

Request For Proposal

Instructions for School Food Authorities

The State of Vermont has created this Request for Proposals template to be used in new contracts between School Food Authorities (SFAs) and Food Service Management Companies (FSMCs). Please change the template for your SFA's needs and implement the document submission procedures listed below to ensure compliance with federal and state regulations and statutes. The SFA should seek the advice of their legal counsel regarding local regulations and policies. An SFA failing to follow the required procedures may be prohibited from utilizing nonprofit food service account funds to pay for the meal services contract. Please allow appropriate time for the documents to be processed—the completed materials must be reviewed and approved prior to the execution of the contract. The contract start date cannot be prior to the date of final signatures of the SFA and contractor.

Reimbursement is not allowed for meals served prior to the implementation or start date of the contract.

1. **Submission #1: Proposed RFP – allow 30 days plus time for revisions.**

All Request for Proposals documents must be submitted to the state agency (SA) for review prior to beginning the solicitation process. This template requires modifications done by the SFA to align with the specific needs of the program; please enter information using **'Track Changes.'**

When the documents submitted are deemed in compliance with general and state regulations and statutes, the State Agency (SA) will incorporate the changes into the final version and returned the document with written notification authorizing the SFA to begin the solicitation process.

2. **Advertising:** Allow 30 days at least (preferably 45-60 days) plus time for managing the advertisement. After the SA has approved the proposed RFP documents, the SFA must advertise widely throughout the state and region via the [Vermont Business Registry online RFP database](#). This must be posted 30 days or more to ensure compliance with regulations.

In addition, the RFP may be sent directly to a list of known contractors. You can contact Conor Floyd (conor.floyd@vermont.gov) for a full list of Food Service Management Companies that have expressed interest in operating in Vermont.

3. **Changes.** All changes (addenda/amendments) must be submitted to the SA for review. The SFA must receive written confirmation from the SA to confirm that the document is in compliance prior to distribution to potential contractors.

4. **Opening.** SFAs must notify the SA at least 14 days prior to the opening of the bids of the time and place of bid opening. Addenda/amendments should not be issued within a recommended minimum of seven (7) working days of the time and date set for the solicitation opening. Otherwise, the time and date set for the solicitation opening may be delayed to allow issuing an addendum/amendment.

5. **Criteria & Documents.** Following the solicitation period, all sealed proposals that have

been received by the SFA must be ranked using the evaluation criteria as defined by the solicitation. In addition to the Technical Proposal and Cost Proposal, all proposers must submit signed copies of the following:

- Bid-Rigging Certification
- Certificate of Independent Bid Determination
- Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions
- Certificate Regarding Lobbying form
- Disclosure of Lobbying Activities form (if applicable)

6. **All proposals must be evaluated based on the criteria established in the following solicitation.** During the evaluation period, no proposer, prospective or otherwise, may be allowed access to supporting documents received by the SFA. The SFA must award the contract to **the responsive and responsible** bidder whose proposal scores the highest on the pre-determined scoring criteria. Price must be the highest weighted factor for contract award.

- a. To be considered “**responsive**,” a contractor must submit a response to a solicitation that conforms to all material terms and conditions of the solicitation.
- b. To be considered “**responsible**,” a contractor must be capable of performing successfully under the terms and conditions of the contract.

7. **Submission #2: Proposal selection – allow 15 days for SA to review the documents and send the SFA the written notification necessary to proceed with contract award.** Following the proposals opening and prior to the contract award, the following documents must be submitted to SA for review, accompanied by *the Pre-Contract Award Summary Sheet*. **The contract may not be awarded pending SA’s compliance notification.**

- Newspaper advertisement with date of publication
- List of proposers that received the solicitation/contract documents and all addenda issued—include date mailed/delivered
- If a pre-proposal conference was held—list of proposers in attendance
- Bid Summary form for each proposal received
- Correspondence from proposers opting not to submit proposal (or phone call documentation)
- Completed Bid Criteria Analysis Sheet summarizing all proposals received

8. **Contract Award.** After receiving written notice from SA stating that the SFA may proceed with the contract award, the SFA awards the contract to the responsive and responsible bidder whose proposal reflects the highest score on the pre-determined evaluation scoresheet. The final contract must be the original solicitation with an attachment of the final FSMC proposal as negotiated.

9. **Submission #3:** Upon completion of the contract award, the SFA must provide copies of the following documents to the SA, accompanied by an original signed copy of the Post-Contract Award Summary Sheet.

- Executed copy of the contract—Signed Bid Summary form
- Signed copy of the Bid-Rigging Certification form
- Signed copy of the Certificate of Independent Bid Determination form
- If the contract is \$25,000 or more—Signed copy of the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions
- If the contract is over \$100,000—Signed copy of the Certificate Regarding Lobbying
- If the contract is over \$100,000 and any funds other than Federal appropriated funds have been used for lobbying—Signed copy of the Disclosure of Lobbying Activities

The proposal solicitation and resulting contract (including all addenda) must be the same document(s) previously determined in compliance by SA. Revisions cannot be made to the executed Request for Proposals and Contract without first submitting proposed revisions to SA for review and receiving written notification that the proposed revisions are allowable within the regulatory guidelines. Furthermore, additional documents and/or agreements, including those developed by the contractor, cannot become part of the executed contract.

