General and Administrative Expense Fee" means FSMC's fee for those services provided at SFA's Food Service Locations, listed in this contract.
14. "Meal Equivalent" In a fixed fee per meal contract, the FSMC is paid on the basis of the number of meals served. In order for the FSMC to be paid for non-meal food service, non-program meal sales activity and revenues are converted into a specific number of reimbursable lunches. The conversion of non-meal activity into an equitable number of meals is completed by dividing the total of cash receipts, other than from sales of NSLP and SBP meals, ACSP and SFSP meals, by the current equivalency factor. The equivalency factor for the Meal Equivalent shall remain fixed for the term of the Contract and all renewals.
15. "Non-profit School Food Service Account" means the restricted account in which all of the revenue from all food service operations conducted by the SFA principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service.

16. Procurement standards. SFA may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with nonprofit school food service account funds adhere to the standards set forth in 2 CFR 200 Part D and 7 CFR 200.21. SFA procedures must include a written code of standards of conduct meeting the minimum standards of 2 CFR 200.318, as applicable. No employee, officer or agent of the SFA 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. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards.
17. "Program(s)" or "Child Nutrition Program (CNP) (s)" means the USDA Child Nutrition Programs in which SFA participates.
18. "Program Funds" means all funds that are required to be deposited into the Non-profit School Food Service Account.
19. "Proposal" means Food Service Management Company's response to the RFP and Contract.
20. "RFP" means SFA's Request for Proposal and Contract, and all of its attachments.
21. "SDDOE" means the South Dakota Department of Education.
22. "Services" means the services and responsibilities of FSMC as described in this Contract, including any additional services described in this Contract.
23. "SFA" or "School Food Authority" as defined in 7CFR § 210.2.
24. "SFA's Food Service Budget" means the Food Service Budget for the Current School Year, which is attached to this Contract.
25. "SFA's Food Service Facilities" means areas, improvements, personal property, and facilities made available by SFA to FSMC for the provision of the food services as described herein.
26. "SFA's Food Service Program" means the preparation and service of food to SFA's students, staff, employees and authorized visitors, including the following programs: *National School Lunch Program (NSLP), School Breakfast Program (SBP), After School Care Snack Program (ACSP), Summer Food Service Program (SFSP), Fresh Fruit and Vegetable Program (FFVP), and a la carte food service.*
27. "SFA's Food Service Location(s)" means the schools or other locations where Program meals are served to SFA's schoolchildren.
28. "Summer Food Service Program (SFSP)" means either the Summer Food Service Program or the Seamless Summer Option identified herein, and in which SFA participates.
29. "USDA" means United States Department of Agriculture, Food and Nutrition Service.

B. PURPOSE

The SFA wishes to retain the FSMC to provide certain food and food related services at the sites specified by the SFA in this RFP. The contract is acknowledged by the SFA and FSMC to be satisfactory and adequate. Both parties agree as follows:

1. The food service program provided shall be operated and maintained as a benefit to the SFA students, faculty, and staff.
2. The FSMC must give evidence of financial stability.
3. The FSMC must be licensed to do business in the State of South Dakota.
4. The SFA reserves the right to accept and/or reject any and/or all proposals, if deemed to be in the best interest of the SFA.

5. Award shall be made to the qualified and responsible offer whose proposal is responsive to this solicitation. A responsible offer is one who's financial, technical, and other resources indicate an ability to perform the services required by this solicitation.
6. The FSMC or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting proposals; failure to do so will be at the FSMCs own risk and cannot secure relief on the plea of error.
7. The SFA is not liable for any cost incurred by the FSMC prior to the signing of a contract by all parties. **Paying the FSMC from the Child Nutrition Program funds is prohibited until the contract is approved by the SA, and signed by both parties.**
8. Provisions for equipment purchases that entail repayment to the FSMC over a period in excess of one year are not permitted.
9. No oral interpretation will be made to any FSMC as to the meaning of the RFP. Any oral communication will be considered unofficial and non-binding on the SFA. Unauthorized contact by the FSMC with other SFA employees or SFA Board Member regarding the RFP may result in disqualification. Each request for such interpretation shall be made in writing to the SFA. Every interpretation made to the FSMC will be in the form of an addendum to the specification, mailed to each FSMC, and will be on file at the school. All such addenda shall become part of the final contract and FSMC shall be bound by such addenda.
10. In the event the contract initially awarded by the SFA is terminated for any reason within 120 days of the due date for proposals, the SFA reserves the right to accept any other submitted proposal in conformance to the requirements of this solicitation including submission by the original date by which such proposals where due.

C. Intent

1. The FSMC shall conduct the food service in such a manner as will ensure compliance with the rules and regulations of the SA and the USDA regarding Child Nutrition Programs.
2. The fixed price per meal, meal equivalency, and outside catered events will be subject to the percent change in the Consumer Price Index for all Urban Consumers from May of the previous year to May of the current year, at the time of contract renewal. The specific CPI used will be published by the Bureau of Labor Statistics
3. The SFA is prohibited from entering into contracts that are on a "cost-plus-a-percentage of cost", "cost-plus-a-percentage-of-income" basis, or contracts that permit all income and expenses to accrue to the FSMC.
4. If the SFA determines that significant changes are necessary, the SFA must complete a new RFP and contract process. The following changes would normally not substantially change the contract.
 Number of schools - new schools added but enrollment stays constant;
 Changes in enrollment – normal fluctuation in student enrollment and the corresponding change expected in participation;
 Changes in meal prices charged to students by SFA - meal price changes (determined by the SFA). Cost increases - cost increases limited to a measurable index (such as the Consumer Price Index for all Urban Consumers); and
 Meal equivalency - minor adjustments to the per meal equivalency.
5. Examples of substantive changes that could require the SFA to redo the contract include; the addition of a program, such as the SBP; major changes to the formula for determining meal equivalency; a major shift in responsibilities for the SFA/FSMC staff; and significant changes in the basis for determining guaranteed returns.
6. The FSMC shall cooperate with the SFA in promoting nutrition education and coordinating the SFA's food service with classroom instructions.

7. The SFA reserves the right to operate present food and beverage vending machines in its facilities and expand their operation at their discretion.
8. The FSMC shall be an independent contractor and not an employee of the SFA. The food service employees of the FSMC shall not simultaneously be food service employees of the SFA.
9. The FSMC shall provide additional food service, such as banquets, parties, refreshments for meetings, etc., as requested by the SFA. The SFA or requesting organization will be billed for the actual cost of food, supplies, labor, and the FSMC's overhead and administrative expense if applicable to providing such service. USDA donated foods shall not be used for these special functions.
10. This contract constitutes the entire agreement between the SFA and the FSMC and may not be changed, extended orally, or altered by cause of conduct.
11. No provision of this contract for provision of school meals shall be assigned or subcontracted without prior written consent of the SFA. Subcontracting is not allowed for SFSP and CACFP only (7 CFR 225.6(h)(2)(ii) and 7 CFR 226.21(e)).
12. Any agreement between the SFA and the FSMC shall be subject to approval by the SA.

