# (Sample Cover Page)

# REQUEST FOR PROPOSALS/INVITATION FOR BIDS

Nonprofit School Food Service

Food Service Management Company

for

(Insert Name of School/District/SFA)

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

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

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

1. mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410;

1. fax: (202) 690-7442; or
2. email: program.intake@usda.gov.

This institution is an equal opportunity provider.

# SECTION 1

## INSTRUCTIONS TO BIDDERS

(DELETE THESE INSTRUCTIONS: The school food authority is responsible for completing this required section. This section outlines the purpose of your solicitation and provides general information regarding the bid procedures. This section may be in bulleted or narrative-letter format. Be sure to include the following information.)

1. The purpose of this solicitation is to seek fixed price bids for School Breakfast Program, National School Lunch Program, Fresh Fruit and Vegetable Program, After School Snack Program, Child and Adult Care Food Program At-Risk, and Summer Food Service Program. (be sure to delete any unnecessary meals/programs. If you might consider implementing CACFP or SFSP in the future, include them in the bid. Adding the program later will require a re-bid of the contract.)
2. There will be a pre-bid meeting/facility tour (if applicable, include date, time, and address of the meeting and tour)
3. Bid must be submitted (include date, to whom, what, when, where, and how―see 2.1)
4. Please submit all questions in writing to (insert who to ask questions). All questions will be answered in writing only. (to whom should questions be addressed, within what time period—keep in mind 1.7 below, in writing only, how questions will be answered—in writing only)
5. Hereinafter, school food authority (SFA) shall refer to (insert school/district name).
6. Hereinafter, food service management company (FSMC) shall refer to the contractor awarded the Contract.
7. If clarification of the specifications/instructions is required, the SFA will clarify the specifications/instructions in the form of an addendum issued to all prospective bidders. If the SFA issues any changes to this Request for Proposals/Invitation for Bids (RFP/IFB), acknowledgement of receipt of such changes must be made to the SFA in writing, signed by an individual authorized to legally bind the bidder, and included in the bidder’s bid package. If changes to the RFP/IFB are not acknowledged, the SFA retains the right to reject the bid as non-responsive. No addenda will be issued within (insert #—minimum 7 recommended) working days of the time and date set for the bid opening. Should the SFA determine that clarification of the specifications/instructions is necessary within (insert same #—minimum 7 recommended) working days of the time and date set for the bid opening, the time and date set for the bid opening will be delayed to allow issuing an addendum.
8. The subject matter of this RFP/IFB is subject to legislative changes either by the federal or state government. If any such changes occur prior to contract award, then all bidders will have the opportunity to modify their bids to reflect such changes. If any such changes occur after a contract award has been made, then the SFA (i) reserves the right to negotiate modifications to the Contract reflecting such legislative changes; and (ii) shall have no obligation to provide unsuccessful bidders with the opportunity to modify their bids to reflect such legislative changes.

## SECTION 2

## GENERAL CONDITIONS

(*DELETE THESE INSTRUCTIONS*: The school food authority is responsible for completing this required section. This section outlines the specific conditions related to the bid process and Contract award. Use other bid documents and local policy as resources to complete this section. Be sure to include the following information.)

Bids shall be submitted on the forms provided with the below specifications. Bids shall be in a sealed envelope properly marked with the title of the bid and due date, and delivered to (individual’s name)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on or before (Date)\_\_\_\_\_\_\_\_. All certifications contained herein must be signed and submitted with the bid.

1. Bids submitted after the date and time specified will not be considered and will be returned, unopened to the appropriate bidder. Postmarks or dating of documents will be given no consideration in the case of late bids.
2. The SFA retains the right to reject any or all bids, when there are sound documented reasons to do so.
3. The SFA will provide no relief for errors or omissions in the bid submitted in response to this document.
4. No deviations or exceptions from the specifications and conditions outlined in this document will be accepted. Changes in or additions to this RFP/IFB or any other modifications of the proposal forms which is not specifically called for in these solicitation documents will result in the SFA’s rejection of the proposal as not being responsive. No oral, written, or telephonic modifications of any proposal submitted will be considered.
5. Submission of a response to this document indicates bidder is informed of specifications and conditions contained herein.
6. No gratuity is allowed in connection with this bid, including but not limited to gifts, scholarships, gift cards, catering, catering account, event tickets, grants, kickbacks, etc.
7. The SFA reserves the right to investigate each bidder’s ability to fulfill terms.
8. All bids shall remain valid and subject to acceptance for a period of ninety (90) days after the bid opening date. Award of the Contract shall be made to the lowest responsive, responsible bidder as determined by the SFA, based on the criteria and specifications outlined in the RFP/IFB and further set forth in the Contract.
9. The meal rates and fees bid must be calculated based on the menu(s) in Exhibit B and on the projected annual units provided on the Bid Summary form, both attached herein. Rates must be provided per unit. All other estimated line item totals shall be computed by multiplying the projected annual units by the rate bid per unit. Estimated totals must be carried out to the second decimal place and must not be rounded. In any case of errors in the extension of the estimated total(s), the actual unit rates shall govern.
10. The FSMC shall provide a cashier’s check or proposal bond in the amount of $\_\_\_\_\_\_\_ (not more than 5% of the total contract cost) which must be included with the proposal. The check will be returned to an unsuccessful FSMC upon award of the contract. The successful bidder will have their check returned once there is a signed contract and proof of bond is provided to the SFA.
11. As a condition to entry into this contract, the successful vendor shall provide to the district a performance bond equaling the annual sales of the program/total cost of the contract. This performance bond will guarantee the vendor’s faithful performance. For the successful contractor, the performance bond is required annually, in each year of the contract, to be submitted to the SFA Business Office no later than July 15th, each year.
12. Protest on a bid must be filed in writing with the School Business Manager or Director of Purchasing within 5 working days after receipt of the bid summary and recommendations are sent to the bidders.
13. No bid will be accepted from, or contract awarded to, any person, firm, or corporation that is in arrears or is in default to the SFA upon any debt or contract, or is a defaulter, as surety or otherwise, upon any obligation to said SFA, or has failed to perform faithfully any previous contract with the SFA.
14. All completed bids and supporting documentation submitted shall be the property of the SFA.
15. Until such time as a Contract is awarded, no bidder, prospective or otherwise, shall be provided access to any supporting bid documents received by the SFA. All supporting bid documents shall be held strictly confidential and shall be reviewed and evaluated solely by SFA employees. Such documents shall not be released for distribution under the Freedom of Information Act until such time as the Contract has been executed awarded. Violation of this clause by any bidder, prospective or otherwise, shall result in automatic disqualification of the bidder from being awarded the Contract. Violation of this clause by an SFA may result in (1) temporary withholding of cash payments pending correction of the deficiency by the SFA or other more severe enforcement action; (2) disallowing of both, use of funds and matching credit for all or part of the cost of the activity or action not in compliance; (3) whole or partial suspension or termination of the SFA’s program; (4) withholding of further awards for the program; or (5) other remedies that may be legally available. Actions that result in the violation of law will be referred to the appropriate local, State or Federal authority having jurisdiction.
16. Compliance With Law. The FSMC shall comply with all laws, ordinances, rules, and regulations of all applicable federal, state, county, and city governments, bureaus, and agencies, regarding purchasing, sanitation, health, and safety of the food service operations and shall procure and maintain all necessary licenses and permits. The SFA shall cooperate, as necessary, for the FSMC’s compliance and procurement efforts. The FSMC shall conduct program operations in accordance with **7 CFR Parts 210 (National School Lunch Program), 220 (School Breakfast Program), 225 (Summer Food Service Program), 226 (Child and Adult Care Food Program), 245 and 250, The Fresh Fruit and Vegetable Program, and FCS instructions and policy. [Delete program references if not applicable]**. USDA Suggested Language is in bold.
17. Child Nutrition Program. In order to assist the SFA’s participation in the following Child Nutrition Programs program:
	1. National School Lunch Program (NSLP)
	2. School Breakfast Program (SBP)
	3. After School Snack Program
	4. Summer Food Service Program (SFSP)
	5. Child and Adult Care Food Program
	6. Fresh Fruit and Vegetable Program
18. Any federally donated USDA Foods received by the SFA and made available to the FSMC shall be used only for the benefit of the SFA’s food service operation. Any USDA Foods processing contracts shall be established by the SFA. All goods, services, and monies received as a result of rebate under a processing contract must be used in the SFA’s nonprofit food service. **[7 CFR § 210.16 (a)(6)]**
19. The FSMC shall retain inventory records of USDA Foods for a period of three years from the close of the fiscal year to which they pertain. However, in instances when claims action and/or audit findings have not been resolved, the records shall be retained as long as required for the resolution of such action or findings. **[7 CFR § 250.16(b)]**
20. No payment shall be made for meals or snacks that are spoiled or unwholesome at the time of service, or do not meet specifications developed by the SFA, or do not otherwise meet the meal pattern requirements. **[7 CFR § 210.16 (c)(3), 7 CFR § 210.10, 7 CFR § 220.8, 7 CFR § 226.20, 7 CFR § 225.16]** No deduction in payment shall be made by the SFA unless the SFA notifies the FSMC in writing.
21. The FSMC shall report the claim information to the SFA promptly at the end of each month or more frequently as specified by the SFA. **[7 CFR 210.16(c)(1)].**
22. Comprehensive Insurance. The FSMC shall obtain and keep in force during the Contract, for the protection of the SFA and the FSMC, Comprehensive General Bodily Injury and Property Damage Liability Insurance in the combined single limit of no less than one million dollars ($1,000,000). That insurance shall include, but not be limited to, Personal Injury Liability, Worker’s Compensation Liability, Broad Form Property Damage Liability, Blanket Contractual Liability, and Products Liability, covering only the operations of the FSMC under the Contract, and shall deliver to the SFA a certificate evidencing such policies and coverage upon the execution of the Contract by the parties. The insurance policies shall contain a covenant by the issuing company that the policies will not be canceled unless a thirty (30) day prior written notice of cancellation is given to the SFA. The policies for $X,000,000 coverage shall also name the SFA as an Additional Insured, but only with respect to operations of the FSMC under the Contract. **[Delete if not included as part of the bidding/proposal process. To protect the interests of the SFA, contracts for food service should contain language about insurance requirements. Contracts generally identify three liabilities, i.e., comprehensive general liability, workmen’s compensation, and vehicle insurance. SFA’s are reminded that the cost of unnecessary insurance is unallowable under Federal Cost Principles.]**

# SECTION 3

## SCOPE

1. The food service provided shall be operated and maintained as a benefit to the SFA’s students, faculty, and staff.
2. The food service shall be managed to promote maximum participation in the Child Nutrition Programs.
3. The food service management company (FSMC) shall have the exclusive right to manage the Child Nutrition Programs at the sites specified on Exhibit A.
4. The FSMC shall provide the type of food service at sites as specified on Exhibit A for approximately \_\_\_\_(add number of approximate serving days) annual serving days during each Term of the Contract.
5. The SFA may at any time during the Term of the Contract add or remove sites and/or meal periods for programs covered by the Contract unless the addition or removal of sites and/or meal periods creates a material or substantive Contract change.
6. The SFA reserves the right to maintain, add, and/or remove present food and beverage vending machines in its facilities.
7. The FSMC shall be an independent contractor and not an employee of the SFA. The employees of the FSMC shall be considered solely employees of the FSMC and shall not be considered employees or agents of the SFA in any fashion. Nothing in the Contract shall be deemed to create a partnership, agency, joint venture or landlord-tenant relationship.
8. The FSMC shall conduct the food service to ensure compliance with the rules and regulations of the Vermont Agency of Education and the United States Department of Agriculture (USDA) regarding Child Nutrition Programs.
9. The SFA shall be legally and financially responsible for the conduct of the food service and shall supervise the food service to ensure compliance with the rules and regulations of the Vermont Agency of Education and the United States Department of Agriculture regarding Child Nutrition Programs.