List of Additional RFP/IFB Contract Documents

	AOE Template Provided	Completed by SFA	FSMC
Attachments			
Attachment 1: Bid Summary and Final Contract	X	X	X
Attachment 2: School District RFP Evaluation Rubric	X	Once all bids are in	
Attachment 3: FSMC Staffing Plan	X		X
Attachment 4: Insurance Requirements / Certificate	X		X
Attachment 5: Bid Rigging Certification	X		X
Attachment 6: Certificate of Independent Price Determination	X		X
Attachment 7: Certificate Regarding Debarment, Suspension	X		X
Attachment 8: Certificate Regarding Lobbying	X		X
Attachment 9: Disclosure of Lobbying Activities <i>if applicable</i>	X		X
Attachment 10: Certificate of Energy Policy and Conservation Act	X		X
Exhibits			
Exhibits A: School/Site Data			
Exhibit A-1: Site – Building General Data	X	X	
Exhibit A-2: School Data Form	X	X	
Exhibit A-3: Site Information and Enrollment Data	X	X	
Exhibits B: Program Meal Pattern Requirements			
Exhibit B-1: SBP Meal Pattern Requirements	X		
Exhibit B-2: NSLP Meal Pattern Requirements	X		
Exhibit B-3: NSLP After School Snack Meal Pattern <i>if applicable</i>	X		
Exhibit B-4: SFSP Meal Pattern Requirements <i>if applicable</i>	X		
Exhibit B-5: CACFP Meal Patterns <i>if applicable</i>	X		
Exhibit B-6: Breakfast 21-Day Cycle Menu		X	
Exhibit B-7: Lunch 21-Day Cycle Menu		X	
Exhibit B-8: Meal and A la Carte Prices		X	
Exhibit C: USDA Foods Ordered; prior SY and current SY to date	X	X	
Exhibit D: Prior SY SFA Claims Totals		X	
Exhibit E: Site Claim Totals; prior SY and current SY to date		X	
Exhibit F: Minimum Food Specifications	X	X	
Exhibit G: Local Wellness Policy		X	
Exhibit H: Contractor Owned Equipment <i>if applicable</i>		X	
Exhibit I: Request for Equipment to be Purchased <i>if applicable</i>		X	
Exhibit J: Meal Charge Policy		X	
Exhibit K: School Year Calendars; prior SY and current SY		X	
Exhibit L: Bidder Responsibility and Responsiveness Criteria	X	X	X

REQUEST FOR PROPOSAL AND CONTRACT

**NONPROFIT SCHOOL FOOD
SERVICE**

**FOOD SERVICE MANAGEMENT
COMPANY**

For

**(Insert Name of School / District
/ SFA)**

USDA Non-Discrimination Statement for Child Nutrition Programs

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

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

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. mail:
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or
2. fax:
(833) 256-1665 or (202) 690-7442; or
3. email:
program.intake@usda.gov

This institution is an equal opportunity provider.

Assurance of Civil Rights Compliance

The SFA hereby agrees that it will comply with:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
- ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
- iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
- v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
- vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);
- vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
- viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);
- ix. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.
- x. The USDA non-discrimination statement that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

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

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

General Information

- A. Request for Proposal.** This document contains a Request for Proposal for providing food service management services for:

_____ School Food Authority's (SFA) participation in the United States Department of Agriculture's (USDA) Child Nutrition Programs (CNP) and sets forth the terms and conditions applicable to the proposed procurement. Upon acceptance, this document shall constitute the contract between the FSMC and the School Food Authority. The SFA has full responsibility for ensuring that the terms of the contract are fulfilled. The USDA, State of Vermont, or Agency of Education is never a party to any contract between an SFA and a Food Service Management Company (FSMC). The Vermont Agency of Education has no involvement with the enforcement of this contract; however, payment can be denied for all meals received/purchased under an invalid contract.

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

_____ **School District**, hereinafter referred to as School Food Authority (SFA).

- C. Procurement method.** Procurement Method will be the Competitive Sealed Proposal for a firm, fixed price per meal contract with annual price adjustment as indicated in section 2.3.

- D. Goals.** The SFA's food service goals are to provide nutritious, high-quality meals to students and participants in the National School Lunch Program, to accommodate special diets where medically necessary, improve the nutritional quality of meals, and maintain a financially viable food service program. General food service goals are to:

- Provide an appealing and nutritionally sound program for students as economically as possible;
- Increase participation at all levels of the food service program by improving meal quality, seeking student and parent input, offering menu variations, and improving planning;
- Maintain reasonable prices for students and adults participating in the food service program;

- E. Pre-proposal conference.** A meeting with interested proposers to review the specifications; to clarify any questions; and for a walk-through of the facilities with school officials will be held on

- **March 19, 2024 at 11:00 a.m.**
- **Location: _____.**

- 1. Questions for pre-proposal conference.** Submit questions regarding the RFP in writing by **12 Noon EST on March 14, 2024 to _____.**

SFA will acknowledge receipt of questions no later than **4:00 p.m. EST on March 15, 2024.**

- a. Questions submitted prior to the Pre-Proposal Conference will be answered at the Pre-Proposal Conference.
- b. Questions from the floor at the Pre-Proposal Conference may or may not be answered at the Pre-Proposal Conference.
- c. All questions presented at the Pre-Proposal Conference will be answered in

writing after the meeting and sent to all individuals that signed in at the Pre-Proposal Conference.

F. Proposal submission and award.

1. Proposals are to be submitted by 12:00 noon EST on **April 12, 2024** to:

Name of SFA: _____
Mailing Address: _____
Physical Address: _____
City/State/Zip _____

Proposals will not be accepted after this time. Proposal is to be submitted in an envelope or email marked **Food Service Management Proposal**.