D. Duration and Termination

1. This contract shall be for the duration of no longer than one year; and options for the yearly renewal of a contract may not exceed four (4) additional years. (7 CFR 210.16(d))
2. Either party may cancel for cause with 60-day notification. (7CFR 210.16(d))
3. Any amendment, addendum, and/ renewal to the contract shall become effective at the time specified and must be sent to the SA.
4. Neither the FSMC nor the SFA shall be responsible for any losses resulting if the fulfillment of the terms of the contract is delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or any other acts which could not have been prevented by the exercise of due diligence.
5. The SFA shall ensure that the SA has reviewed and approved contract terms and that the SFA has incorporated all SA required changes into the contract or amendment before any contract or amendment to an existing FSMC contract is executed. Any changes made by the SFA or FSMC to a SA pre-approved prototype contract or SA approved contract term must be approved in writing by the SA before the contract is executed. When requested, the SFA must submit all procurement documents, including responses submitted by potential contractors, to the SA, by the due date established by the SA. (7 CFR 210.16(a)(10))
The SFA may cancel the contract for breach, as determined by the SFA which shall consider such items as, but not limited to, insufficient insurance coverage, failure to provide required period statements, and/or failure to enforce required standards or quality of service including but not limited to failure to maintain adequate personnel (whether arising from labor disputes) or any substantial change in ownership or proprietorship of the FMSC which in the opinion of the SFA is not in it's the best interest or failure to comply with the terms of the contract.
The SFA shall provide ten (10) calendar days written notice of contract breach and unless within ten (10) calendar days such neglect has ceased and arrangements made to correct, the SFA may cancel the contract by giving sixty (60) days notice in writing by registered or certified mail of its intention to cancel the contract

E. Fixed Price Financial Agreements

1. Meal equivalent factors (MEF) shall be utilized to determine equivalent meals to determine payment to the FSMC. The SFA shall require the FSMC to report all receipts from non-reimbursable meals including electronic or cash payments for second items, extras, A la

carte sales, adult or guest meals, catering, vending machines or vended meals to other entities, etc., (referred to as extra sales) each month to be converted to equivalent meals to be charged to SFA.

The meal equivalent factor shall be the sum of the Federal free lunch reimbursement (including performance-based payment) plus the value of USDA entitlement and bonus donated food.

The following formula shall be utilized to calculate the meal equivalencies:

Amount SFA is to be billed for meal equivalencies= (total extra sales) / (meal equivalent factor) (X) fixed price per meal.

Example:

Lunch free meal reimbursement = \$3.3675

+USDA Foods allocation = \$0.2375

=Meal equivalent factor = **3.3675**

Meal price from FSMC = \$3.12

Extra sales = **\$100,000**

\$100,000 / 3.3675 = meal equivalents of 29,520

29,520 X fixed price per meal \$ 3.12 = charge to SFA by FSMC \$92,103.32

2. The fixed price for meal programs must include all food, supplies, labor (including bonuses, if any) and expenses as shown below. They may not be charged back to the SFA in any other manner.

- Menu development specific to the operation
- Nutrition education materials and program expense
- Design services specific to the operation
- Education program via assembly programs, school room programs, parent/teacher meetings, and school food advisory committee meetings
- Personal representation, visitation, and coverage on a regular basis by a principle of FSMC
- All accounting
- All payroll costs and documentation
- Administrative dietetic, nutritional, sanitation, and personnel advice
- All costs incurred in hiring and relocating, if necessary, the FSMC management team
- All training costs for FSMC employees
- All miscellaneous costs to operate the program; i.e., consumable marketing materials

3. The FSMC shall be required to furnish a performance bond in the amount \$100,000. Such bond must be furnished upon notification by the FSA and prior to the award contract. The performance bond shall be furnished by the company licensed to do business in the State of South Dakota. The performance bond shall be for the entire contract period.

The performance bond shall provide that in the event of non-renewal of the bond, the SFA and the FSMC be notified in writing by the issuer a minimum of sixty (60) days prior to the anniversary of the effective date of the contract. In the event of non-renewal, the FSMC shall provide the SFA evidence of the new scope of surety within twenty-one (21) calendar

days after the SFA's receipt of the non-renewal notice. Failure to maintain the require surety in force may be cause for contract termination.

4. The FSMC shall submit an invoice to the SFA weekly biweekly X monthly based upon the actual number of meals served during that billing period based upon the actual number of meals served during the calendar month multiplied by the daily rates for the total billing.
5. The SFA's failure to pay as invoiced shall constitute a breach of the contract. In the event any invoice is unpaid for more than 60 days, the FSMC shall have the right upon written notice to terminate performance under this contract.

VI. RESPONSIBILITIES

A. Food Service Management Company Responsibilities

1. The FSMC shall comply with the applicable rules, regulations, policies, and instructions of the SA and USDA and any additions or amendments thereto, including

- USDA Regulation 7 CFR Part
 - 210 (National School Lunch Program),
 - 215 (Special Milk Program),
 - 220 (School Breakfast Program),
 - 225 (Summer Food Service Program),
 - 226 (Child & Adult Care Food Program),
 - 245 (Free and Reduced Price Eligibility),
 - 250 (Food Distribution),
- 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- Government wide Debarment and Suspension [Executive Orders 12549 and 12689](2 CFR Part 200.213 and Appendix II to 2 CFR Part 200 (I).

Company personnel responsible for the preparation of menus will maintain access to these meal pattern regulations currently available at <http://www.fns.usda.gov/>.