## SECTION 4

## FOOD SERVICE PROGRAM

1. Location. The FSMC shall prepare and serve meals for the schools listed in Exhibit A. The SFA and the FSMC shall jointly agree to add other locations, during the school year and for summer programs.
	1. The FSMC shall prepare and serve meals for the SFA acting as a sponsor of the following USDA Child Nutrition Programs: [check the box to choose programs that school currently participates in and plans to implement]
		1. National School Lunch Program (NSLP) □
		2. School Breakfast Program (SBP) □
		3. After School Snack Program (ASP) □
		4. Fresh Fruit & Vegetable Program (FFVP) □
		5. Summer Food Service Program (SFSP) □
		6. Child & Adult Care Food Program (CACFP) □
		7. At Risk Snacks/Suppers □
		8. Child Care Programs □
2. Calendar. All meals will be provided in accordance with the approved calendar, attached as Appendix B. For the first twenty-one (21) days of food service, the FSMC will adhere to the 21-day cycle menu agreed upon by FSMC and the SFA. Changes thereafter may only be made with approval of the SFA. [7 CFR § 210.16 (b)(1)].
3. Meal Program. The FSMC shall provide nutritious, high-quality breakfasts, lunches, snacks, milk service, a la carte food, fresh fruits and vegetables, after-school snacks and/or suppers, summer meals, and vending items [delete any items not applicable] in accordance with the following terms:
	1. In order to offer a la carte food service, the FSMC must also offer free, reduced price and paid reimbursable meals to all eligible children. [7 CFR § 210.16(a)]
	2. All reimbursable lunches, breakfasts and snacks, and the fresh fruit and vegetable program shall meet the qualifications for USDA reimbursement as described in 7 CFR § 210.10, 220.8, 225.16, and 226.20. [as applicable].
	3. Prices to be charged for meals and snacks during the current contract year shall be established by the SFA. [7CFR 210.16(a)(4)]
	4. The SFA shall administer the application process for all free and reduced price meals, and shall establish and notify parents and guardians of program criteria for eligible students. Both the SFA and the FSMC shall be responsible for protecting the anonymity of students receiving free or reduced price meals. [7 CFR § 210.16 (a)(5)]
	5. The FSMC shall collect gross sale receipts, on behalf of the SFA, for meals, a la carte items, and vending items. Gross cash receipts shall be turned over to the SFA or deposited in the SFA’s account daily.
	6. The SFA and FSMC shall purchase, to the maximum extent practicable, domestic commodities or products for use in meals served in the NSLP in compliance with the Buy American Provision under 7 CFR 210.21(d)(2) and 7 CFR Part 250.
4. Nutrition Awareness Programs. In cooperation with the SFA, the FSMC shall conduct on-going nutrition awareness programs for students, teachers, parents, and other interested parties and participate as a member of the School Wellness Committee.
5. Dietary Modifications. The FSMC shall supply dietary modifications for students as required in federal guidance and regulation [7 CFR 15b.3], including when prescribed and approved in writing by a licensed physician or medical practitioner. The FSMC, in cooperation with the SFA, shall work with the household to determine the best course of action in each individual case.
6. Advisory Board. The FSMC shall cooperate with the SFA’s Food Service Advisory Board, consisting of students, parents, SFA staff, in developing menus and other food service programs.
7. Catering. [Delete if not applicable]. Upon request by the SFA, the FSMC shall provide catered food service at times and prices mutually agreed upon. The SFA may, if a price cannot be agreed upon or the FSMC cannot provide the service, obtain outside catering services. For all SFA sponsored and third party functions catered by the FSMC, the FSMC shall prepare and submit pre-numbered invoices to appropriate administrators of the SFA and representatives of third party organizations, which shall pay the SFA directly. Such invoices will be submitted by the FSMC by the end of the current month. Any invoice payments received by the FSMC shall be immediately delivered to the SFA’s business office. The SFA shall be responsible for collecting amounts due on food services accounts receivable invoices. Costs of catered functions shall not be supported by the nonprofit foodservice account funds. The FSMC shall provide the SFA with copies of invoices and an invoice control log within ten (10) days after the end of each month. The FSMC shall provide a method which delineates the cost allocation for special functions conducted outside the nonprofit school food service. The method should demonstrate that labor costs are not being double billed for program meals and special function meals.
8. Environmental Protection Agency Compliance. In performance of the Contract, the FSMC shall comply with Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 117389, and EPA Regulations 40 CFR Part 15, et seq. Environmental violations shall be reported to the United States Department of Agriculture and US EPA Assistant Administrator for Enforcement, and the FSMC agrees not to utilize a facility listed on the EPA’s “List of Violating Facilities.” [2 CFR 200]
9. Energy Policy and Conservation Act Compliance. The SFA and the FSMC shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state conservation plan issued in compliance with the Energy Policy and Conservation Act. [2 CFR 200]
10. Contract Work Hours and Safety Standards Act Compliance. In performance of the Contract, and as employer for all management food service employees, the FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act. [2 CFR 200]
11. Debarment Certification. The FSMC shall complete and submit to the SFA and the Agency of Education the Certification Regarding Debarment. The certification must also accompany the four (4) additional one-year renewals. [2 CFR 200]
12. Lobbying. Pursuant to section 1352, Title 31, US Code, the FSMC shall complete and submit a Certificate Regarding Lobbying and a Disclosure of Lobbying Activities to the SFA and the Agency of Education. These certifications must accompany each of the four (4) additional one-year renewals. [2 CFR 200]
13. Buy American Provision. Pursuant to Section 104(d) of the William F Goodling Child Nutrition Reauthorization Act of 1998 requires schools and institutions participating in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) the contiguous United States to purchase, to the maximum extent practicable, domestic commodities or products for use in meals served under the NSLP and SBP. [7 CFR 210.21 (d)(2)]

# SECTION 5

## SCHOOL FOOD AUTHORITY RESPONSIBILITIES

1. **The SFA shall:**
	1. Supervise and retain control of the FSMC’s daily operation of the food service establishment described in the school food authority’s agreement; retain control of the quality, extent and general nature of the food service operation; establish all prices for meals served under the nonprofit school food service account, e.g., pricing for reimbursable meals, a la carte sales including vending machines, and adult/non-program meals; and monitor the performance of the FSMC under this agreement through periodic on-site visits. [7 CFR 210.16(a)(2)(3) (4)]
	2. Retain signature authority on the State Agency-School Food Authority Agreement, Free and Reduced Price Policy Statement and Claims for Reimbursement. [7 CFR § 210.16(a)(5)]
	3. Retain control of the school food service account and overall financial responsibility for the school nutrition program. [7 CFR 210.14 (a)]
	4. Ensure that all federally donated foods received by the school food authority and made available to the food service management company accrue only to the benefit of the school food authority's nonprofit school food service and are fully utilized therein. [7 CFR § 210.16(a)(6)]
	5. Maintain all applicable health certification and be assured that the FSMC is meeting all State and local regulations in preparing or serving meals at school food authority facilities. [7 CFR § 210.16(a)(7)]
	6. Retain signature authority and be responsible for all contractual agreements entered into in connection with the school nutrition program. [7 CFR § 210.16(a)(5)]
	7. Make reasonable regulations with regard to all matters under its supervision and control, and the FSMC shall comply with them as soon as reasonably possible after proper notification is given.
	8. Establish and maintain a food service advisory board composed of parents, teachers, and students to assist in menu planning. The advisory board shall meet at least twice per year, and at least once prior to November 1st. Meeting agendas and minutes shall be maintained by the SFA. [7 CFR § 210.16(a)(8)]
	9. Ensure resolution of program review and audit findings. [7 CFR § 210.9(b)(17); 210.18(k)(1)(2)]
	10. Provide a 21 day cycle menu. The FSMC shall adhere to the cycle menu for the first 21 days of operation. Changes thereafter may be made with the approval of the SFA. [7 CFR § 210.16 (b)(1)]
	11. Develop, distribute, and collect the parent letter and application for free and reduced price meals. [7 CFR § 245.6]
	12. Determine eligibility and verify applications for free and reduced price meals benefits and will conduct any hearings related to such determinations. [7 CFR § 245.6, 6a, 7, 10]
	13. Assure that the maximum amount of USDA Foods are received and utilized by the FSMC prior to the end of the school year. [7 CFR § 210.9(b)(15)]
	14. Establish processing agreements, secure private storage facilities, and maintain any other aspect of financial management relating to USDA Foods. [7 CFR § 250.14, 250.15]