2. Evaluation of proposals is expected to begin on **April 15, 2024** and be completed by **April 18, 2024**. The projected award date for the contract is **April 25, 2024**. These dates are subject to change based upon the number and nature of received proposals, SA approval process, and any unforeseen factors.
3. To be considered, each proposer must submit a complete response to this solicitation **using the forms provided**. There must be no material change to the contract language.
4. The SFA will provide no relief for errors or omissions in the proposal submitted in response to this document.
5. All proposals shall remain valid and subject to acceptance for a period of ninety (90) days after the proposal opening date.
6. Award shall only be made to a responsible proposer whose proposal is responsive to this solicitation. A responsible proposer is one whose financial, technical, and other resources indicate an ability to perform the services required by this solicitation.
7. Proposers are expected to fully inform themselves as to the conditions, requirements and specifications before submitting proposals; failure to do so will be at the proposer's own risk. SFA is not liable for any cost incurred by the proposer prior to the signing of a contract by all parties. Paying FSMC from the Child Nutrition Program (CNP) funds is prohibited until the contract is signed.

If additional information is required, please contact:

- G. Late proposals.** Any proposal received after the exact time specified for receipt in Section E above will not be considered.
- H. Free and Open Competition.** SFAs shall conduct all procurement transactions in a manner that provides maximum free and open competition consistent with Title 2, Code of Federal Regulations (**2 CFR**), **Part 200.319(a)(1-7)**.
- I. Award criteria.**
Proposals will be evaluated by a committee against the criteria found in **Attachment 2**. Each area of the award criteria must be addressed in detail in the proposal.
- J. State Agency Review.** **7 CFR 210.19** requires the State Agency to review each contract between any SFA and FSMC annually to ensure compliance with program regulations. Regulations require the SA's approval of each contract and renewal year amendment before the contract is executed.

1 SCOPE AND PURPOSE

1.1 Duration of Contract. This contract shall be for a period of up to one (1) year, beginning on **July 1, 2024** and ending on **June 30, 2025**, with four (4) renewals of one (1) year each with mutual agreement between SFA and FSMC.

1.2 Independent Contractor. FSMC shall be an independent contractor and not an employee of SFA. The employees of the FSMC are not employees of the SFA.

1.3 Permanent Agreement. FSMC shall operate in conformance with SFA's Permanent Agreement with VT Agency of Education.

1.4 Scope of Operations. Only the programs checked below will be included in the awarded contract. The programs checked below shall be the same as those listed in **Exhibit A-3**. If a program is added later, the appropriate procurement procedures must be followed.

Currently Operating Programs are those programs that the SFA currently runs at sites. Projected units in the Bid Summary Pricing will be based on current data.

Expected Future Programs are programs that the SFA reasonably expects to begin in the next five years, the time frame that the contact could encompass with the maximum contract extensions. Available program data (such as student enrollment) will be used to project units in the Bid Summary Pricing and FSMCs will submit bid prices.

Reserve the Right to Implement should be used for programs that the SFA would like to have the option of implementing in the next five years but does not have current data on. The FSMC will not bid prices for these programs. The SFA and FSMC may negotiate a unit price at a later date for these programs. If an agreement cannot be reached on unit pricing, the program will not be operated by the FSMC.

Program	Currently Operating Program	Expected Future Program	Reserve the Right to Implement
National School Lunch Program (NSLP)			
School Breakfast Program (SBP)			
After School Snack Service			
Summer Food Service Program (SFSP)			
Child & Adult Care Food Program (CACFP)			
Fresh Fruits and Vegetables Program (FFVP)			
A la carte Sales			
Catering			
Vended Meals			

FSMC shall have the exclusive right to operate the above Currently Operating and Expected Future Program(s) at the sites specified by SFA in **Exhibit A-3**.

FSMC shall be responsible for all procurement of products as necessary to achieve pricing per bid meal.

1.5 Program Beneficiaries. The food service provided shall be operated and maintained as a

benefit to SFA's students, faculty, and staff.

1.6 Maximum Participation. The food service shall be managed to promote maximum participation in the Child Nutrition Programs.

1.7 Responsibility for Program. SFA shall be legally and financially responsible for the conduct of the food service program and shall supervise the food service operations in such manner as will ensure compliance with the rules and regulations of the SA and USDA regarding each of the CNPs covered by this contract.

1.8 Establishing Prices. The SFA shall establish all selling prices, including price adjustments, for all reimbursable and non-reimbursable meals, milk and a la carte sales (including vending, adult meals, contract meals, and catering) prices. Please note that all food sold to students during the school day that is not part of a reimbursable meal is subject to USDA Smart Snack requirements.

1.9 Additional Services. FSMC shall provide additional food service such as banquets, parties, and refreshments for meetings as requested by SFA. USDA Foods shall not be used for these special functions unless SFA's students will be primary beneficiaries. SFA reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after SFA's regularly scheduled lunch or breakfast periods, provided such service is not prohibited by federal program regulations.

1.10 Nutrition Education. FSMC shall cooperate with SFA in promoting nutrition education and coordinating SFA's food service with classroom instruction.

1.11 Regulatory Compliance. FSMC shall comply with the rules, regulations, policies, and instructions of the SA and USDA and any additions or amendments thereto, including **7 CFR 210, 215, 220, 225, 226, 245, and 250, as well as 2 CFR 200, 400, and 415** as applicable.

1.12 Food Service Staff. FSMC shall provide necessary staff to manage the food service operations as proposed and supervise all FSMC employees as designated in Section 3 of this document under DESIGNATION OF PROGRAM EXPENSE.

1.13 Special Dietary Needs.

- a. FSMC shall make modifications in the food components of the meal pattern to accommodate students with disabilities. A medical statement from a professional licensed to write prescriptions must accompany any school meal modification made outside of the meal pattern requirements. Modifications shall be made in accordance with guidance provided by the Accommodating Children With Disabilities in the School Meal Programs Manual.
 - i. For CACFP and SFSP, please reference the Policy Memorandum on Modifications to Accommodate Disabilities in the Child and Adult Care Food Program and Summer Food Service Program.
- b. There will be no additional charge to the student for meal modifications which have been made to accommodate disabilities per this section of the contract.