2. The FSMC shall not sell or offer on the premises of any school, any food, or beverage item other than the prescribed meals except those a la carte items authorized by the SFA. The FSMC cannot directly or indirectly restrict the sale or marketing of fluid milk at any time or in any place on school premises or at any school-sponsored event. [7 CFR 210.21(e)]

3. The FSMC shall serve, on such days and at such times as requested by the SFA according to the applicable programs:

- a) Lunches, breakfasts, snacks, afterschool snacks, and/or suppers priced as a unit, which meet the requirements of respective USDA regulation in 7 CFR Part 210.10 (School Lunch and Afterschool Snacks, Seamless Summer),
 - b) Fresh Fruit and Vegetable Program billed according to actual food, labor, and other itemized allowable costs approved by the SFA.
 - c) Other foods as may be agreed upon by the FSMC and the SFA.
4. The FSMC shall serve free and reduced-priced meals, after school snacks or free milk, if applicable, to those children designated by the SFA to meet program requirements and in order to offer a la carte food service.
 5. Special Dietary Needs
 - a. FSMC and SFA must follow current federal and state regulations regarding providing for special dietary needs for enrolled students. Additional information is

available at <https://www.fns.usda.gov/school-meals/faqs> . Until the new guidance document has been revised and posted, refer to *SP 59-2016, September 27, 2016, Modifications to Accommodate Disabilities in the School Meal Programs*, for the current requirements and guidance.

b. Exceptions for disability reasons: FSMC must make substitutions in lunches and afterschool snacks for students who are considered to have a disability under 7 CFR 15b.3 and whose disability restricts their diet. Substitutions must be made on a case by case basis only when supported by a written statement of the need for substitution(s) that includes recommended alternate foods, unless otherwise exempted by USDA. Such statement must be signed by a licensed physician or (MD or DO), advanced practice nurse (APN) with prescriptive authority or physician assistant.

c. Exceptions for non-disability reasons: FSMC, with instructions from the SFA, may make substitutions for students without disabilities who cannot consume the regular lunch or afterschool snack because of medical or other special dietary needs. Substitutions must be made on a case by case basis only when supported by a written statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Except with respect to substitutions for fluid milk, such a statement must be signed by a recognized medical authority.

d. Fluid milk substitutions for non-disability reasons: FSMC, with instructions from the SFA may make substitutions for fluid milk for non-disabled students who cannot consume fluid milk due to medical or special dietary needs. A school that selects this option may offer the nondairy beverage(s) of its choice, provided the beverage(s) meets the nutritional standards established under 7 CFR § 210.10(d)(3)) and 7 CFR § 220.8. Expenses incurred when providing substitutions for fluid milk that exceed program reimbursements must be paid by the school food authority. Requisites for fluid milk substitutions:

1. SFA must inform CANS if any of its schools choose to offer fluid milk substitutes other than for students with disabilities; and

2. A medical authority or student's parent or legal guardian must submit a written request for a fluid milk substitute identifying medical or other special dietary need that restricts the student's diet.

3. Substitution approval. The approval for fluid milk substitution must remain in effect until the medical authority or the student's parent or legal guardian revokes such request in writing, or until such time as the school changes its substitution policy for non-disabled students.

4. Required Documentation: Information about meal modifications must be included in the following documents: (1) medical statements or preference forms, (2) production records (3) recipes (4) HACCP plans and (5) meal counting and claiming tracking. Production records should indicate the meal substitutions/accommodations and the number of meal served for special diets.

6. The FSMC shall participate in the parent, teacher, and student advisory boards.

7. The FSMC shall implement the collection procedures as specified by the SFA. Distribution of tickets and obtaining accurate meal counts will be completed in accordance with the SFA's free and reduced price meal policies.

8. During the term of this Contract, FSMC may have access to SFA confidential information ("SFA Confidential Information"), including student identifiable confidential information that is protected from disclosure by federal law (42 U.S.C. §1758(b)(6)).

- a. FSMC agrees to hold any SFA Confidential Information in confidence during the term of this Contract and thereafter.
 - b. FSMC further agrees that FSMC has no independent rights to this information and will not make any SFA Confidential Information available in any form to any third party or use Confidential Information for any purpose other than the performance of FSMC's obligations under this Contract.
 - c. FSMC will use reasonable security measures to protect SFA's Confidential Information from unauthorized access, use or disclosure and ensure that SFA's Confidential Information is not disclosed or distributed in violation of the terms of this Contract.
 - d. Immediately upon the termination or expiration of this Contract, FSMC shall return to SFA any copies of SFA's Confidential Information provided to FSMC by SFA, and FSMC will destroy all other copies of SFA's Confidential Information in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials.
 - e. If the FSMC is responsible for taking meal counts or has any access to students' personally identifiable information (PII), the FSMC personnel shall sign confidentiality statements to be placed on file with the SFA and FSMC staff shall agree that any information about eligibility, account balances, payments, accounts, special diets, or other PII shall not be discussed with anyone outside of those who have a need to know as designated by the SFA personnel.
9. No money is collect by the youth for meals at the food service site. No adult meals are required.
 10. The FSMC shall prepare and maintain such records as the SFA will need to support its claim for reimbursement, and shall, at a minimum, report claim information to the SFA at the end of each calendar month. (7 CFR 210.16(c)(1)) This report shall include the number of meals served, by type. FSMC shall retain such records and these shall be made available to the SFA immediately upon request.
 11. The FSMC agrees to provide the SFA with necessary financial information, to include detailed breakouts of all income and expenditure categories for reporting to the SA.
 12. The FSMC shall not use SFA facilities for preparation of food to be served at any location other than for the SFA's approved program without the permission of the SFA and paid according to procedures outlined in the contract.
 13. If food or meals are proposed to be prepared outside the school, the FSMC shall maintain State and local health certification of their facility, and shall maintain this health certification for the duration of the contract. (7CFR 210.16(c)(2)) FSMC will comply with requirement to post results of inspections.
 14. If reimbursement is denied or recovered as a direct result of the failure of the FSMC to comply with the provisions of this contract and/or Program requirements, the FSMC shall assume responsibility for the amount denied. It cannot be billed back to the SFA in any manner.
 15. Production records of food prepared and delivered will be maintained and provided to the SFA by the FSMC each month, to ensure program requirements are being met;
 16. Buy American: SFA and FSMC will comply with the Buy American provision for contracts that involve the purchase of food. As required by the Buy American provision, all products must be of domestic origin as required by 7 CFR Part 210.21(d).
 - a. The SFA participates in the NSLP and SBP and is required to use the nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals. A "domestic commodity or product" is defined as one

that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR Part 210.21(d).

b. Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request.

c. To be considered for the alternative or exception, FSMC must submit request in writing to SFA and be approved. Approval will be retained with purchase records. The request must include the:

i. Alternative substitute (s) that are domestic and meet the required specifications:

1. Price of the domestic food alternative substitute (s); and
2. Availability of the domestic alternative substitute (s) in relation to the quantity ordered.

ii. Reason for exception: limited/lack of availability or price (include price):

1. Price of the domestic food product; and
2. Price of the non-domestic SP-24-2016).

17. Documentation that the FSMC requests of the SFA for exceptions must be in place as follows:

a. Requests for consideration on the use of domestic alternative foods before approving an exception.

b. Documentation of the use of a non-domestic food exception when competition reveals the cost of domestic is significantly higher than non-domestic food.

c. Use of a non-domestic alternative food due to the domestic food not produced or manufactured in sufficient and reasonable available quantities of a satisfactory quality

18. Upon request, make all accounts and records pertaining to its SFA available to the SA and to Food Nutrition Services (FNS), for audit or review at a reasonable time and place. Such records shall be retained for a period of 3 years after the date of the final claim for reimbursement for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the 3-year period as long as required for resolution of the issues raised by the audit. (7 CFR 210.9(b)(17))

19. SA representatives or their designees, auditors of the USDA and the Comptroller General of the United States and the SFA's independent auditors shall have access to all such records for audit and review upon request at a reasonable time and place for making audit, examination, excerpts, and transcriptions. Authorized representatives of the SFA, the SA, or the USDA shall have the right to conduct on-site administrative reviews of the food service program (7CFR Part 210.23(c)) and 2 CFR 200).