## SECTION 6

## FOOD SERVICE MANAGEMENT COMPANY RESPONSIBILITIES

1. **The Food Service Management Company Shall:**
	1. Maintain such records as the school food authority will need to support its Claim for Reimbursement; make all records available to the SFA upon request; and retain all records for a period of three (3) years after the SFA submits the final Claim for Reimbursement for the fiscal year for inspection and audit by representatives of the SFA, State Agency (SA), United States Department of Agriculture (USDA) and the State Comptroller General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the 3-year period until resolution of the issues raised by the audit. [Record Retention and Access, 2 CFR 200 and 7 CFR § 210.16(c)(1)]
	2. Maintain all records pertaining to the SFA at [Specify the location] for the duration of the contract and for the required retention period.
	3. Prepare and serve a variety of high quality, wholesome, and nutritious meals, beverages and a la carte items for the SFA’s students, faculty, staff, visitors and others as designated by the SFA in accordance with the terms and conditions of the SFA agreement.
		1. The FSMC shall serve, on such days and at such times as requested by the SFA: (DELETE THESE INSTRUCTIONS: Delete programs below that are not applicable and modify numbering)
			1. Breakfasts, priced as a unit, which meet USDA requirements
			2. Lunches, priced as a unit, which meet USDA requirements
			3. After-school snacks, priced as a unit, pursuant to the After-School Care Program
			4. Summer meals, priced as a unit, which meet USDA requirements
			5. A la carte, vending, and catering, priced as a unit, which meet USDA requirements
			6. Other foods as agreed upon by the FSMC and SFA, pursuant to applicable regulatory requirements
		2. The FSMC shall implement the Fresh Fruit and Vegetable Program per the sites listed in Exhibit C. The FSMC agrees to operate the FFVP in accordance with the requirements of Section 19 of the National School Lunch Act, all applicable regulations and policies, and the FFVP Handbook for Schools, as well as USDA guidance issued via memorandum and the Administrative Review Manual (ARM).
			1. The FSMC shall submit a sample cycle menu
			2. The FSMC shall submit a sample nutrition lesson corresponding with the cycle menu
		3. FSMC shall document and track all FFVP expenses separately and make this documentation easily accessible for the SFA, Agency of Education, or USDA.
		4. Allowable operational costs shall include the purchase of fruits and vegetables, including the cost of pre-cut produce and delivery charges, and non-food items or supplies that are used in serving or cleaning. (Salaries and other costs shall not be included in allowable operational costs; these labor costs shall be included in general program operations)
		5. The FSMC shall provide the SFA with an itemized invoice of FFVP allowable costs on a monthly basis.
	4. The FSMC shall adhere to the 21-day cycle menu(s) and portion sizes specified by the SFA on Exhibit B for the first 21 days of meal service. Thereafter, changes in the menu(s) may be made with prior approval of the SFA who shall ensure all foods and beverages are of equivalent or better quality and variety as the foods and beverages required for the first 21 days of meal service. The meals must meet the Meal Pattern as designated herein by the SFA for each Term of the Contract, if applicable. Meals must adhere to all calorie ranges and meet the nutrition standards for National School Lunch, School Breakfast, and/or summer meals programs for the age/grade groups of school children as listed in Exhibit C.
	5. The serving sizes provided by the SFA on the 21-day cycle menu(s) in Exhibit B are, in most cases based on the required minimum serving sizes stated in Exhibit C. If the serving sizes for the food items indicated on the menu(s) do not meet the required average daily calorie ranges per five-day week and the nutrient standards as stated in Exhibit C, the FSMC must adjust the serving sizes and/or provide additional food items as necessary to meet the required calorie ranges and nutrient standards while meeting all Meal Pattern requirements and without significantly altering the 21-day cycle menu(s).
	6. The FSMC is required to substitute food components of the meal pattern for students with disabilities in accordance with 7 C.F.R. § 15b when the disability restricts their diet and is permitted to make substitutions for students without disabilities when they are unable to eat regular meals because of a medical or special dietary need.
	7. It will be the joint responsibility of the SFA and the FSMC to protect the anonymity of all children receiving free or reduced-price meals, and methods for ensuring anonymity shall be jointly agreed upon; provided that nothing in this paragraph shall be construed to relieve the FSMC of its independent obligation to protect the anonymity of all children receiving free or reduced-price meals and to provide the required quality and extent of goods and services hereunder.
	8. At the SFA’s discretion, the SFA may conduct performance reviews of the FSMC’s performance under the Contract. Any services performed under the Contract shall be subject to a performance review. The FSMC shall cooperate with the SFA in these reviews, which may require the FSMC to provide records of its performance. Performance reviews may be used by the SFA to determine whether to enter into future contractual relationships with the FSMC, including subsequent Contract renewal Terms, as applicable. Performance reviews may include, but are not limited to:
		1. Completion and performance of contractual services rendered;
		2. Adherence to the meal pattern and food specification requirements, including quality and variety;
		3. Performance on SFA On-Site Reviews and status of required corrective action, if any;
		4. Performance on State and/or Federal reviews and status of required corrective action, if any;
		5. Participation trends, including program participation compared to a la carte sales;
		6. Responsiveness of local staff and management to the SFA’s needs, including the Advisory Board and Local Wellness Committee, as applicable; and
		7. Responsiveness of regional management to the SFA and local staff/management.
	9. Perform the work described in this agreement in full compliance with all applicable laws, rules, and regulations adopted or promulgated by any federal or state regulatory body or governmental agency.
	10. Meet all requirements and performance standards that may be specified by rule or regulation by any administrative officials or bodies charged with enforcement of any state or federal laws on the subject matter of this agreement.
	11. Ensure that all federally donated foods received by the SFA and made available to the FSMC accrue only to the benefit of the SFA’s nonprofit school food service account and are fully utilized therein. [7 CFR § 210.16(a)(6)]
	12. Have State and/or local health certification for any facility outside the school in which it proposes to prepare meals and the food service management company shall maintain this health certification for the duration of the contract. The FSMC must meet all applicable State and local health regulations in preparing and serving meals at the SFA facility. [7 CFR § 210.16(a)(7)]
	13. Assume full responsibility for the payment of all contributions, assessments, both state and federal, including, but not limited to, wages, pension benefits, federal, state and local employment taxes, unemployment taxes, social security, and worker’s compensation costs, as to all employees engaged by it in the performance of this agreement.
	14. Furnish the SFA, upon request, a certificate or other evidence of compliance with state or federal laws regarding contributions, taxes, and assessments on payrolls.
	15. Accept liability caused by FSMC negligence for claims assessed as a result of Federal or State reviews/audits, corresponding with the SFA’s period of liability.
	16. Accept liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA Foods.
	17. Participate in the parent, teacher, and student advisory board.
	18. Adhere to and assist in the implementation, enforcement, and evaluation of all nutrition-related requirements in the SFA’s Local Wellness Policy. The FSMC shall remain informed of increasing industry standards and assist the SFA in modifying its Local Wellness Policy to reflect the highest current nutrition-related standards. Refer to Exhibit H.
	19. Cooperate with the SFA in promoting nutrition education and coordinating the SFA’s food service with classroom instruction.
	20. Deposit daily all monies in the SFA’s nonprofit food service account.
	21. CACFP Institutions:
		1. The institution shall provide the food service management company with a list of the State agency approved child care centers, day care homes, adult day care centers, and outside-school-hours care centers to be furnished meals by the food service management company, and the number of meals, by type, to be delivered to each location;
		2. The food service management company shall maintain such records (supported by invoices, receipts or other evidence) as the institution will need to meet its responsibilities under this part, and shall promptly submit invoices and delivery reports to the institution no less frequently than monthly;
		3. The food service management company shall have Federal, State or local health certification for the plant in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times. In addition, the State agency may require the food service management company to provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being prepared. These bacteria levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals prepared or served by other establishments in the locality. Results of these inspections shall be submitted to the institution and to the State agency;
		4. The meals served under the contract shall conform to the cycle menus upon which the bid was based, and to menu changes agreed upon by the institution and food service management company;
		5. The books and records of the food service management company pertaining to the institution's food service operation shall be available for inspection and audit by representatives of the State agency, of the Department, and of the U.S. General Accounting Office at any reasonable time and place, for a period of 3 years from the date of receipt of final payment under the contract, or in cases where an audit requested by the State agency or the Department remains unresolved, until such time as the audit is resolved;
		6. The food service management company shall operate in accordance with current Program regulations;
		7. The food service management company shall not be paid for meals which are delivered outside of the agreed upon delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements contained in the contract;
		8. Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;
		9. Increases and decreases in the number of meal orders may be made by the institution, as needed, within a prior notice period mutually agreed upon in the contract;
		10. All meals served under the Program shall meet the requirements of §226.20;
		11. All breakfasts, lunches, and suppers delivered for service in outside-school-hours care centers shall be unitized, with or without milk, unless the State agency determines that unitization would impair the effectiveness of food service operations. For meals delivered to child care centers and day care homes, the State agency may require unitization, with or without milk, of all breakfasts, lunches, and suppers only if the State agency has evidence which indicates that this requirement is necessary to ensure compliance with §226.20.
		12. A food service management company may not subcontract for the total meal, with or without milk, or for the assembly of the meal.