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

- a. The employee, officer or agent;
- b. Any member of his immediate family;
- c. His or her partner; or
- d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

1.15 Tracking for the Local Foods Incentive Grant. The FSMC will track all locally produced food purchases in accordance with Vermont's Local Foods Incentive state grant program and collect product documentation as needed to demonstrate the products qualify as VT Local. On a monthly basis, the FSMC will provide the SFA with a record of the locally produced food purchases made and the receipts for those purchases. The minimum level of detail required in tracking purchases is a spreadsheet detailing invoice dates, invoice numbers, and the amount (\$) spent on qualifying locally produced foods for each specified invoice. Additionally, the associated invoices (or copies), with the qualifying products highlighted, should be easily retrievable if requested during an audit.

(Optional: This clause is recommended for SFAs intending to apply for the Local Foods Incentive Grant but is not a required part of the RFP. If the SFA is not exercising this clause, please remove 1.15. Remove these instructions from the final RFP.)

1.16 Universal Meals Option. The SFA reserves the right to opt into and out of a universal free meals option, under which meals are offered to students at no charge, at a later date under this contract if State and Federal laws allow. This could include the Community Eligibility Provision, Provision 2, or another method of offering meals to all students at no charge. If the SFA transitions to universal free meals or ends universal free meals, the FSMC per meal rates will remain the same.

(Optional: This clause is recommended for SFAs interested in transitioning to Universal Meals or plan to end Universal Meals if state funding is discontinued in the future. Remove these instructions from the final RFP.)

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

2 FEES AND FINANCIAL TERMS

2.1 Fixed Fee Price. The FSMC will be paid at a fixed rate per meal. A fixed-price/fee, which is permissible either under an IFB or RFP, takes the form of a unit charge where the unit may be per meal or per time period, typically a year. The fee charged is expected to cover all program costs. A per meal management fee may also be added if clearly stated in the bid. Such fees are to be fixed for the entire contract duration and for renewals unless a provision allowing for periodic cost adjustment is otherwise stated in the original solicitation.

The SFA must receive the full value of USDA Foods; i.e., credits or reductions. The proposed meal rate(s) must be calculated net of applicable discounts, rebates, and credits received by the FSMC. Additionally, the fixed meal rate for meals must be calculated as if no USDA Foods were available. The FSMC is responsible for reporting monthly to the SFA the meal counts by program type, USDA Foods received, and any other costs on their invoice. 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 contract documents.

2.2 Bid Summary Form. All proposals must be calculated based on the menu(s) in **Exhibit(s) B-6 and B-7** and on the projected annual units provided on the Bid Summary Pricing form (**Attachment 1**), both attached herein. All proposals shall be submitted using the Bid Summary form. All rates must be written in ink or typed in the blank space(s) provided, must be carried out to the second decimal place, and must not be rounded.

2.3 Annual Escalator. The fixed price per meal/lunch equivalent is 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 as of the February preceding the year of renewal, if applicable. This escalator provision is for the fixed meal rate only, it does not apply to any management or administrative per meal fees.

2.4 Payment Terms. FSMC shall bill for the number of meals served (may change to "meals

delivered" if preferred) for NSLP. For CACFP (7 CFR 226.6(i)(1)) and SFSP (7 CFR 225.6(l)(2)(ix)) meals, program regulations require that the number of meals ordered/delivered be the basis for billing. FSMC shall invoice SFA at the end of each month for amounts due based on on-site records. SFA shall make payments within 30 business days of the invoice date. Upon termination of the Agreement, all outstanding amounts shall immediately become due and payable.

- 2.5 Discounts, Rebates, and Credits.** The SFA will pay the FSMC at a fixed rate per meal. The SFA must determine, and the FSMC shall credit the SFA for, the full value of U.S. Department of Agriculture (USDA) Foods. The FSMC's fixed-price invoice will be fully compliant with procurement requirements for the National School Lunch, School Breakfast, and Special Milk Programs, set forth in Title 7, Code of Federal Regulations (7 CFR), parts 210, 215, and 220, 225, and the USDA Food and Nutrition Service (FNS) Final Rule issued Wednesday, October 31, 2007. The FSMC shall take discounts, rebates, and other credits into account when formulating their prices for this fixed-price contract (Title 2, Code of Federal Regulations [2 CFR], sections 200 & 400).
- 2.6 Nonprofit Food Service Account.** All income accruing as a result of payments by children and adults, federal reimbursements, and all other sources (including, but not limited to, donations, special functions, catering, a la carte sales, vending, concessions, contract meals, grants, and loans) shall be deposited daily in SFA's nonprofit food service account. Any profit or guaranteed return shall remain in SFA's nonprofit food service account. SFA shall retain control of the CNP nonprofit food service account and overall financial responsibility for the CNP.
- 2.7 Failure to Comply.** If reimbursement is denied as a direct result of the failure of the FSMC to comply with the provisions of the Contract, the FSMC shall assume responsibility for the amount denied.
- 2.8 Meal Equivalents Defined:**
- a. **Management Fee Meal Equivalents.** 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.
 - b. **A la Carte Meal Equivalent Factor.** 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 Meal Equivalent Factor as determined by the VT AOE. 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 Meal Equivalent Factor will be posted on the VT AOE website each year.
- 2.9 Unallowable Costs.** Interest, fines, penalties, and finance charges that may accrue under this contract are not allowable expenses to the nonprofit school food service account. The SFA will not pay unallowable expenses from the SFA's nonprofit school food service account. **(2 CFR, Section 200.449).**
- 2.10 Spoiled or Unwholesome Food.** The SFA shall make no payment to the FSMC for meals that, in the SFA's determination, are spoiled or unwholesome at the time of delivery, do not meet detailed food component specifications as developed by the SFA for the meal pattern, or do not otherwise meet the requirements of this Contract **(7 CFR, Section 210.16[c][3]).**
- 2.11 Allowable Costs.**

- a. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by FSMC or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to SFA.