20. The proposed 21-day menu cycle shall follow the USDA food-based menu plan effective January 26, 2012 and appropriate phased-in sections shall be followed. Changes to the cycle may be made only with the approval of the School Food Authority (7CFR Part 210.16(b)(1)).

21. The FSMC shall promote maximum participation in the Programs, and shall not promote A la carte over reimbursable meals.

22. In accordance with 2 CFR 200, 324(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- a) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

- b) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- c) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- d) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- e) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

B. SFA Responsibilities

1. The SFA shall adhere to the procurement standards specified in §210.21 when contracting with the food service management company (7CFR 210.16(1)(1))
2. The SFA shall ensure that FSMC operation of the SFA's school food service is in conformance with the SFA's agreement under the program. (7CFR 210.16(a)(2)) SFA will comply with requirement to post results of inspections.
3. The SFA shall retain control of the quality, extent, and general nature of its food service and the prices to be charged to the children for meals, milk, after school snack, a la carte items, adult meals, and vending machine items, as applicable. The SFA shall maintain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation. (7CFR Part 210.16(a)(4));
4. The SFA must receive all food service revenue, including rebate payments resulting from participation in any Rebate Programs for processed donated foods. The food service revenue shall flow through the SFA chart of accounts. The food service revenue shall be used only for allowable allocable costs for the SFA nonprofit food service. (7CFR 210.14(a))
5. The SFA participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals. A "domestic commodity or product" is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7CFR Part 210.21(d).
6. No interest or finance charges that may accrue under this Contract may be paid from SFA's Nonprofit School Food Service Account
7. The SFA shall monitor the food service program through periodic on-site reviews to include the inspection of meals, food preparation, storage and service areas, sanitation practices, and, if included in the contract, procedures for accurately counting meals for the claim. (7CFR 210.16(a)(3))
8. The SFA shall have responsibility for meal count accuracy (a) *internal controls*. The school food authority shall establish internal controls which ensure the accuracy of lunch counts prior to the submission of the monthly Claim for Reimbursement. (7CFR 210.8 (a))
9. The SFA shall retain the right to approve the menus and recipes for meals and other food to be served or sold to students to ensure compliance with the rules and regulations of the SA and the USDA.
10. The SFA shall approve all a la carte items and the prices charged for those items in advance of their sale by the FSMC.
11. The SFA shall ensure that an advisory board composed of parents, teachers, and students to assist in menu planning is established. (7CFR 210.16(a)(8))

12. The SFA shall retain signature authority on the SA-SFA agreement, free and reduced price policy statement and claims for reimbursement. (7CFR 210.16(a)(5))
13. The SFA has responsibility for developing, distributing, and collecting free and reduced price letter/application. (7CFR 245.10(a)) The SFA also has responsibility for determination of eligibility, conducting hearings, and for verification. (7CFR 245.6(a), 245.6(b), 245.7)
14. The SFA is responsible for participation in Direct Certification.
15. The SFA shall ensure applicable health certification(s) is maintained and that all State and local regulations are being met by FSMC preparing or serving meals at SFA's facilities. (7CFR 210.16(a)(7))
16. The SFA shall conduct annual reviews of storage facilities. The FSMC/SFA
 - a. May store and inventory donated foods together with foods it has purchased commercially for the SFA's use (unless specifically prohibited in the contract). It may store and inventory such foods together with other commercially purchased foods only to the extent that such a system ensures compliance with the requirements for the use of donated foods in §250.51(d)—i.e., use all donated ground beef and ground pork, and all end products in the food service, and use all other donated foods or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the food service
 - b. Must ensure that its system of inventory management does not result in the SFA being charged for donated foods.
17. The SFA shall inform FSMC of any requested adjustments to menus and monitor implementation of said adjustments.
18. The SFA shall be responsible for resolution of program review and audit findings. FSMC shall fully cooperate with SFA in resolving review and audit issues. FSMC shall indemnify SFA for any fiscal action, claims, losses, or damages, fault, fraud, required repayment or restoration of funds, including reasonable attorney's fees incurred in defending or resolving such issues, that results from FSMC's intentional or negligent acts.
19. The SFA reserves the right to cancel or shorten any school day and agrees to give FSMC at least twenty-four (24) hours advance notice of such changes except in an emergency when as much advance notice as possible will be given.
20. SFA representatives have the option to discuss with the Company any area of non-performance in order to meet all requirements and regulations on a daily basis.

C. Use of Facilities and Equipment

1. The SFA shall have access, with or without notice to the FSMC, to all the SFA's facilities used by the FSMC for purposes of inspection and audit.
2. The SFA shall make available without any cost or charge to the FSMC the areas and premises agreeable to both parties in which the FSMC shall render its services. The FSMC shall make no alterations, changes, or improvements to said areas without obtaining written consent from the SFA with identification of responsibility for costs.
3. The FSMC shall operate and care for all equipment and food service areas in a clean, safe, and healthy condition in accordance with standards acceptable to the SFA and comply with all applicable laws, ordinances, rules, and regulations of federal, state, and local authorities.
4. The SFA shall provide at its expense necessary expendable equipment including, but not limited to, silverware, table service, chinaware, serving trays, glassware, pots, pans, and utensils; and shall periodically replace said expendable equipment as items become worn, broken, used, lost, or otherwise disposed of up to the amount of the original inventory,

except for replacements caused by FSMC's negligence which shall be the responsibility of the FSMC.