## SECTION 7

## USDA FOODS

1. The FSMC will provide the following services in relation to USDA Foods (Delete or add duties as necessary):
	1. Preparing and serving meals
	2. Ordering or selection of USDA Foods, in coordination with the SFA and in accordance with 7 CFR 250.52
	3. Storage and inventory management of USDA Foods in accordance with 7 CFR 250.52
	4. Payment of processing fees and or submittal of refund 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 subpart C of 7 CFR 250
2. The FSMC must credit the SFA for the value of all USDA Foods received for use in the SFA’s meals service in a school year, including the value of USDA Foods contained in processed end products if the FSMC procures processed end products on behalf of the SFA, or acts as an intermediary in passing the donated food value in processed end products on to the SFA. (All USDA foods must be received by the SFA by the end of the school year.) [7 CFR 250.519(a)]
3. The FSMC shall credit for USDA Foods by disclosure, i.e., the FSMC shall credit the SFA monthly for the value of USDA Foods as found in the “Value of Commodities Received Report” from USDA’s Web Based Supply Chain Management (WBSCM), in its billing for program costs submitted to the SFA, the savings resulting from the receipt of USDA Foods for the billing period. Programs receiving USDA Foods value through the DoD Fresh Program should use found in FFAVORS.
4. The FSMC shall use all ground beef, ground pork, and all processed end products in the SFA’s reimbursable meals. The FSMC will use all other donated foods, or will use commercially purchased foods of the same generic identity, of US origin, and of equal or better quality than the donated foods, in the SFA’s food service.
5. The FSMC must meet the general requirements in 7 CFR 250.14(b) for the storage and inventory management of USDA Foods. Additionally, the FSMC must ensure that its system of inventory management does not result in the SFA being charged for USDA Foods.
6. Upon the termination of the Contract, the FSMC must return all unused USDA Foods, including but not limited to ground beef, ground pork, and processed end products to the SFA.
7. The SFA must ensure that the FSMC has credited it for the value of all USDA Foods received for use in the SFA‘s meal service in the school year. The FSMC agrees to cooperate and provide information reasonably requested by the SFA.
8. The FSMC must ensure compliance with the requirements of subpart C of 7 CFR part 250 and with the provisions of the distributing and/or the SFA’s processing agreements in the procurement of processed end products on behalf of the SFA, and will ensure crediting of the SFA for the value of USDA Foods contained in such end products at the processing agreement value.
9. The FSMC shall not enter into the processing agreement with the processor required in subpart C of 7 CFR 250.
10. The distributing agency, sub distributing agency, SA or SFA, the Comptroller General or the US Department of Agriculture, or their duly authorized representatives, may perform onsite reviews of the FSMC’s food service operation, including the review of records, to ensure compliance with requirements for the management and use of USDA Foods.
11. The FSMC will maintain records to document its compliance with 7 CFR 250.54(b).
12. Any extension or renewal of the Contract is contingent upon fulfillment of all provisions in the Contract relating to USDA Foods.
13. The FSMC must maintain the following records relating to the use of USDA Foods:
	* + 1. The USDA Foods and processed end products received from, or on behalf of, the SFA, for use in the SFA’s food service operations;
			2. Documentation that it has factored all rebates for the value of all USDA Foods received for use in the SFA’s food service operations in to the fixed cost for the school year, including, in accordance with the requirements in 7 CFR 250.51(a), the value of USDA Foods contained in processed end products; and
			3. Documentation of its procurement of processed end products on behalf of the SFA, as applicable.
14. The SFA shall ensure that the FSMC is in compliance with the requirements of this section through its monitoring of the food service operation, as required in 7 CFR parts 210, 225, or 226, as applicable.
15. The SFA shall conduct a reconciliation at least annually (and upon termination of the Contract) to ensure that the FSMC has factored in the value of all USDA Foods received for use in the SFA’s food service in the school year, including, in accordance with the requirements in 7 CFR 250.51(a), the value of USDA Foods contained in processed end products.
16. The FSMC will assure that USDA Foods are not used for special functions conducted outside the nonprofit school food service.
17. The current market value of USDA Foods is based on the prices issued by the Vermont Agency of Education in compliance with 7 C.F.R. § 250.58(e).
18. The FSMC shall credit the SFA’s monthly bill/invoice the current market value of all USDA Foods received during each Contract Term as the USDA Foods are used in the SFA’s food service. The FSMC must credit the SFA for all USDA Foods received for use in the SFA’s food service each Contract Term whether the USDA Foods have been used or not. Such credit shall be issued in full prior to the expiration of each Contract Term.
19. At the end of each Contract Term and upon expiration or termination of the Contract, a reconciliation shall be conducted by the SFA using the Agency of Education’s Value of Commodities Received Memo to ensure and verify correct and proper credit has been received for the full value of all USDA Foods received by the FSMC during each Contract Term for use in the SFA’s food service. SFAs must pursue the variance of the value of USDA foods received vs. the entitlement value as indicated in the memo if the FSMC fails to utilize at least 95% of the entitlement value. If the FSMC utilizes at least 95% but less than 100% of the entitlement value, the SFA retains the right to pursue the variance.
20. The SFA shall ensure the method and timing of crediting does not cause its cash resources to exceed limits established in 7 C.F.R. § 210.9(b)(2).
21. At the end of each Contract Term and upon expiration or termination of the Contract, a reconciliation shall be conducted by the SFA to ensure and verify the rebates for all USDA Foods received by the FSMC during the Contract Term for use in the SFA’s food service have been factored into the fixed price contract.
22. The SFA shall verify receipt of USDA Foods shipments through its electronic records or by contacting the Vermont Agency of Education or processor as applicable.
23. The SFA reserves the right to conduct USDA Foods credit audits throughout each Contract Term to ensure compliance with federal regulations 7 C.F.R. Part 210 and Part 250.
24. The FSMC may store and inventory USDA Foods together with commercial foods purchased for use in the SFA’s food service. The FSMC must meet all storage and inventory management requirements outlined in 7 C.F.R. Part 250. USDA ground beef, ground pork, and processed end products shall be stored in a manner that ensures usage in the SFA’s food service.
25. The FSMC must accept liability for any negligence on their part that results in any loss, damage, out of condition, or improper use of USDA Foods not yet credited to the SFA, and shall credit the SFA either monthly or through a fiscal year-end reconciliation.
26. The SFA and FSMC shall consult and agree on end products to be produced from USDA Foods during each Contract Term. If the SFA and FSMC cannot agree on end products, the FSMC shall utilize the USDA Foods in the form furnished by the USDA.
27. The SFA shall have processing contracts in place when a commercial facility processes or repackages USDA Foods. The FSMC shall pay all related processing fees and costs. The SFA shall not be responsible for any costs associated with processing USDA Foods. The terms and conditions of the processing contract must comply with 7 C.F.R. Part 250. In accordance with 7 CFR 250.51(a), the FSMC factor the full value of all USDA Foods received for use in the SFA’s meal service in a school year or fiscal year (including both entitlement and bonus foods) into the Contract. This includes factoring in the value of USDA Foods contained in processed end products (per 6.19 below).
28. The FSMC shall not enter into subcontracts for further processing of USDA Foods.
29. The FSMC shall be responsible for all delivery, freight/handling, storage, and warehousing costs associated with USDA Foods. Approximate annual delivery, freight/handling costs are (insert dollar amount). [DELETE THESE INSTRUCTIONS: This clause may be revised to designate the SFA as responsible for any or all of these costs. If the SFA is responsible for all costs, change FSMC to SFA in the above clause. If using the above clause, delete the clause following these instructions along with these instructions. If the costs are shared by the FSMC and the SFA, for example, if the SFA is responsible for storage and warehousing, the following language MUST be used and the above clause must be deleted along with these instructions.] The FSMC shall be responsible for all delivery and freight/handling costs associated with USDA Foods. The SFA shall be responsible for all storage and warehousing costs associated with USDA Foods. The SFA shall provide reimbursement to the FSMC for USDA Foods that are lost, damaged, or become out-of-condition due to the SFA’s own negligence and for which the FSMC has already credited the SFA. Approximate annual delivery, freight/handling costs are (insert dollar amount).

# SECTION 8

# Purchases/Buy American/Specifications for Products

(DELETE THESE INSTRUCTIONS: If an SFA chooses to include specifications regarding Farm to School educational opportunities, Harvest of the Month, freshness requirements, etc., they should develop those specifications and include them in this section.)

1. The FSMC shall retain title of all purchased food and nonfood items.
2. The FSMC shall purchase, to the maximum extent practicable, domestic commodities or products which are either an agricultural commodity produced in the United States or a food product processed in the United States substantially using agricultural commodities produced in the United States (U.S.). [7 CFR Part 210.21(d)/FNS Policy Memo SP 24-2016]
	1. Any product that is not 100% domestically grown shall not be served in the school meals program. The FSMC must first provide documentation that supports the use of non-domestic food after a domestic alternative has been considered. Exceptions must be used as a last resort and pre-approved by the SFA using this criteria:
		1. The product is not produced or manufactured in the US in sufficient or reasonable quantities of a satisfactory quality; or
		2. Competitive bids reveal the costs of a US product are significantly higher than the non-domestic product.
	2. All documentation must be kept on file by the FSMC and available upon request by the SFA, Agency of Education, or USDA.
3. The FSMC shall not substitute commercially-purchased foods for USDA ground beef, ground pork, and processed end products received.
4. The FSMC shall certify the percentage of U.S. content in the products supplied to the SFA.
5. The SFA reserves the right to review FSMC purchase records to ensure compliance with the Buy American provision in 7 C.F.R. Part 250.
6. The FSMC shall provide Nutrition Facts labels and any other documentation requested by the SFA to ensure compliance with U.S. content requirements.
7. For the duration of the Contract and all subsequent renewal Terms, as applicable, the FSMC shall purchase foods and beverages that are equivalent or better in quality and variety as those items required in the 21-day cycle menu, per the requirements outlined above, Exhibit B, and the food specifications contained herein.

# SECTION 9

## Use of Facilities and Equipment

1. 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.
2. The SFA shall furnish and install any equipment and make any structural changes needed to comply with federal, state, and local laws, ordinances, rules, and regulations.
3. All equipment owned by the current contractor is listed in Exhibit H. The FSMC awarded the Contract shall be responsible for providing and installing, as applicable, all equipment as designated in Exhibit I, if necessary for the provision of the contractual services required by the Contract.
4. The FSMC shall not use the SFA’s facilities to produce food, meals, or services for other organizations or otherwise use the facilities of the SFA for any reason other than those specifically provided for in the Contract without the express written consent of the SFA.
5. The FSMC and SFA shall inventory the equipment and supplies owned by the SFA at the beginning of the school year and the end of the school year, including but not limited to flatware, trays, chinaware, glassware, and kitchen utensils. The FSMC will be responsible for correcting any discrepancies and any equipment repairs that are not the result of normal wear and tear within 30 days of the end-of-the-school-year inventory. This documentation shall be submitted to and kept on file by the SFA’s Business Manager.
6. The SFA shall repair and service equipment except when damages result from the use of less-than-reasonable care by the FSMC employees or agents as determined by the SFA. When damage results from less-than-reasonable care on the part of any FSMC employees or agents, it will be the FSMCs responsibility to repair and service the damaged equipment, incurring all applicable fees and costs, within a reasonable timeframe to ensure no disruption in service.
7. The SFA reserves the right, at its sole discretion, to use its facilities to sell or dispense any food or beverage before or after regularly scheduled lunch or breakfast periods provided such use does not interfere with the operation of the Child Nutrition Programs.
8. 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.
9. The FSMC shall maintain the inventory of expendable equipment necessary for the food service and at the inventory level as specified by the SFA.
10. The SFA shall be legally responsible for any losses of USDA Foods which may arise due to equipment malfunction or loss of electrical power not within the control of the FSMC.
11. The FSMC and/or its employees or agents shall not remove equipment or property of the SFA from the SFA’s premises including, but not limited to, food preparation and/or serving equipment.
12. The FSMC shall provide written notification to the SFA of any equipment belonging to the FSMC within ten days of its placement on SFA premises.
13. The SFA shall not be legally responsible for loss or damage to equipment and/or vehicles owned by the FSMC and located on SFA premises.
14. The SFA shall provide sanitary toilet facilities for the FSMC employees.
15. The SFA shall have access, with or without notice to the FSMC, to all SFA facilities used by the FSMC for inspection and audit purposes.
16. The FSMC shall surrender all equipment and furnishings in good repair and condition to the SFA upon termination of the Contract, reasonable wear and tear excepted.
17. The SFA must give prior approval and have final authority for the purchase of equipment used for the storage, preparation, serving, and/or delivery of school meals for items listed in Exhibit I.
18. The SFA retains title to all property and equipment when placed in service. If the property and/or equipment is amortized through the FSMC and the Contract expires or is terminated, the SFA can return the property to the FSMC for full release of the unpaid balance or continue to make payments in accordance with amortization schedules.
19. (DELETE THESE INSTRUCTIONS: If the FSMC is responsible for providing a vehicle(s), add language here and include all general vehicle requirements.)