When submitting costs to SFA for payment, FSMC must identify the amount of the cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit food service account).

- b. FSMC's determination of its allowable costs must be made in compliance with the applicable Program regulations and OMB cost circulars.
- c. SFA must receive the full value of all USDA Foods, i.e., credits or reductions of FSMC costs. Specific requirements for USDA Foods are discussed further in section 6 of this document.
- d. FSMC must individually identify the amount and nature of each discount, rebate and other applicable credit on bills and invoices presented to SFA for payment. SFA will require FSMC to report this information monthly. FSMC must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract.
- e. FSMC must maintain documentation of costs, discounts, rebates, and other applicable credits, and must furnish such documentation upon request to SFA, SA, or USDA.
- f. No expenditure may be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of FSMC's actual net allowable costs.

2.12 Invoice Structure. The FSMC shall submit the following supporting documents to the SFA monthly:

- i. Daily meal counts by benefit category by school for each program and service provided including: NSLP, SBP, FFVP, SSO, SFSP, CACFP and the After School Snack Service as applicable
- ii. Monthly summary of value of USDA foods used
- iii. Monthly summary of value of USDA foods delivered
- iv. Monthly summary of revenues from all sales by category including but not limited to paid meals, a la carte foods and beverages, vending, adult meals and catering as applicable.

Daily meal production records by program for all participating schools should also be available on demand or the SFA should be given 24/7 online access.

2.13 Fresh Fruit and Vegetable Program. FSMCs operating the Fresh Fruit and Vegetable Program will be paid on a reimbursable basis for allowable costs (food, labor, and equipment) from the nonprofit school food service account 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, remove this section if not operating FFVP).**

2.14 Separate Billing. The FSMC shall submit separate billing for special functions conducted outside of the nonprofit school food service account.

3 DESIGNATION OF PROGRAM EXPENSE

3.1 Allocation of Expenses. FSMC guarantees to SFA that FSMC shall be responsible for the expenses as checked under Column I, and these expenses will be factored into the

fixed price fees as bid. FSMC shall be responsible for negotiating/paying all employee fringe benefits, employee expenses, and accrued vacation and sick pay for staff on their payroll. FSMC shall factor these expenses into the fixed price per meal that will be billed to SFA. SFA shall pay directly for the expenses as checked under Column II. Any expenses that will be not applicable to the contract shall be marked with N/A.

(The SFA must complete this section prior to issuing the solicitation for the RFP)

DESCRIPTION	COLUMN I (FSMC)	COLUMN II (SFA)
LABOR:		
Managers and/or Supervisors		
Full and Part-time Workers		
EMPLOYEE BENEFITS:		
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:		
USDA Foods		
Handling and Processing Charges		
Commercial Distribution Charges		
Commercial Foods		

DESCRIPTION	COLUMN I (FSMC)	COLUMN II (SFA)
OTHER EXPENSES:		
Accounting		
Bank Charges		
Data Processing		
Recordkeeping		
Processing and Payment of Invoices		
Equipment - Major		
Original Purchase		
Routine Maintenance		
Major Repairs		
Replacement		
Equipment - Minor (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		
Point of Sale System and associated equipment		
Postage		
Printing		
Product Testing		
Promotional Materials		
Taxes and License		
Telephone		
Local		
Long Distance		
Training		
Transportation of meals		
Trash Removal		
From Kitchen		
From School Premises		
Travel		
Required		
Requested		
Utilities		
Vehicles		

4 SCHOOL FOOD AUTHORITY RESPONSIBILITIES

- 4.1 Signature Authority.** SFA shall retain signature authority for the application/agreement, free and reduced-price policy statement, programs indicated in Section 1.4, and the monthly claim for reimbursement. **(7 CFR 210.9(a) and (b) and 7 CFR 210.16(a)(5))**
- 4.2 Financial Responsibility.** SFA shall retain control of the school food service account and overall financial responsibility for the school nutrition program. **[7 CFR 210.14 (a)]**
- 4.3 Daily Operation.** SFA shall 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)]**
- 4.4 USDA Foods.** SFA shall 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)]**. The SFA shall ensure that the maximum amount of USDA Foods is received and utilized by the FSMC prior to the end of the school year. **[7 CFR 210.9(b)(15)]**
- 4.5 Health Certification.** SFA shall 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)]**
- 4.6 Advisory Board.** SFA shall 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)]**
- 4.7 Findings.** SFA shall ensure resolution of program review and audit findings. **[7 CFR 210.9(b)(17); 210.18(k)(1)(2)]**
- 4.8 Cycle Menu.** SFA shall 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)]**
- 4.9 Eligibility Roster.** SFA shall be responsible for the establishment and maintenance of the free and reduced-price meals eligibility roster. SFA is ultimately responsible for assuring the accuracy of this roster.
- 4.10 Eligibility Application.** SFA shall be responsible for the development and distribution of the parent letter and Application for Free and Reduced-Price Meals **[7 CFR 245.6]**; Direct Certification; and determination of eligibility for free or reduced -price meals. FSMC may act as an agent for SFA related to these responsibilities