5. The SFA shall provide and maintain at its expense necessary inter-school vehicles, satellite transporter units, and equipment including operating costs for it.
6. The FSMC shall take reasonable care in the use of the premises, equipment, vehicles, and other items furnished by SFA.
7. The FSMC and the SFA shall inventory the equipment and supplies owned by the SFA at the beginning of the school year, including but not limited to flatware, trays, chinaware, glassware, and kitchen utensils.
8. The FSMC shall maintain the inventory of expendable equipment necessary for the food service and at the inventory level as specified by the SFA.
9. Facilities and equipment at the SFA as well as food purchased for the SFA shall be used solely for meals and events at the SFA. Use of facilities and equipment for preparation of meals for other entities must be identified in the RFP process and payment made by the FSMC to the SFA for these meals prepared under separate contracts or agreements. Examples include but are not limited to preparation of meals for programs not operated by the SFA such as other schools, child care centers, Head Start sites, senior meals, summer programs, and other catering.
10. The SFA shall furnish and install any equipment and make any structural changes needed to comply with federal, state, and local laws, ordinance, rules, and regulations.
11. The FSMC shall not remove food preparation and serving equipment owned by the SFA.
12. The SFA shall repair and service equipment except when damages result from the use of less-than-reasonable care by the employees of the FSMC.
13. The SFA shall not be legally responsible for loss or damage to equipment owned by the FSMC located on the SFA premises.
14. The FSMC shall provide a written notification to the SFA of any equipment belonging to the FSMC within ten days (10) of its placement on SFA premises and must receive written approval.
15. The SFA reserves the right, at its sole discretion, to use its facilities to sell or dispense any food or beverage before or after the regularly scheduled lunch or breakfast periods provided such use does not interfere with the operation of the Child Nutrition Programs.
16. The SFA shall return facilities and equipment to the FSMC in the same condition as received when the SFA uses the facilities for extra-curricular activities.
17. The SFA shall be responsible for removing rubbish and garbage resulting from food service operation after it has been placed by FSMC in containers furnished by the SFA for such purposes.
18. The SFA shall furnish at its expense, space, light, heat, power, hot and cold water, and other utilities as are necessary for the operation of the food services to be furnished hereunder.
19. The SFA shall not permit any interruptions in utility service except in an emergency or for necessary repairs or for improvement of the service, and in such case the SFA agrees to notify the FSMC immediately of any interruption or proposed interruption in utility service.
20. The SFA shall provide sanitary toilet facilities for the employees of the FSMC.
21. The SFA shall provide the FSMC with local and long distance telephone service and internet connections. Cell phones or other communication devices shall be the responsibility of the FSMC.
22. The SFA must give prior approval and have final authority for the purchases of the equipment used for storage, preparation, or delivery of school meals.

23. The FSMC shall surrender to the SFA upon termination of the contract all equipment and furnishings belonging to the SFA in good repair and condition.

24. The SFA, on the termination or expiration of the contract, shall conduct a physical inventory of all equipment and donated foods owned by the SFA.

25. The FSMC shall surrender to the SFA upon termination of the contract all records pertaining to the operation of the food service, to include all production records, product invoices, claim documentation, financial reports, and procurement documentation. The records shall be in appropriate order and complete to the extent necessary to reconstruct individual cost of prior FSMC billings.

26. In accordance with 7 CFR 250.52(c), when a contract terminates, and is not extended or renewed, the FSMC must return all unused donated ground beef, donated ground pork, and processed end products, and must, at the SFA's discretion, return other unused donated foods. The SFA must also ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA's food service in the school year.

D. Sanitation

1. The SFA shall place garbage and trash in containers in designated areas as specified.
2. The SFA shall remove all garbage and trash from the designated areas.
3. The SFA shall clean the kitchen and dining room area including dining tables and chairs .
4. The SFA shall clean ducts and hoods above the filter line.
5. The SFA shall provide extermination services as needed.
6. The FSMC shall comply with all local and state sanitation requirements in the preparation of food.

E. Employees

1. The FSMC shall be responsible for supervising and training personnel, including SFA-employed staff. Supervision activities include employee and labor relations personnel development, and hiring and termination of FSMC management staff, except for the site manager. The FSMC shall also be responsible for the hiring and termination of non-management staff who are employees of the FSMC.
2. The SFA and FSMC shall comply with the Fair Labor Standards Act, as amended, to include Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5) pursuant to 2 CFR 200, .
3. The FSMC shall instruct its employees to abide by the policies, rules, and regulations, with respect to use of SFA premises, as established by the SFA and furnished in writing to the FSMC.
4. The FSMC shall provide daily on-site supervisory personnel for the overall food service.
5. The FSMC shall provide worker's compensation coverage and unemployment insurance for its employees.
6. The FSMC shall maintain its own personnel and fringe benefit policies for its employees, subject to review by the SFA.
7. The FSMC shall be responsible for hiring an adequate number of employees for efficient operation. FSMC shall provide and pay a staff of qualified management (and operational) employees assigned to duty on SFA's premises for efficient operation of the Programs. The FSMC must ensure that the FSMC employees providing services for the

school meal programs have the required annual training and show compliance with the annual training standards

8. All persons employed by the FSMC shall be employees of the FSMC and neither the FSMC nor any agent or employee of the FSMC shall be or be deemed an employee of the SFA. Neither party shall, during the term of this contract or for one year thereafter, solicit to hire, terminate, or contract with either party's employees who manage any services or any other employee or are highly compensated employees ("One-Year Non-Solicitation"). In the event of any breach of such One Year Non-Solicitation, the breaching party shall pay and the injured party shall accept an amount equal to the annual salary of the relevant employee as liquidated damages.

9. The FSMC shall provide the SFA with a list of its personnel policies and the SFA shall review and provide written approval it in accordance with the SFAs requirements(SFA – think in terms of Weapons, drugs, registered sex offenders, access to facilities, use of keys, etc.)

10. The SFA shall have final approval regarding the hiring of the FSMC's site manager.

11. The FSMC and SFA shall mutually agree upon staffing patterns.

12. The SFA and FSMC shall mutually agree upon the use of student workers.

13. 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 of which is detrimental to the physical, mental, or moral well-being of students or staff.

14. In the event of the removal or suspension of any employee, the FSMC shall immediately restructure its staff without disruption in service.

15. All food service personnel assigned to each school shall be instructed on the use of all emergency valves, switches, and fire and safety devices in the kitchen and cafeteria areas.

16. Professional Standards for Local School Nutrition Personnel:

a. The FSMC must ensure that the FSMC employees providing services for the school meal programs have the required annual training and show compliance with the annual training standards FSMC is required to provide documentation to the SFA showing the training hours and topics completed by the FSMC employees.

b. If the FSMC staff person performs food service director type duties, but reports to a district business manager who is responsible for the school district's school food service activities, both individuals would be responsible for meeting the training standards for program directors and comply with the professional standards requirements.

c. Minimum Hiring Standards for Food Service Directors: USDA provides the minimum hiring standards in 7 CFR 210.30 (2). The student enrollment includes total enrollment in all schools in all SFAs in all FSMC contracts for an individual food service director.