#  SECTION 10

# MANAGEMENT AND PERSONNEL

1. FSMC Management and Professional Employees. The FSMC shall provide sufficient and qualified management and professional employees to manage the food service operations and supervise all employees employed therein.
2. Non-Management Employees. All non-management food service employees shall be employees of the SFA / FSMC. (Delete SFA or FSMC as appropriate). The FSMC managers shall direct and supervise SFA (delete this sentence if there are no SFA employees) food service employees.
3. Student Workers. [Delete if not applicable and indicate N/A] The SFA has a policy of providing work experience for appropriate students as part of the educational curriculum. In furtherance of that policy, the SFA may assign students for work in the food service operation in such numbers as are agreed upon between the SFA and the FSMC.
4. Payroll and Taxes. The FSMC shall prepare and process the payroll for and shall pay its employees directly. The FSMC further warrants that it shall withhold or pay as appropriate all applicable federal and state employment taxes and payroll insurance with respect to its employees, specifically including, but not limited to, any income, social security, and unemployment taxes and workers’ compensation payments.
5. Workers’ Compensation Insurance. The FSMC shall procure Workers’ Compensation Insurance or shall maintain a system of self-insurance in conformance with applicable state law covering its employees and shall provide proof of such coverage or system to the SFA.
6. Nondiscrimination. The SFA and the FSMC shall comply with Executive Order 11246, entitled “Equal Employment Opportunity” as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). **[2 CFR 200]**
7. Fingerprinting Requirements. The FSMC shall be responsible for obtaining any necessary background checks or fingerprint clearances for its employees as required by law. The FSMC shall provide all necessary forms and/or documentation for such employees to the SFA.
8. The FSMC shall comply with all wage and hours of employment regulations of federal and state law.
9. The FSMC shall pay all FSMC employees in accordance with the Fair Labor Standards Act and any other applicable statutes.
10. The FSMC shall provide the SFA with a list of its personnel policies and employee handbook.
11. The FSMC shall comply with USDA professional standards requirements for staff employed at the SFA. Documentation shall be readily available upon request.
12. The SFA shall submit to the FSMC a current schedule of employees, positions, assigned locations, hours of work, wages and benefits (as applicable) on Exhibit F which must be used for bid calculation purposes. (DELETE THESE INSTRUCTIONS: insert the total estimated labor cost from Exhibit F).
13. The FSMC shall maintain the same minimum level of employee positions, hours, wages, and benefits as stipulated on Exhibit G throughout the entire Contract Term, and each subsequent Contract Term, as applicable, unless a reduction in the required levels is authorized by the SFA. The FSMC shall provide the SFA with written notice of any increases in employee positions, hours, wages, and benefits.
14. In the event a reduction in employee positions, hours, wages, and/or benefits occurs and such reduction is authorized by the SFA, the FSMC shall credit the SFA’s monthly bill/invoice for the exact dollar amount related to the cost of the labor reduction as indicated on Exhibit G for the remainder of the Contract Term and all subsequent Contract Terms, as applicable, including the value of any subsequent and future increases in employee wages and benefits. Such credits shall be termed a Labor Reduction Fee.
15. The FSMC must ensure that the employees’ hours listed on Exhibit G are not used for catering or special functions.
16. The FSMC shall ensure that all individuals performing services on the FSMC’s behalf in or for schools shall be free from communicable diseases, including tuberculosis, prior to performing any such services in or for schools.
17. Upon written request of the SFA, the FSMC will remove any FSMC employee who violates health requirements or conducts themselves in a manner which is detrimental to the physical, mental, or moral well-being of students or staff, or otherwise violates SFA policies, procedures, and practices.
18. In the event of the removal or suspension of any employee, the FSMC shall immediately restructure its staff without disruption in service.
19. 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.
20. The FSMC shall provide daily, on-site supervisory personnel dedicated solely to the SFA, for the overall food service. The SFA retains final approval authority for the FSMC’s local management position(s).
21. The FSMC will assure conformance with all civil rights requirements that are applicable to the SFA.
22. The FSMC shall conduct civil rights training for all food service employees, including front-line staff, on an annual basis. Civil rights training must include:
	1. Collection and use of data,
	2. Effective public notification systems,
	3. Complaint procedures,
	4. Compliance review techniques,
	5. Resolution of noncompliance,
	6. Requirements for reasonable accommodation of persons with disabilities,
	7. Requirements for language assistance,
	8. Conflict resolution, and
	9. Customer service.
23. The FSMC shall conduct periodic training on various food service related topics for all food service employees.

# SECTION 11

## INVENTORIES, FACILITIES, EQUIPMENT, AND MAINTENANCE

1. The SFA and FSMC shall conduct a joint inventory of existing food and operational supplies at both the beginning and the end of the Contract. If the ending inventory is less than the value of the beginning inventory the FSMC will credit the SFA for the difference. The cost of food and operational supplies ordered by FSMC on behalf of the SFA in performance of the Contract shall be paid for by the FSMC.
	1. Any USDA Foods/federally donated commodities received by the SFA and made available to the FSMC shall be used only for the benefit of the SFA’s nonprofit food service operation and must be fully utilized. Bonus USDA Food items must be used to reduce the cost of meals, but not replace purchased products. The USDA shall establish the value of USDA Foods. Any commodity processing contracts shall be established by the SFA. All goods, services, and monies received as result of rebate under a processing contract must be used in the SFA’s nonprofit food service.
	2. FSMC representative must have authorization from the SFA to have access to the commodity ordering system and the name of the authorized representative on file with the VT Agency of Education.
	3. Rebates or allowances obtained from vendors, suppliers, or distributors including those through the FSMC’s regional or national purchasing or distribution arrangements must be factored into the fixed price.
2. The SFA and the FSMC shall inventory the equipment owned by the SFA at the beginning of the Contract year, including, but not limited to, consumable and non-consumable flatware, trays, china, glassware and food. The FSMC shall be responsible for reimbursing the SFA for all shortages noted on the year-end inventory.
3. The SFA shall provide, without cost to the FSMC, suitable office facilities, including furniture and equipment, for use by the FSMC in performance of the Contract. The FSMC shall take reasonable care of the office facilities and equipment, and shall return them to the SFA in good condition upon termination of the Contract, ordinary wear and tear excepted.
4. The FSMC shall be responsible for usual and customary cleaning and sanitation of the SFA’s food service facilities.
	1. The FSMC shall be responsible for housekeeping and sanitation in areas used for food preparation, storage, and service, and shall clean and sanitize dishes, pots, pans, utensils, equipment, and similar items. The SFA shall designate a refuse collection area and the FSMC shall be responsible for transporting refuse to the designated refuse collection area.
	2. The SFA shall be responsible for the required cleaning and maintenance of dining areas, as well as periodic cleaning of all ceilings, ceiling fixtures, air ducts, and hood vent systems (as per local ordinance). The SFA shall also provide and maintain adequate fire extinguishing equipment for food service areas, provide necessary pest control, and shall be responsible for the removal of refuse from the designated refuse collection area.
	3. If the SFA is unable to perform any of its responsibilities described in subparagraph B above, the FSMC may, with the written approval of the SFA, temporarily assume those responsibilities and shall bill the SFA for any costs incurred.
	4. The FSMC shall be responsible for complying with all applicable federal, state, and municipal laws related to food preparation and sanitation and all rules and regulations promulgated thereunder. The SFA shall be responsible for compliance related to structural and equipment matters.

1. The SFA shall provide, at the SFA’s expense, maintenance personnel and outside maintenance services, parts, and supplies required to properly maintain the food service facilities and equipment.
2. The SFA shall obtain necessary health permits and certification for its facilities. The premises and equipment provided by each party in performance of this agreement shall comply with all applicable building, safety, sanitation, and health laws; and shall satisfy all permit requirements, ordinances, rules, and regulations, including the federal Occupational Health and Safety Act of 1970 or applicable state act and standards promulgated thereunder. FSMC shall take reasonable and proper care of all premises and equipment in its custody and control and shall use them in a manner that will not cause violation of applicable laws, ordinances, rules, and regulations, including any reporting and record-keeping requirements. If at any time the FSMC is notified by an authorized government agency that the SFA’s premises or equipment are not in compliance with any law, ordinance, rule, or regulation, the FSMC shall immediately inform the SFA of such notification. The FSMC shall post copies of the health inspection in a clearly visible area at each site.
3. Transportation Equipment and Vehicle. The SFA shall provide transportation vehicles and equipment to be used in the food service program. Maintenance, fuel, insurance, and equipment for transportation shall be the responsibility of the SFA. [Delete or modify if not applicable]
4. Nonconforming Facilities and Equipment. Each party shall, at no cost to the other, make all repairs, alterations, modifications, or replacements which may be necessary to correct any conditions of premises or owned equipment which violate applicable building, sanitation, health, or safety law, ordinance, rule or regulation.