- 4.11 **Verification of Eligibility.** SFA shall be responsible for verifying Applications for Free and Reduced-Price Meals as required by USDA regulations and will conduct any hearings related to such determinations. [7 CFR 245.6a]. FSMC may act as an agent for SFA related to verification of applications.
- 4.12 **Monitoring.** The SFA shall monitor the performance of the FSMC under this agreement through periodic on-site visits. [7 CFR 210.16(a)(2)(3) (4)]

5 FOOD SERVICE MANAGEMENT COMPANY RESPONSIBILITIES

- 5.1 **Point of Service Count.** FSMC shall conduct an accurate point-of-service count; any counting system must eliminate the potential for overt identification of free and reduced-price eligible students. (7 CFR 245.8)
- 5.2 **Records.** FSMC shall 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, 7 CFR 210.16(c)(1), and 7 CFR 215, 220, 225, and 226].
- 5.3 **Records Location.** FSMC shall maintain all records pertaining to the SFA at [Specify the location] for the duration of the contract and for the required retention period.
- 5.4 **Meal Programs.** FSMC shall 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. *(SFA to complete a list of items the FSMC is expected to supply and serve that includes but is not limited to the quality and specifications of the products desired)*
- i. 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 Snack 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 requirements.
- ii. The FSMC shall implement the Fresh Fruit and Vegetable Program per the sites listed in **Exhibit A-3**. 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 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.
 5. Labor costs in either the “operating or administrative” category must be minimal. However, up to two hours of labor may be charged to the SFA by the FSMC per day in which FFVP operates. All labor must be documented.
 6. The FSMC shall provide the SFA with an itemized invoice of FFVP allowable costs on a monthly basis.

5.5 21 Day Cycle Menu. The FSMC shall adhere to the 21-day cycle menu(s) and portion sizes specified by the SFA on **Exhibits B-6 and B-7** 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. FSMC must also comply with the Minimum Food Specifications in **Exhibit F** for all programs. The FSMC shall provide Nutrition Facts Labels, Child Nutrition (CN) Labels, Product Formulation Statements, recipes, ingredient lists and any other documentation required to meet USDA Child Nutrition Program Requirements

5.6 Meal Pattern. 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 (NSLP Title 7 CFR 210; SBP 7 CFR 220; SFSP 7 CFR 225; Special Milk Program 7 CFR 215; and CACFP 7 CFR 226) as listed in Exhibit C. Vermont has retained the requirement that 100% of creditable grains be whole grain rich, so all creditable grain items offered must be whole grain rich.

5.7 Serving Size. FSMC shall meet the serving sizes provided by the SFA on the 21-day cycle menu(s) in **Exhibits B-6 and B-7** which are, in most cases based on the required minimum serving sizes stated in **Exhibits B-1 and B-2**. 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 Exhibits B-1 and B-2, 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).

- 5.8 Students with Disabilities.** The FSMC is required to make modifications to the food components of the meal pattern to accommodate students with disabilities in accordance with Sections 504 of the Rehabilitation Act of 1973 and USDA implementing regulation, 7 CFR Part 15b, Americans with Disabilities Act (ADA), 28 CFR Part 35, Title II, Subtitle A; and the ADA Amendments Act of 2008.
- 5.9 Anonymity of Children.** 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 confidentiality 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.
- 5.10 Performance Review.** 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:
- i. Completion and performance of contractual services rendered;
 - ii. Adherence to the meal pattern and food specification requirements, including quality and variety;
 - iii. Performance on SFA On-Site Reviews and status of required corrective action, if any;
 - iv. Performance on State and/or Federal reviews and status of required corrective action, if any;
 - v. Participation trends, including program participation compared to a la carte sales;
 - vi. Responsiveness of local staff and management to the SFA's needs, including the Advisory Board and Local Wellness Committee, as applicable; and
 - vii. Responsiveness of regional management to the SFA and local staff/management.
- 5.11 Compliance with Laws.** FSMC shall 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.
- 5.12 Certificate of Compliance.** FSMC shall furnish the SFA, upon request, a certificate or other evidence of compliance with state or federal laws regarding contributions, taxes,

and assessments on payrolls.

- 5.13 Performance Standards.** FSMC shall 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.
- 5.14 Donated Foods.** FSMC shall 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)]**
- 5.15 Inventory and Storage.** 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. The FSMC may store and inventory USDA Foods together with commercial foods purchased for use in the SFA's food service at the SFAs facility. The FSMC must meet all required local and state safety, sanitation and health requirements for the inventory and storage of purchased foods and supplies as well as the inventory management requirements outlined in 7 CFR 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.
- 5.16 Health Certification.** FSMC shall 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)]**
- 5.17 Employee Payment.** FSMC shall 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.
- 5.18 FSMC Negligence.** FSMC shall 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.
- 5.19 USDA Foods.** FSMC shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA Foods.
- 5.20 Advisory Board.** FSMC shall participate in the parent, teacher, and student advisory board.
- 5.21 Local Wellness Policy.** FSMC shall 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 G**.

5.22 Nutrition Education. FSMC shall cooperate with the SFA in promoting nutrition education and coordinating the SFA's food service with classroom instruction, which may include Farm to School educational opportunities and tours.