F. USDA Donated Foods

1. The proposed rate per meal must be calculated as if no donated foods are available.

2. In accordance with 7 CFR Part 250.51(a) all donated foods received for use by the recipient agency (SFA) for a period specified as either the school year or fiscal year must be used in the recipient agency's (SFA's) food service. Contracts between recipient agencies in child nutrition programs and FSMCs must also ensure compliance with other requirements in this subpart relating to donated foods, as well as other Federal requirements in 7 CFR parts 210, 220, 225, or 226, as applicable

3. The FSMC will maintain records to document its compliance with requirements relating to donated foods, in accordance with 250.54(b).

4. The SFA and FSMC shall consult and agree on end products to be produced from USDA donated foods during the time of this contract. If agreement cannot be reached, the FSMC shall utilize the donated foods in the form that was furnished by USDA.
5. The FSMC must credit the SFA for the value of USDA donated foods received for use in the SFAs meal service (including both entitlement and bonus foods), and including the value of donated foods contained in processed end products, in accordance with the contingencies in 7 CFR 250.51(a) on the monthly billing statement. (7CFR 250.51)
6. The SFA shall ensure that all federally donated foods are received by SFA and made available to the FSMC to reduce the price of the meal. The SFA shall ensure that all USDA donated foods received by the SFA and made available to the FSMC, including processed donated foods, accrue only to the benefit of the SFA's nonprofit school food service and are fully utilized therein. This provision also applies to any refunds received from processing USDA Foods. The SFA shall retain title to the USDA donated foods (7CFR Part 210.16(a)(6)).
7. The FSMC shall accept and use USDA donated foods in as large a quantity as may be efficiently utilized in the nonprofit food service subject to approval of the SFA. (7 CFR 210.16(a)(6))
8. The FSMC will not itself enter into the processing agreement utilizing USDA donated foods on behalf of the SFA as required in subpart C of 7 CFR part 250.15.
9. The USDA donated food value used in crediting will be determined by using the USDA pound/unit value.
10. The FSMC will comply with the storage and inventory requirements for donated foods.
11. Monthly crediting shall be monitored by the school on the billing. An end of school year reconciliation shall be conducted by the SFA to ensure and verify that the correct and proper credit has been received for the full value of all USDA donated foods received by the FSMC during the contract year as credited on each month's invoice, including the value of donated foods contained in processed end products, in accordance with the contingencies in 250.51(a). The SFA reserves the right to conduct donated food credit audits throughout the year to ensure compliance with federal regulations. An end of contract reconciliation must also be conducted to ensure full value of product has been credited. (7 CFR 210 and 7 CFR 250.)
12. The FSMC and SFA agree to comply with federal regulations 7 CFR Part 250, Section 250.12(b)(3) which states that SFAs have and preserve a right to assert claims against other persons to whom donated foods are delivered for care, handling, and distribution. Section 250.12(b)(4) states that SFA will take action to obtain restitution in connection with claims for improper distribution, use, or loss, or damage to donated foods. (7CFR 250.12(b)(3) and (b)(4))
13. The FSMC must accept liability for any negligence on their part that results in any loss, damage, out of condition or improper use of donated foods, and shall credit the SFA the value of said donated foods, at the SFAs option, either monthly or through an end of school year reconciliation.
14. The SFA shall be legally responsible for any loss of federally donated food that may arise due to equipment malfunctions or loss of electrical power not within the control of the FSMC.
15. The FSMC shall have records maintained and available to substantiate the receipt, use, storage, and inventory compliance of USDA donated foods in accordance with 250.54(b). The FSMC must submit to the SFA monthly inventory reports showing all transactions for processed and non-processed donated foods.
16. The FSMC will use all donated ground beef and ground pork products, and all processed end products, in the SFAs food service.

17. The FSMC will use all other donated foods, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the SFAs food service (unless the contract specifically stipulates that the donated foods, and not such commercial substitutes, be used).

18. Extensions or renewals of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to donated foods.

19. The FSMC assures that the procurement of products on behalf of the SFA, as applicable, will ensure compliance with the requirements in subpart C of 7 CFR part 250 and with the provisions of the SA or the SFA processing agreements, and will ensure crediting of the SFA for the value of donated foods contained in such end products at the processing agreement value.

20. The SA, SFA, the Comptroller General, the Department of Agriculture, or their duly authorized representatives, may perform onsite reviews of the FSMC's food service operation, including the review of any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions., to ensure compliance with requirements for the management and use of donated foods.

21. Any activities relating to donated foods that the FSMC will be responsible for, in accordance with 250.50(d), and assurance that such activities will be performed in accordance with the applicable requirements in 7CFR 250.5 and 250.50(d).

a) *The ordering or selection of USDA Foods, in coordination with the SFA.*

b) *The storage and inventory management of USDA Foods. At a minimum, a year-end inventory of USDA Foods must be conducted; however, SFAs may include in their solicitation more frequent inventory reporting, such as on a monthly basis, to ensure the maximum use of USDA Foods.*

c) *The payment of processing fees or submittal of refund/rebates requests to a processor on behalf of the SFA, or remittance of refunds for the value of USDA Foods in processed end products to the SFA, in accordance with the requirements in 7 CFR 250, Subpart C.*

G. Licenses and Taxes

1. The FSMC shall be responsible for paying all applicable taxes and fees, including (but not limited to) excise tax, state and local income tax, payroll and withholding taxes, for FSMC employees; the FSMC shall hold the SFA harmless for all claims arising from payment of such taxes and fees.

2. The FSMC shall obtain and post all licenses and permits as required by federal, state, and/or local law.

3. The FSMC shall comply with all SFA building rules and regulations.

H. Insurance (The SFA may add additional insurance requirements)

1. The SFA shall be named as additionally insured on General Liability, Automobile, and Excess Umbrella.

2. The contract of insurance shall provide for notice to the SFA of cancellation of insurance policies 30 days before such cancellation is to take effect.

I. Miscellaneous

1. The SFA, in the event that the FSMC is not able to perform under this contract due to events beyond the reasonable control of FSMC; i.e., strike, labor or material shortage, fire, flood, or other casualty or Acts of God, may, at their option, terminate this contract and

assume control of the facilities, equipment, food supplies, expendables, etc., necessary for the continued operation of the SFA's food service operation.

2. For all contracts in excess of \$150,000, both SFA and FSMC agree to comply with all applicable standards, orders, or requirements issued under section the Clean Air Act (42 U.S.C. 7401-7671q), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). The SFA and FSMC must recognize energy efficiency standards contained in State Energy Conservation Plan in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat 871).