# SECTION 12

## DESIGNATION OF EXPENSES/FINANCIAL AND PAYMENT TERMS

1. Meal Equivalent defined:
	1. For fixed-price per meal purposes, each reimbursable lunch and supper shall be considered one (1) meal/meal equivalent, each reimbursable breakfast shall be considered two-thirds (2/3) (.666) of a meal/meal equivalent, and one reimbursable snack shall be considered one-fourth (1/4) (.25)of a meal/meal equivalent. (Note to SFA: The allocation of meal equivalents by meal type is negotiable. Delete this note.)
	2. For cash meal sales other than reimbursable meals, the number of meal equivalents shall be determined by dividing the total of all food sales except reimbursable meal and reimbursable snack sales, (including sales of adult meals, a la carte meals, snack bar, catering, vending, and any other function sales) by the sum of the current school year free lunch reimbursement rate and the USDA foods value. [Example: The meal equivalency rate is calculated by the free lunch reimbursement rate ($3.22) plus the cash in lieu of USDA foods rate ($0.23) equals $3.45. Lunch equivalents is determined by the total a la carte dollars divided by $3.45.]
	3. Expenses paid by the FSMC and not charged to the SFA or the food service operation and are unallowable include:
		1. Reports filed to the State
		2. Corporate income tax
	4. The FSMC shall submit the following supporting documents to the SFA monthly
		1. Daily meal counts by benefit category by school for each program
		2. Daily meal production records by program
		3. Monthly summary of value of USDA foods used
		4. Monthly summary of value of USDA foods delivered
		5. Monthly summary of revenues from all sales
		6. FFVP documentation
2. Fresh Fruit and Vegetable Program. Allowable costs will be paid from the nonprofit school food service account to the FSMC net of all discounts, rebates and other applicable credits accruing to or received by the FSMC or any assignee under the contract to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority. (FFVP only)
3. The FSMC shall receive no payment for meals that are spoiled or unwholesome at the time of serving, that do not meet the detailed specifications for each food component or menu item in accordance with 7 C.F.R. Part 210 and other meal pattern requirements, or that do not otherwise meet the requirements of the Contract.
4. For the purposes of the Contract, a la carte shall be inclusive of all foods and beverages sold to students that do not constitute a component of a reimbursable meal plus all foods and beverages sold to adults during any and all meal services provided within the scope of the Contract. The FSMC and SFA shall determine a la carte meal equivalents by dividing all a la carte revenue by the a la carte equivalency factor which is determined by taking the sum of the Federal and State free lunch reimbursement rates plus the value of USDA entitlement.
5. The SFA shall ensure the method and timing of crediting does not cause its cash resources to exceed the limits established in 7 C.F.R. § 210.9(b)(2).
6. The FSMC must submit all invoices pertaining to the SFA nonprofit food service within 30 days of the last day of each month or the final day of the program.
7. The FSMC shall submit separate billing for special functions conducted outside of the nonprofit school food service account.
8. The fixed meal rate for meals must be calculated as if no USDA Foods were available.
9. The FSMC guarantees to the SFA that the bid meal rates and fees for each reimbursable school meal and a la carte equivalent shall include the expenses designated under Column I. The FSMC shall be responsible for negotiating/paying all employees’ fringe benefits, employee expenses, and accrued vacation and sick pay for staff on their payroll.
10. The SFA shall pay those expenses designated under Column II.

Column I Column II

LABOR

 Payroll, Managers, and/or Supervisors \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

 Payroll, Full-, and Part-Time Workers \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

 Payroll, \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

 Cashiers \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

 Drivers \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

EMPLOYEE BENEFITS/COSTS—TO BE PAID BY PARTY DESIGNATED AS EMPLOYER. MAY INCLUDE, BUT NOT LIMITED TO:

 Life Insurance, Medical/Dental Insurance

 Retirement Plans, Social Security

 Vacation, Sick Leave, Holiday Pay

 Uniforms, Tuition Reimbursement

Labor Relations

 Unemployment Compensation, Workers Compensation

 Processing and Payment of Payroll

FOOD Column I Column II

Food Products \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

USDA Foods Delivery \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

USDA Foods Freight/Handling Costs \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Food Storage/Warehouse \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

OTHER EXPENSES

Accounting

Bank Charges \_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Data Processing \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Record Keeping \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Processing and Payment of Invoices \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Equipment—Major

Original Purchase \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Routine Maintenance \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Major Repairs \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Replacement \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Equipment—Expendable (Trays, tableware, glassware, utensils)

Original Purchase \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Replacement \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Cleaning/Janitorial Supplies \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Insurance

Liability Insurance \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Insurance on Supplies/Inventory \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Laundry and Linen \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Office Materials \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Paper/Disposable Supplies \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Pest Control \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Postage \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Printing \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Product Testing \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Promotional Materials \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Taxes and License \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Telephone

 Local \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

 Long Distance \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Tickets/Tokens \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Training \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Transportation \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Trash Removal

 From Kitchen \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

 From School Premises \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Column I Column II

Travel

 Required \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

 Requested \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

Vehicles \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_

1. Invoices submitted to the SFA by the FSMC will be paid according to the SFA’s “Accounts Payable Cut-Off Schedule,” attached as Appendix (add Appendix letter). If invoices are received in the SFA’s Accounting Department by the cut-off date, and they pass audit, payment will be made on the release date listed on the schedule. The FSMC will be notified immediately of any invoice that does not pass audit. The SFA shall pay all amounts when due, but if the SFA does not make a payment when due, no interest shall be charged by the FSMC on that past due receivable, pursuant to 7 CFR § 210.16(c). (Note to school: If you include a contract provision to pay interest or a penalty for late payment you may not pay the interest or penalty from the nonprofit food service account. Delete before printing.)
2. The FSMC shall submit monthly operating statements to the SFA by the fifteenth (15th) of the next month. This statement shall reflect all activity for the previous calendar month.
3. The renegotiation of price terms under the Contract is permitted only upon the occurrence of unpredictable, unexpected conditions beyond the control of the parties. If those conditions create a significant and material change in the financial assumptions upon which the price terms of the Contract are based, then those price terms so affected may be renegotiated by the parties. Renegotiation of price terms under such conditions must be mutual, and any changes in price terms must be agreed upon by both parties. Any adjustments so negotiated and agreed upon must accurately reflect the change in conditions. The occurrence of such contingencies that are foreseeable and predictable, but not certain, should be calculated into the defined price terms to the extent possible, with the goal of minimizing the need for renegotiation of price terms during the term of the Contract.
4. Every payment obligation of the SFA under the Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of the Contract, the Contract may be terminated by the SFA at the end of the period for which funds are available. No liability shall accrue to the SFA in the event this provision is exercised, and the SFA shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
5. The FSMC’s determination of its allowable costs must be made in compliance with the applicable USDA and program regulations (7 CFR parts 210, 215, 220, 3016 and 3019, as applicable) and Office of Management and Budget Cost Circulars (A-87 cost Principles for State, Local Governments and Indian Tribal Governments, or A-122 Cost Principles for Non-profit Organizations, as applicable).
6. The FSMC must identify the amount of each discount, rebate and other applicable credit on bills and invoices for the Fresh Fruit and Vegetable Program presented to the SFA for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. This information must be supplied on a monthly basis. (FFVP only)
7. The FSMC must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the SFA, the Vermont Agency of Education, or the United States Department of Agriculture. The FSMC shall return the value of all discounts, rebates and other applicable credits allocable to the Contract to the SFA for the Fresh Fruit and Vegetable Program. (FFVP) [If you do not include the preceding sentence in the Contract, or equivalent, and allow the FSMC to keep the value of the discounts, rebates or other applicable credits you are out of compliance with Federal Regulations.]
8. Program Records. The books and records of the FSMC pertaining to the operations under the Contract shall be available to representatives of the SFA, Vermont Agency of Education, The US Department of Agriculture, and the US General Accounting Office at any reasonable time and place.

# SECTION 13

## FEES

1. All bids must be calculated based on the menu(s) in Exhibit B and on the projected annual units provided on the Bid Summary form, both attached herein. All bids shall be submitted using the Bid Summary form. All rates must be written in ink or typed in the blank space(s) provided and the estimated totals must be carried out to the second decimal place and must not be rounded.
2. The bid rate(s) must be calculated net of applicable discounts, rebates, and credits received by the FSMC and must not include the use of USDA Foods or any alternate pricing structure.
3. Fixed Fee Bid – the FSMC will be paid at a fixed rate per meal/lunch equivalent. The SFA must determine and receive the full value of USDA Foods; i.e., credits or reductions. The FSMC is responsible for reporting this monthly to the SFA. Adjustments must be accomplished on the monthly invoice from the FSMC and reconciled by an annual adjustment. The method of determining the donated food values that will be used in crediting in accordance with 7 CFR 250.51(c), or the actual donated food values must be included in the bid and contract documents.
4. The fixed price per meal/lunch equivalent may be subject to an annual escalator provision as stipulated in this contract by the SFA for annual renewals. Adjustment factors must reflect changes in federal Consumer Price Index for Food Away from Home. (The SFA may retain this section to allow for increases in subsequent contract renewals for the fixed prices per meal/meal equivalent. This escalator provision is for the fixed meal rates only; it does not apply to the administrative per meal fee.)

# SECTION 14

# REVENUE

* 1. The SFA shall receive all revenue from the food service.
	2. The food service revenue shall be used only for the SFA’s nonprofit food service.
	3. The food service revenue shall flow through the SFA’s chart of accounts.
	4. All goods, services, or monies received as the result of any equipment or USDA Foods rebate shall be credited to the SFA’s nonprofit food service account.
	5. If reimbursement is denied as a direct result of the failure of the FSMC to comply with the provisions of the Contract, the FSMC shall assume responsibility for the amount denied.

# SECTION 15

## LICENSES, CERTIFICATIONS, AND TAXES

* 1. Throughout the Term of the Contract and each renewal Term, the FSMC shall obtain and maintain all applicable licenses, permits, and health certifications required by federal, state, and local law. The approximate prior annual cost for licenses/permits was $\_\_\_\_\_\_.
	2. The FSMC shall have state or local health certification for any facility outside the SFA in which it proposes to prepare meals, if applicable, and must maintain this health certification for each Contract Term.

# SECTION 16

## RECORD KEEPING

1. The FSMC shall maintain such records as the SFA will need to meet monthly reporting responsibilities and will report claim information, including daily meal counts, to the SFA promptly at the end of each month.
2. The FSMC shall have records maintained and available to demonstrate compliance with the requirements relating to USDA Foods. Such records shall include the following:
3. The receipt, use, storage, and inventory of USDA Foods;
4. Monthly inventory reports showing all transactions for processed and non-processed USDA Foods; and
5. Documentation of credits issued to the SFA for USDA Foods received.
6. All records relating to the Contract, including subsequent renewal Terms, if applicable, are property of the SFA and shall be maintained in (DELETE THESE INSTRUCTIONS: select one: original or electronic) form on SFA premises for the duration of the Contract. At any time during the Contract, the SFA reserves the right to require the FSMC to surrender all records relating to the Contract to the SFA within 30 days of such request. Such records shall include, but are not limited to:
	1. All data, materials, and products created by the FSMC on behalf of the SFA and in furtherance of the Services;
	2. Production records, including quantities and amounts of food used in preparation of each meal and food component of menus;
	3. Standardized recipes and yield from recipes as deemed necessary;
	4. Processed product nutritional analysis;
	5. Nutritional content of individual food items and meals;
	6. Bills charged to the SFA for meals prepared under the Contract including the credit of USDA Foods where applicable;
	7. Inventory records;
	8. Food and bid specifications; and
	9. All documents and records as noted in this Request for Proposals/Invitation for Bids and Contract.
7. Upon expiration or termination of the Contract, the FSMC shall surrender all records as noted above, relating to the initial Contract and all subsequent renewal Terms, if applicable, to the SFA within 30 days of the Contract expiration or termination.
8. The SFA shall retain all records relating to the initial Contract and all subsequent Contract renewal Terms for a period of three years either from the date the final Contract renewal Term has expired, receipt of final payment under the Contract is recorded, or after the SFA submits the final Monthly Claim for Reimbursement for the final fiscal year of the Contract, whichever occurs last.
9. All records must be available for the period of time specified above for the purpose of making audits, examinations, excerpts, and transcriptions by representatives of the SFA, the Vermont Agency of Education, the United States Department of Agriculture, and the Auditor General, and other governmental entities with monitoring authority at any reasonable time and place. If audit findings have not been resolved, the records shall be retained beyond the specified period as long as required for the resolution of the issues raised by the audit.