5.23 Daily Deposits. FSMC shall deposit daily all monies in the SFA's nonprofit food service account.

6 USDA FOODS

6.1 Use for SFA's Benefit. Any USDA Foods (also known as donated foods, or commodities) received by SFA and made available to FSMC must accrue solely to the benefit of SFA's CNPs and shall be fully utilized therein. Donated foods shall be considered received when the foods arrive at the school kitchen, SFA storage facility, or FSMC storage facility in either raw form or in processed end products. FSMC shall have records available to substantiate that the full value of all donated foods are used solely for the benefit of SFA and 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)]**

6.2 USDA Foods Entitlement Value. The state agency will provide the SFA with an estimated entitlement value and options for utilizing that value. The SFA may delegate decisions about how to utilize the value to the FSMC. If the FSMC does not fully utilize the estimated *entitlement value* during the school year, the FSMC **must refund the SFA the value of the unutilized entitlement** at the end of the school year. In this case, the SFA will retain title to any unused USDA Foods, unless an allowable substitution was provided.

6.3 Beginning and Ending Inventory. Prior to the start of initial operations, FSMC and SFA will take a beginning inventory of all USDA Foods on the premises. An ending inventory shall be taken annually in addition to termination of the Contract by FSMC and SFA.

6.4 Reconciliation. Year-end reconciliation shall be conducted by SFA to ensure and verify correct and proper credit has been received for the full value of all donated foods used by FSMC during the fiscal year. The food service management company must credit the recipient agency for the value of all donated foods received for use in the recipient agency's meal service in the school year or fiscal year (including both entitlement and bonus foods), and including the value of donated foods contained in processed end products, in accordance with the contingencies in §250.51(a); SFA reserves the right to conduct donated foods credit audits throughout the year to ensure compliance with federal regulations **7 CFR 210** and **7 CFR 250**. If any adjustments are necessary, SFA is responsible for assuring such adjustments are made.

6.5 Delivery Fees. 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)**.

6.6 Title. SFA shall retain title to all donated foods and the selected FSMC will conduct all activities relating to donated foods for which it is responsible. **(7 CFR 210.16[a][6])**.

- 6.7 Acceptance of Foods.** FSMC shall accept and use donated foods in as large quantities as may be efficiently utilized in SFA's nonprofit food service, subject to approval of SFA. SFA shall consult with FSMC in the selection of donated foods; however, the final determination as to the acceptance of donated foods must be made by the SFA. **(7 CFR 210.9[b][15]).**
- 6.8 Storage and Inventory.** FSMC will comply with all storage and inventory requirements for USDA foods. FSMC will ensure that its system of inventory management will not result in SFA being charged for donated foods. **(7 CFR 250.14).**
- 6.9 Specific Use Requirements.** FSMC will use all donated ground beef and ground pork products, and all processed end products, without substitution, in SFA's food service. FSMC will use all other donated foods or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in SFA's food service. **(7 CFR, Section 250.51[d])**
- 6.10 USDA Foods Use.** The FSMC will assure that USDA Foods are not used for special functions conducted outside the nonprofit school food service.
- 6.11 Recordkeeping.** FSMC is required to maintain accurate and complete records with respect to the receipt, use/disposition, storage, and inventory of donated foods in accordance with **(7 CFR 250.54(b))**. Failure by FSMC to maintain the required records under this contract shall be considered prima facie evidence of improper distribution or loss of donated foods.
- 6.12 Negligence.** FSMC shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to donated foods.
- 6.13 Processing Contracts.** FSMC is prohibited from entering into any processing contracts utilizing donated foods on behalf of SFA without prior written agreement. Any written agreement to allow processing will include that any procurement and/or utilization of end products by selected FSMC on behalf of SFA will be in compliance with the requirements in subpart **C of 7 CFR 250** and with the provisions of distributing or recipient agency processing agreements, and will ensure crediting of the recipient agency for the value of donated foods contained in such end products at the processing agreement value;
- 6.14 Discounts, Rebates, Credits.** SFA must receive all discounts, rebates or credits for donated foods purchases made on its behalf. All refunds received from processors must be retained in the nonprofit food service account.
- 6.15 Credit for Food Value.** FSMC must credit by disclosure as a separate line item on monthly invoice to SFA the value of all donated foods received for use in SFA's meal service in the school year or fiscal year (including both entitlement and bonus foods) and including the value of donated foods contained in processed end products, in accordance with the contingencies in **7 CFR 250.51(a) and 7 CFR 250.51 (b)**.
- 6.16 Review of Records.** The distributing agency, sub-distributing agency, SFA, the Comptroller General, the Department of Agriculture, or their duly authorized representatives, may perform onsite reviews of FSMCs food service operation, including the review of records, to ensure compliance with the requirements for the management and use of donated foods.
- 6.17 USDA Foods Value for Crediting.** The current value of USDA Foods is found in the

“Value of Commodities Received Report” in the WBSCM USDA Foods management system. This value is assigned in compliance with **7 CFR 250.58(e)**.

- 6.18 Storage Requirements.** 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.
- 6.19 Contingency for Extension.** Extensions or renewals of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to donated foods. (**7 CFR 250.53[a][12]**).

7 FOOD SAFETY

- 7.1 Inspection Requirements.** SFA shall comply with food safety inspection requirements as prescribed by USDA for its facilities and shall ensure that all state and local regulations are being met by FSMC preparing or serving meals at any SFA facility.
- 7.2 Outside Facility Requirements.** FSMC shall maintain state and/or local health certifications for any facility outside SFA in which it proposes to prepare meals and shall maintain this health certification for the duration of the contract as required under USDA Regulations **7 CFR 210.16(c)(2)** and shall comply with food safety inspection requirements as prescribed by USDA for its facilities and shall ensure that all state and local regulations are being met in its facilities.