3. No payment shall be made for meals that are spoiled or unwholesome at the time of delivery, or do not meet detailed specifications as developed by the SFA for each food component as specified in 7 CFR, Part 210.10, or do not otherwise meet the requirements of the contract. (7CFR 210.16(c)(3))

4. Refer to Grade and Quality Specifications sheet containing purchased food specifications; such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery times, as outlined by SFA and agreed to by FSMC in procuring food components. (7CFR 210.6(c)(3))

5. The FSMC shall maintain such records as the SFA will need to support its claim for reimbursement under this part, and shall, at minimum, report claim information to the SFA promptly at the end of each month. Such records shall be made available to the SFA upon request, and shall be retained in accordance with 210.23(c). (7 CFR 210.16(c)(1))

6. Certification of compliance exists with the following Acts and regulations as appropriate for this contract:

a. Energy Policy and Conservation Act (2 CFR 200)

b. For any contract involving research, developmental (such as software), experimental or demonstration work: The requirements established in USDA regulations concerning USDA rights to copyrights, patent rights, and rights in data and reporting of discoveries and invention. (2 CFR 200);

c. 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." For all contracts in excess of \$10,000: Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 and Department of Labor Regulations. (2 CFR 200);

d. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity 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.

7. For all contracts of \$100,000 or more:
 - a. 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.
 - b. For all contracts in excess of \$150,000, both SFA and FSMC agree to comply with all applicable standards, orders, or requirements issued under section the Clean Air Act (42 U.S.C. 7401-7671q), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). The SFA and FSMC must recognize energy efficiency standards contained in State Energy Conservation Plan in compliance with the Energy Policy and Conservation Act (P.L. 94-163, 89 Stat 871).
 - c. Certification Regarding Lobbying, pursuant to 31 USC 1352,
 - d. Disclosure of Lobbying Activities, pursuant to 31 USC 1352,
 - e. Byrd Anti-Lobbying Amendment [31 U.S.C. 1352] (Appendix II to 2 CFR Part 200 (for contracts worth \$100,000 or more)?
 - f. 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 require 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).
8. The SFA may terminate this contract for breach/neglect as determined by SFA when considering such items as failure to maintain and enforce required standards of sanitation, failure to maintain proper insurance coverage as outlined by contract, failure to provide required periodic information/statements, or failure to maintain quality of service at a level satisfactory to SFA. The SFA is the responsible authority without recourse to FNS or the SA for the settlement and satisfaction of all contractual and administrative issues arising from the transaction. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of contractual nature. Matters concerning violations of the law will be referred to the local, state, or federal authority that has proper jurisdiction. (7 CFR 210.16(b)(2), 210.21(b))
9. During the term of the contract, the FSMC may grant to the SFA a nonexclusive right to access certain proprietary materials of the FSMC, including menus, recipes, signage, food service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed by the FSMC), and similar compilations regularly used in FSMC business operations (trade secrets). The SFA shall not disclose any of the FSMC’s trade secrets or other confidential information, directly or indirectly, during or after the term of the contract. The SFA shall not photocopy or otherwise duplicate any such material without the prior written consent of the FSMC. All trade secrets and other confidential

information shall remain the exclusive property of the FSMC and shall be returned to the FSMC immediately upon termination of the contract. The SFA shall not use any confusingly similar names, marks, systems, insignia, symbols, procedures, and methods. Without limiting the foregoing and except for software provided by the SFA, the SFA 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 the FSMC and not the SFA. The SFA shall have access to all such information from the FSMC for three years after grantees or sub-grantees make final payments unless there are unresolved audits, in which case all information must be retained and be accessible until the audits are resolved.

10. Furthermore, the SFA's access or use of such software shall not create any right, title interest, or copyright in such software and the SFA shall not retain such software beyond the termination of the agreement. In the event of any breach of this provision, the FSMC shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. The SFA's obligations under this section are subject to its obligations under the South Dakota Open Records Act. This provision shall survive termination of the agreement.

11. Any discovery, invention, software, or programs paid for by the SFA shall be the property of the SFA to which the SA and USDA shall have unrestricted rights.

12. The FSMC certifies that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

13. No child shall be discriminated against on the basis of race, color, national origin, age, sex, or disability. Both parties also mutually agree that no child's eligibility category shall be overtly identified through actions of the SFA or the FSMC or any of their staff;

14. SFA and FSMC mutually agree that any silence, absence, or omission from the contract specifications concerning any point must 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 is to be used.

15. SFA and FSMC must mutually certify that prices in the offer have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition.

J. GRADE AND QUALITY SPECIFICATIONS

1. Meats -

- a. **Beef, Pork, Lamb, Veal** - Meats used must be USDA inspected and of commercial grade or above. Ground beef must be no more than 20% fat.
- b. **Poultry** – U.S Grade "A"
- c. **Fish** -- Grade "A" where grade exists.

2. Grains/Breads

- a. Products to be made with whole-grain or enriched meal or flour.
- b. Pasta: Made from enriched semolina durum wheat flour.
- c. Cereals must be whole-grain rich, enriched, fortified
- d. Products shall meet USDA standards for whole grains according to the phased-in schedule at a minimum. Implementation of whole-grain rich may follow an accelerated schedule.

3. Dairy -- Minimum Standards

- a. Skim (nonfat) unflavored and 1% or ½% (lowfat) unflavored milk. Skim (nonfat) flavored if approved by the SFA.

- b. Fluid milk shall be pasteurized, contain vitamins A & D at levels specified by the FDA, and must be consistent with State and local standards.
- c. Buttermilk -- 8 ¼ % milk solids.
- d. Yogurt, Cheese, Ice Cream, etc., USDA Quality Approved
- 4. Beverages Other Than Milk** (when allowed by regulation and SFA)
 - a. Coffee – Grade “1”, no soluble used.
 - b. Tea – Orange Pekoe or higher grade.
 - c. Milk substitutes for non-disability reasons, if utilized by the SFA, must be consistent with standards identified in 210.10.
- 5. Eggs** – Grade “A” fresh – No storage eggs will be used.
- 6. Canned Fruits and Vegetables** – U.S. Grade “A” or U.S. Fancy only.
- 7. Fresh Fruits and Vegetables** –
 - a. Fruits and vegetables used must be U.S. No. 1 or better (or that product’s equivalent) and be wholesome and unspoiled.
 - b. Items such as peaches, pears, and fruit cocktail are only available as Grade B. Specifications of these items should not exceed Grade B.
- 8. Canned/Frozen Products**
 - a. Canned or frozen products used must be no more than six months old.
 - b. Canned or frozen fruits and vegetables must be U.S. Grade A.
 - c. Canned fruit shall be in light syrup, water, or fruit juice.
- 9. Miscellaneous Groceries** –
 - a. Highest grade obtainable. U.S. No. 1 or Grade “A” or equivalent.
 - b. Alternate Protein Products - Alternate protein products used must meet the requirements in Appendix A of 7 CFR Part 210.
 - c.
 - d. Only 100 percent pasteurized full-strength juice may be used in a breakfast or lunch.
 - e. Condiments -- U.S. Grade "A".