# SECTION 17

## TERMS AND TERMINATION

1. The Contract that results from this RFP/IFB (heretofore known as the Contract) is effective for a one-year period commencing (enter date)\_\_ or upon written acceptance of the Contract, whichever occurs last, through \_(enter date)\_\_\_\_\_ (the “Term”), with options to renew yearly not to exceed four additional years (each a renewal “Term”).
2. Renewal of the Contract is contingent upon the fulfillment of all Contract provisions relating to USDA Foods.
3. Either the SFA or FSMC can terminate the Contract for cause or for convenience with a sixty- (60) day written notification. Following sixty (60) day written notification, the SFA can terminate the Contract in whole or in part without the payment of any penalty or incurring any further obligation to the FSMC.
4. Following any termination for convenience, the FSMC shall be entitled to compensation for services completed upon submission of invoices and proof of claim for services provided under the Contract up to and including the date of termination. The SFA shall have the right to receive services from the FSMC through the effective date of the notice of termination, and may, at its election, procure such work from other contractors as may be necessary to complete the services.
	1. Notwithstanding any provision to the contrary in the Contract, obligations of the SFA will cease immediately without penalty of further payment being required if sufficient funds for the Contract are not appropriated by the Vermont General Assembly or a federal funding source, or such funds are otherwise not made available to the SFA for payments in accordance with the Contract.
	2. Notwithstanding the notice period in paragraph 17.3, the SFA may immediately terminate the Contract, in whole or in part, upon notice to the FSMC if the SFA determines that the actions, or failure to act, of the FSMC, its agents, employees or subcontractors have caused, or reasonably could cause jeopardy to health, safety, or property; or if the SFA determines that the FSMC lacks the financial resources to perform under the Contract.
	3. (DELETE THESE INSTRUCTIONS: Optional—SFA may delete this clause) If the FSMC fails to perform to the SFA’s satisfaction any material requirement of the Contract or is in violation of a material provision of the Contract, the SFA shall provide written notice to the FSMC requesting that the breach of noncompliance be remedied within sixty- (60) days. If the breach or noncompliance is not remedied by the specified period of time, the SFA may either: (a) immediately terminate the Contract without additional written notice or, (b) enforce the terms and conditions of the Contract, and in either event seek any available legal or equitable remedies and damages. The SFA may finish the services by whatever method the SFA may deem expedient. Any damages incurred by the SFA as a result of any FSMC default shall be borne by the Contractor at its sole cost and expense, shall not be payable as part of the Contract amount, and shall be reimbursed to the SFA by the Contractor upon demand.
	4. Neither the FSMC nor 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 (“Act of God”). The SFA may cancel the Contract without penalty if the FSMC’s performance does not resume within 30 days of the FSMC’s interruption of services due to an Act of God.
	5. The only rates and fees that may be adjusted in subsequent Contract Terms are the fixed rates contained herein. Adjustment of all individual per meal fixed rates in subsequent Contract Terms must be tied to the Consumer Price Index for Food Away From Home as of the February preceding the year of renewal, if applicable. (Delete this provision if not applicable.)

# SECTION 18

## GENERAL CONTRACT TERMS/CERTIFICATIONS

1. No provision of the Contract shall be assigned or subcontracted without prior written consent of the SFA.
2. This solicitation/Contract, exhibits, and attachments constitute the entire contract between the SFA and FSMC and may not be changed, extended orally, or altered by course of conduct. No other FSMC contracts will be signed by the SFA.
3. Each party to the Contract represents and warrants to the other that: (a) it has the right, power and authority to enter into and perform its obligations under the Contract and (b) it has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract, and (c) the Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
4. Any silence, absence, or omission from the Contract specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and all materials, workmanship, and services rendered shall be of a quality that would normally be specified by the SFA.
5. No course of dealing or failure of the SFA to enforce strictly any term, right, or condition of the Contract shall be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of the Contract shall operate as a waiver of any other term, right, or condition.
6. Payments on any claim shall not prevent the SFA from making claim for adjustment on any item found not to have been in accordance with the provisions of the Contract.
7. It is further agreed between the SFA and FSMC that the exhibits, attachments, and clauses attached and designated are hereby in all respects made a part of the Contract.
8. The FSMC shall comply with Title VI of the Civil Rights Act of 1964, as amended; USDA regulations implementing Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; Age Discrimination Act of l975; 7 C.F.R. Parts 15, 15a, and 15b; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement—Nutrition Programs and Activities, and any additions or amendments.
9. If the Contract is in excess of $100,000, the SFA and FSMC shall comply with all applicable standards, orders, or regulations, including but not limited to:
	1. The Clean Air Act (42 U.S.C. § 7401 et seq.), the Clean Water Act (33 U.S.C. § 1311–1330, § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. § 1.1 et seq.);
	2. 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.
	3. 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.
	4. Certificate Regarding Lobbying pursuant to 31 U.S.C. 1352 (Appendix A: 7 C.F.R. Part 3018)
10. The FSMC certifies compliance with:
	1. Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871);
	2. The Department of Labor regulations (29 C.F.R. Part 5); and
	3. Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375 and Department of Labor Regulation (41 C.F.R. Chapter 60).
11. The FSMC is subject to the provisions of Section 2209d of Title 7 of the United States Code due to the use of federal funds for the food service program. All announcements and other materials publicizing this program must include statements as to the amount and proportion of federal funding involved.
12. The Vermont Agency of Education and the United States Department of Agriculture are not parties to the Contract and are not obligated, liable, or responsible for any action or inaction by the SFA or the FSMC. The SFA has full responsibility for ensuring the terms of the Contract are fulfilled.
13. To the fullest extent permitted by law, the FSMC agrees to indemnify, defend, and hold harmless the SFA and its respective agents, officers and employees from and against any and all claims, demands, suits, liabilities, injuries (personal or bodily), property damage, causes of action, losses, costs, expenses, damages, or penalties, including, without limitation, reasonable defense costs, and reasonable legal fees, arising or resulting from, or occasioned by or in connection with (i) any bodily injury or property damage resulting or arising from any act or omission to act (whether negligent, willful, wrongful, or otherwise) by the FSMC, its subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable; (ii) failure by the FSMC or its subcontractors to comply with any Laws applicable to the performance of the Services; (iii) any breach of the Contract, including, without limitation, any representation or warranty provided by the FSMC herein; (iv) any employment actions of any nature or kind including but not limited to, workers compensation, or labor action brought by the FSMC’s employees; or (v) any identity breach or infringement of any copyright, trademark, patent, or other intellectual property right.
14. In order for the SFA to respond timely and appropriately to the requirements of the Vermont Public Records Law, the FSMC must review all documents required to be provided under the Contract and the exemptions for release under Vermont Public Records Law and, if exemptions are allowed, provide the SFA a redacted copy for release under the Law, along with the original. The redacted copy shall be marked as “REDACTED”, and the FSMC shall reference the specific grounds under VT Public Records Law or other law or rule supporting the specific redaction request to exempt certain information. Notwithstanding the foregoing, the SFA may not necessarily be allowed to release just the redacted versions. Redactions based on personal privacy and preliminary drafts, by law, must be sent to the Superintendent or head of the institution before a denial to a request can be made. The SFA will abide by the decisions of the Superintendent or the head of the institution.
15. Each Party, including its agents and subcontractors, to the Contract may have or gain access to confidential and proprietary data or information of the other Party including, without limitation, other technical information (including functional and technical specifications, designs, drawings, analysis, research, processes, computer programs, methods, ideas, "know how,” and the like), business information (sales and marketing research, materials, plans, accounting and financial information, personnel records, and the like), all student data and information, and other information designated as confidential expressly or by the circumstances in which it is provided ("Confidential Information"). No Confidential Information collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the disclosing Party, either during the Term of the Contract or thereafter. The recipient must return any and all Confidential Information used in the course of the performance of the Contract, in whatever form it is maintained, promptly upon termination of the Contract, or earlier at the request of the disclosing Party, or notify the disclosing Party in writing of its destruction, if destruction is permitted by the disclosing Party. Confidential Information does not include data or information lawfully in the recipient’s possession prior to its acquisition from the disclosing Party; received by the recipient from a third party who was free to disclose it; publicly known through no breach of confidentiality obligation by the recipient; or independently developed by the recipient without the use or benefit of the disclosing Party’s Confidential Information.
16. Student Records. The FSMC will comply with the relevant requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and the Vermont Public Records Law regarding the confidentiality of student “education records” as defined in FERPA. Any use of information contained in student education records to be released must be approved by the SFA. To protect the confidentiality of student education records, the FSMC will limit access to student education records to those employees who reasonably need access to them in order to perform their responsibilities under the Contract. Any student records in the FSMC’s possession shall be returned to the SFA when no longer needed for the purposes for which they were provided, or at the SFA’s written request, they shall be permanently destroyed and the FSMC shall provide written confirmation to the SFA upon the destruction of student records.
17. Indemnity. Unless otherwise expressly provided, the SFA and the FSMC shall remain responsible for all claims, liability, loss, and expense, including reasonable costs, collection expenses, and attorney’s fees incurred, which arise by reasons of negligent or wrongful act or omission of the party, its agents, or its employees in the performance of its obligations under this agreement.
18. Trade Secrets. The FSMC and SFA shall designate any information they consider confidential or proprietary, including recipes, surveys and studies, management guidelines, operating manuals, and similar documents which it regularly uses in the operation of their business or which they develop independently during the course of this agreement. Information so designated and identified shall be treated as confidential by the FSMC and SFA, and the FSMC and SFA shall exercise the same level of care in maintaining the confidences of the other party as they would employ in maintaining their own confidences. All such materials shall remain the exclusive property of the party that developed them and shall be returned to that party immediately upon termination of this agreement. Notwithstanding, the Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) The copy right in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support. [2 CFR 200]
19. Assignment. This agreement may not be assigned by either party, in whole or in part, without the written consent of the other party.
20. Notices. Any notice or communication required or permitted under this agreement shall be in writing and shall be delivered personally or sent by United States registered or certified mail, postage prepaid and return receipt requested, addressed to the other party as follows:

**Notices to the SFA:**

**Anytown SFA**

**123 Main Street**

**Anytown, State 00000**

**Notices to the FSMC:**

**XYZ Food Service Management Company**

**123 State Street**

**Any Town, State 11111**

1. Other persons or places may also be designated, in writing, by either of the parties, during the term of this agreement. Notices shall be effective when received. Sent notices will be considered received forty-eight (48) hours after they are deposited in the US mail.
2. Catastrophe. With the exception of payment obligations for prior performance under this agreement, neither party shall be liable for the failure to perform their respective obligations under this agreement when such failure is caused by fire, explosion, water, act of God, civil disorder, strikes, vandalism, war, riot, sabotage, weather and energy related closings, governmental rules or regulations, or other like causes beyond the reasonable control of such party, nor for any real or personal property destroyed or damaged due to such causes. The FSMC shall resume food service operations within 30 days. [2 CFR 200]
3. Cure Period. If a cure or remedy is found for the termination request by mutual agreement of the contracting parties, the termination or non-renewal letter must be withdrawn in writing by the terminating party within the sixty (60) day period as described in paragraph 17.3 above. This letter should be counter-signed by the receiving party and the letter should become an amendment to this agreement. [2 CFR 200].
4. Termination for Cause. Either party may cancel the contract for cause by giving a sixty (60) day notice in writing to the other party of its intention to do so. [7 CFR § 210.16 (d), 2 CFR 200 Appendix II].
5. Termination Without Cause. Either party may terminate the Contract without cause. The party terminating the Contract without cause shall give no less than sixty (60) days written notice to the other party of its intention to terminate the Contract without cause.
6. Rights Beyond Termination. The right of termination referred to in the Contract is not intended to be exclusive, and is in addition to any other rights available to either party at law or in equity. If the FSMC breaches a material provision of the Contract and fails to cure such breach within sixty (60) days after receiving written notice of such breach the SFA may elect to pursue any available legal, contractual or administrative remedy or the following sanctions: (i) for a first violation, a written reprimand; (ii) for a second violation, a $X penalty; (iii) for a third violation, a $Y penalty. For the purposes of the foregoing, a single violation means an event of the same or similar kind, without regard for the duration or number of personnel, equipment, students or meals involved. [2 CFR 200] (The above language satisfies the requirements of the above referenced Part that contracts contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. You may substitute other language that also meets the requirements of [2 CFR 200].)
7. Construction and Effect. A waiver of any failure under the Contract shall neither be construed as, nor constitute a waiver of, any subsequent failure. The Contract supersedes all prior negotiations, representations, or agreements. The Article and Paragraph headings are used solely for convenience and shall not be deemed to limit the subject of the Articles and Paragraphs or be considered in their interpretation. The appendixes referred to herein are made part of the Contract by the respective references to them. This Contract may be executed in several counterparts, each of which shall be deemed an original.
8. Amendments to the RFP/IFB/Contract. The parties cannot alter any provision in this agreement that is required by any law, rule or regulation. The parties cannot otherwise amend or alter this agreement, except as to minor, non-substantive provisions or issues that do not materially affect the scope of work or the cost of the agreement. The parties must mutually agree, in a written document signed by both parties and attached to this agreement, to amend, add, or delete an Article or Appendix. Any amendment to this agreement shall become effective at the time specified in the amendment.
9. Notification of Termination: The Vermont Agency of Education shall be notified immediately of termination action and reason for termination.

## SECTION 19

## FOOD SPECIFICATIONS

1. All USDA Foods offered to the SFA and made available to the FSMC are acceptable and should be utilized in as large a quantity as may be efficiently utilized.
2. For all other food components, specifications shall be as follows:
	* 1. All breads, bread alternates, and grains must be whole grain-rich. All breads and grains must be fresh (or frozen, if applicable) and must meet the minimum weight per serving as listed on Exhibit C. If applicable, product should be in moisture-proof wrapping and pack-code date provided.
		2. All meat and poultry must have been inspected by the United States Department of Agriculture (USDA) and must be free from off color or odor.
3. Beef must be at least 70:30 lean to fat, preferably 80:20 lean to fat.
4. Poultry should be U.S. Grade A when applicable and should meet the recommendations outlined in Specifications for Poultry Products, A Guide for Food Service Operators from the USDA.
5. For sausage patties, the maximum fat allowed is 35 percent.
	* 1. For breaded and battered items, all flours must meet the requirements for breads/grains credit and breading/batter must not exceed 30 percent of the weight of the finished product.
		2. All cured processed meats (bologna, frankfurters, luncheon meat, salami, others) shall be made from beef and/or poultry. No variety meats, fillers, extenders, non-fat milk solids, or cereal will be allowed. Meats must not show evidence of greening, streaking, or other discoloration.
		3. All cheese should be firm, compact, and free from gas holes; free of mold; free of undesirable flavor and odors; pasteurized when applicable; and preferably reduced- or low-fat. All cheese should also have a bright, uniform, and attractive appearance; have a pleasing flavor; demonstrate satisfactory meltability; and contain proper moisture and salt content.
		4. All fish must have been inspected by the United States Department of Commerce (USDC) and meet minimum flesh and batter/breading requirements for a USDC Grade A product or a product packed under federal inspection (PUFI) by the USDC.
		5. All fresh fruits must be ripe and in good condition when delivered and must be ready for consumption per the USDA Food Buying Guide. At a minimum, fruits must meet the food distributors’ second-quality level. Fruits should have characteristic color and good flavor and be well-shaped and free from scars and bruises. Size must produce a yield equal to or greater than the attached 21-day cycle menu requirements.
		6. All fresh vegetables must be ripe and in good condition when delivered and must be ready for consumption per the USDA Food Buying Guide. At a minimum, vegetables must meet the food distributors’ second-quality level. Vegetables should have characteristic color and good flavor, be well shaped, and be free from discoloration, blemishes, and decay. Size must produce a yield equal to or greater than the attached 21-day cycle menu requirements.
		7. All canned vegetables must meet the food distributors’ first quality level (extra fancy and fancy) and canned fruits (standard) must meet the second quality level. Vegetables should have characteristic color and good fresh flavor and be free from discoloration, blemishes, and decay.
		8. Sauces, such as gravy, spaghetti sauce, pizza sauce, etc., must be smooth and uniform in color with no foreign substance, flavor, odor, or off color.
		9. If applicable, the food production facility, manufacturing plant, and products must meet all sanitary and other requirements of the Food, Drug, and Cosmetic Act and other regulations that support the wholesomeness of products.
		10. Meals and food items must be stored and prepared under properly controlled temperatures and in accordance with all applicable health and sanitation regulations.
		11. All fruit juices must be 100 percent fruit juice.
		12. When the specification calls for “Brand Name or Equivalent”, the brand name product is acceptable. Other products may be considered with proof that such products meet stated specifications and are deemed equivalent to the brand products in terms of quality, performance, and desired characteristics, as determined by the SFA.
		13. All food items must adhere to the sodium target levels in subsequent Contract Terms, if applicable, as required by the USDA Nutrition Standards in the National School Lunch and School Breakfast Programs, Implementation Timeline for Final Rule and/or other subsequent guidance issued by the USDA.
		14. Nutrition labels or manufacturer specifications must indicate zero grams of trans fat per serving for all foods.
		15. Fluid milk must be low-fat (1 percent milk fat or less, unflavored only) or fat-free (unflavored or flavored). Two choices must be offered daily as required by the SFA.

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

**REMOVE—DO NOT INCLUDE THIS PAGE WITH YOUR BID DOCUMENT**

**ATTACHMENTS**

These pages are provided as a reference only. Once the attachments are completed, please be sure to delete these pages.

**Insurance Requirements**

(SFA to complete and insert)

**Bidder Responsibility and Bid Responsiveness Criteria—Required**

(SFA to complete—see following chart)

**Bid Summary—Required**

(SFA to complete dates and annual projected units on attached form)

**Exhibit A: School Data—Required**

**Exhibit A-1: SFA Site Building Listing General Data (SFA to complete based on prior full school year’s data)**

**Exhibit A-2: School Data Form (SFA to complete and insert)**

**Exhibit A-3: Eligibility Data and Projected Enrollments (SFA to complete and insert)**

**Exhibit A-4: Meal Service Time Information / Delivery Schedule (SFA to complete and insert)**

**Exhibit B: Menu Requirements—Required**

 **Exhibit B-1: 21-Day Cycle Menu(s) (SFA to insert all applicable menus)**

**Exhibit B-2: Meal Choices and Additional Daily Offerings (SFA to complete and insert)**

**Exhibit B-3: Meal Prices Currently Charged by Site & A la Carte Price List (SFA to insert, if applicable)**

**Exhibit C: School Year 2016–2017 USDA Foods**

(SFA to insert)

**Exhibit D: School Year 2016–2017 SFA Claims for Reimbursement —Required**

Sponsor Claims for Reimbursement for school year 2016-2017

Sponsor Claims for Reimbursement for all months to date for school year 2015–2016

**Exhibit E: School Year 2016-2017 Site Claims for Reimbursement —Required**

Site Claims for Reimbursement for October 2016, November 2016, March 2017

**Exhibit F: Current Staffing Patterns—Required — (SFA to insert)**

**Exhibit G: Local Wellness Policy—Required**

(SFA to insert SFA’s Local Wellness Policy)

**Exhibit H: Contractor-Owned Equipment—Required**

(SFA to complete and insert, if applicable)

**Exhibit I: Requested Equipment Purchases**

(SFA to complete and insert, if applicable)

**Exhibit J: Collective Bargaining Agreement—Recommended**

(SFA to insert collective bargaining agreement for food service staff, if applicable)

**Exhibit K: Meal Charge Policy for SFA – Required**

**Exhibit L: SFA/School Calendar - Required**

**Certifications—Required**

*Bid-Rigging Certification*

*Certificate of Independent Price Determination*

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

*Certificate Regarding Lobbying*

*Disclosure of Lobbying Activities*

*Other certifications as required by the SFA*

**Other exhibits as necessary.**

**Insurance Requirements**

(SFA to complete and insert)