IX. CONTRACT SIGNATURE PAGE

The FSMC that is awarded the contract shall sign this contract page as well as the SFA. The FSMC and SFA certify that they shall operate in accordance with all applicable State and Federal regulations. Both parties certify that all terms and conditions within the contract shall be considered binding. Any misstatements by the FSMC in the document shall be treated as fraudulent. The undersigned acknowledges that the representations made in this document are material and important and will be relied upon.

The contract includes the School Food Authority’s request for Proposal, the Food Service Management Company’s response on this document and any accompanying information, negotiations which must be documented in writing, and this final negotiated contract.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

For the Local Education Agency

For the Food Service Management Company

Printed or Name of SFA

Printed or Name of FSMC

Printed or Typed Name of signer

Printed or Typed Name of signer

Printed or Typed Title

Printed or Typed Title

Signature

Signature

Date

Date

ALL CONTRACTS MUST BE APPROVED BY THE STATE AGENCY

This contract is not valid until it is reviewed and approved by the State Agency. The FSMC is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to date below, the State of South Dakota may not be obligated for payment.

Printed or Typed Name of signer

Printed or Typed Title

Signature

Printed or Typed Date

Addenda: Certifications and Assurances

- **Contract Provisions For SFA Contracts Under CNP Awards**
- **Civil Rights Assurances**
- **Byrd Anti-Lobbying Amendment Compliance and Certification**
- **Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (First Tier Subcontractor)**
- **Schedule Of Terms For FSMC Guaranty**
- **Debarment and Suspension Form**
- **Certification Regarding Lobbying**
- **Anti-Collusion Affidavit**

CONTRACT PROVISIONS FOR SFA CONTRACTS UNDER CNP AWARDS

All FSMC contracts must include this addendum.

The SFA's contracts must contain all applicable provisions described in Appendix II to Part 200 (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards)

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) 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."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance 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 statute, 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. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with 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"). The Act provides that each contractor or subrecipient 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. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity 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.

(F) 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.

(G) 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).

(H) 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.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above 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. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

CIVIL RIGHTS ASSURANCES

Per FNS 113-1 Section X; Child Nutrition Programs Appendix B (D)] and Nondiscrimination Statement

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

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

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

- **mail:** U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410
- **fax:** (202) 690-7442; or
- **email:** program.intake@usda.gov.

This institution is an equal opportunity provider.

Per FNS Instruction 113-1, Appendix B, Section D. (1) (c)

The program applicant 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 program applicant 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 Program applicant 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 Program applicant, its successors, transferees, and

assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signature appears below are authorized to sign this assurance on the behalf of the Program applicant.

As noted earlier in the agreement, if the FSMC employees shall have access to personally identifiable information, they must sign confidentiality statements which shall remain on file with the SFA.

BYRD ANTI-LOBBYING AMENDMENT COMPLIANCE AND CERTIFICATION

For all orders above the limit prescribed in FAR Section 52.203-12(g), or its successor regulation (currently \$150,000), the Offeror must complete and sign the following:

The following certification and disclosure regarding payments to influence certain federal transactions are made per the provisions contained in FAR 52.203-11 and 52.203-12 and 31 U.S.C. 1352, the "Byrd Anti-Lobbying Amendment."

(a) FAR 52.203-12, "Limitation on Payments to Influence Certain Federal Transactions" is hereby incorporated by reference into this certification

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:

(1) No 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, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) 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, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$150,000 shall certify and disclose accordingly.

(c) This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person making expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

SIGNATURE: _____

COMPANY NAME: _____

DATE: _____

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT,
AND OTHER RESPONSIBILITY MATTERS (FIRST TIER SUBCONTRACTOR)**

§200.213 Suspension and debarment.

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.

The Offeror certifies, to the best of its knowledge and belief, that--

The Offeror and/or any of its Principals--

- Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
- Have not, within a three-year period preceding this offer, 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) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and
- Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

The Offeror has not, within a three-year period preceding this offer, had one or more public contracts (Federal, State, or local) terminated for cause or default.

"Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

The Offeror shall provide immediate written notice to the SFA if, at any time prior to subcontract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested may render the Offeror non-responsible.

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 paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the SFA, the SFA may terminate the contract resulting from this solicitation for default.

SIGNATURE: _____

COMPANY NAME: _____

DATE: _____

SCHEDULE OF TERMS FOR FSMC GUARANTY

1. The FSMC guarantees revenues in excess of expenditures to the SFA in the amount stated in this contract. The revenues in excess of expenditures shall be determined by the annual independent audit conducted by the audit firm contracted with by the SFA. The revenues in excess of expenditures shall be based on all revenues and expenses set forth in the Food Service Budget and any other necessary revenues or expenses generated or incurred in the operation of the SFA's nonprofit Child Nutrition Program. In the event that the actual revenues in excess of expenditures (total revenue from all sources less Total Food Service Cost), including the management fee described in Section J Financial Terms is below the guaranteed amount, the FSMC shall pay to the SFA any shortfall within 30 days of the determination by the SFA of the amount of the shortfall.
2. All expenditures directly or indirectly associated or necessary to provide the SFA with Child Nutrition Program services shall be considered a direct expense to the program budget and included in the revenues in excess of expenditures statement for purposes of determining guaranteed results.
3. All information relating to the SFA's nonprofit Child Nutrition Program budget, revenues and expenses included in this RFP/Contract is provided for FSMC planning purposes. The SFA budget, revenues and expense are subject to change for future years based on market conditions.

DEBARMENT AND SUSPENSION FORM

Debarment and Suspension and Other Responsibility Matters Primary Covered Transactions

School Food Authorities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, sub-awards, 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 disbarment, 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. 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.

Business Name _____

Name and Title of Authorized Representative

Signature of Authorized Representative

Date _____

CERTIFICATION REGARDING LOBBYING

Certification Regarding Lobbying

[SFA Name]

Certification Regarding Lobbying

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 Food Authority] 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 Food Authority* 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.

Name/Address of Organization

Name/Title of Submitting Official

Signature

Date

ANTI-COLLUSION AFFIDAVIT

STATE OF SOUTH DAKOTA

COUNTY OF MINNEHAHA

_____, of lawful age, being first sworn on oath say, I am authorized by the bidder to submit the attached bid. Affiant further states that the bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any state official or employees to quantity, quality, or price in the prospective contract, or any other terms of said prospective official concerning exchange of money or other thing of value for special consideration in the letting of contract; that the bidder/contractor had not paid, given or donated, or agreed to pay, give or donate to any officer or employee either directly or indirectly in the procuring of the award of a contact pursuant to this bid.

Signed _____

Subscribed and sworn before me this ___ day of _____, 20__.

Notary Public (or Clerk or Judge) _____

My commission expires _____