8 MEALS

- 8.1 Schedule.** FSMC shall serve meals on such days and at such times as requested by SFA.
- 8.2 SFA Responsibility.** SFA shall retain control of the quality, extent, and general nature of the food service.
- 8.3 Free, Reduced, and Paid.** FSMC shall offer free, reduced price, and full price reimbursable meals to all eligible children participating in the programs.
- 8.4 Meal Pattern.** FSMC shall provide meals and a la carte items that satisfy the meal pattern requirements as defined in applicable program regulations (**7 CFR 210, 220, 225, 226**).
- 8.5 Participation.** FSMC shall make every effort to increase participation in the child nutrition programs.
- 8.6 Scope of Services.** FSMC shall provide the specified types of service in the schools/sites listed in **Exhibit A-3**, which is a part of this contract.
- 8.7 Authorized Sales.** FSMC shall sell on the premises only those foods and beverages authorized by SFA and only at the times and places designated by SFA.
- 8.8 Meals Not Meeting Requirements.** No payment will be made to FSMC for meals that

are spoiled or unwholesome at the time of delivery; do not meet detailed specifications as developed by SFA for each food component in the meal pattern; or do not otherwise meet the requirements of this contract.

- 8.9 Adult Meals.** Adult meal charges must be established in accordance with FNS Instruction 782-5, Pricing of Adult Meals in the National School Lunch and School Breakfast Programs. Pricing must include overall cost of the lunch including the value of any USDA Foods used to prepare meals.

9 MENUS

- 9.1 Advisory Board.** SFA shall establish and FSMC shall participate in the formation, establishment, and periodic meetings of an SFA advisory board composed of students, teachers, and parents to assist in menu planning. **(7 CFR 210.16(a)(8))**
- 9.2 Menu Development.** FSMC shall develop menus for all programs.
- 9.3 Menu Cycle.** FSMC must comply with the agreed upon menus included in the proposal document for the first 21 days of program operation. Any changes made by FSMC after the initial menu cycle may be made only with the approval of SFA. SFA shall approve the menus no later than two weeks prior to service **(7 CFR 210.16(b)(1))**. FSMC must also comply with the Minimum Food Specifications in **Exhibits B-9** for all programs.
- 9.4 Nutrition and Product Information.** The FSMC shall provide Nutrition Facts Labels, Child Nutrition (CN) Labels, Product Formulation Statements, recipes, ingredient lists and any other documentation required to meet USDA Child Nutrition Program Requirements
- 9.5 Food Quality.** 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, found in **Exhibits B-9**, and the food specifications contained herein.

10 PURCHASES

- 10.1 FSMC acting as agent.** If FSMC is procuring goods or services which are being charged to SFA under the contract, FSMC is acting as an agent for SFA and must comply with federal procurement regulations **(2 CFR Part 200, 2 CFR Part 400 and 7 CFR Part 210.21)**. FSMC may not serve as a vendor for any procurement conducted as an agent of SFA. Any rebates, discounts, or credits associated in any manner with purchases must be returned to the nonprofit school food service account. Only net costs may be charged to SFA.
- 10.2 Food Specifications.** Any purchase of food must meet the specification listed in **Exhibits B-9**.

11 BUY AMERICAN

11.1 Domestic Commodities. The FSMC shall purchase, to the maximum extent practicable, domestic commodities or products which are (i) an agricultural commodity that is produced in the United States and (ii) 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 38-2017]

- a. The FSMC must 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 these criteria:
 - i. The product is not produced or manufactured in the US in sufficient or reasonable quantities of a satisfactory quality; or
 - ii. Competitive proposals reveal the costs of a US product are significantly higher than the non-domestic product.
- b. All documentation must be kept on file by the FSMC and available upon request by the SFA, Agency of Education, or USDA.

11.2 Percent of US Content. The FSMC shall certify the percentage of U.S. content in the products supplied to the SFA, ensuring that it meets the minimum 51% requirement..

11.3 Certification of Domestic Origin. The FSMC will provide certification of domestic origin for products which do not have country of origin labels.

11.4 Records Review. The SFA reserves the right to review FSMC purchase records to ensure compliance with the Buy American provision in **7 CFR Part 250**.

12 BOOKS AND RECORDS

12.1 Reporting to SFA. FSMC shall maintain such records (supported by invoices, receipts, or other evidence) as SFA will need to meet monthly reporting responsibilities and shall submit monthly operating statements in a format approved by SFA no later than the tenth calendar day succeeding the month in which services were rendered. Participation records, including claim information by eligibility category, shall be submitted no later than the fifth working day succeeding the month in which services were rendered. SFA shall perform edit checks on the participation records provided by FSMC prior to the preparation and submission of the claim for reimbursement.

12.2 Allowable Expenses. FSMC shall maintain on-site records to support all allowable expenses appearing on the monthly operating statement. These records shall be kept in an orderly fashion according to expense categories.

12.3 Year-End Statement. FSMC shall provide SFA with a year-end statement.

12.4 Review of Records. Books and records of FSMC pertaining to the contract shall be made available, upon demand, in an easily accessible manner for a period of three years after the final claim for reimbursement for the fiscal year to which they pertain.

The books and records shall be made available for audit, examination, excerpts, and transcriptions by SFA and/or any state or federal representatives or auditors. If audit findings regarding FSMC's records have not been resolved within the three-year record retention period, the records must be retained beyond the three-year period for as long as required for the resolution of the issues raised by the audit. **(7 CFR 210.9(b)(17) and 2 CFR 200.333)**

- 12.5 Nonprogram Food Costs and Revenues.** The FSMC will annually provide information on food costs and revenues. The information must include food cost for reimbursable meals, food cost for non-program foods, revenue from non-program foods, and total revenue. Nonprogram foods include: a la carte; catering; vending; and student stores operated, or any other sales generated through the nonprofit school food service account not already described. This information is used to determine compliance with revenue from nonprogram foods at **7 CFR 210.14(f)**.
- 12.6 Federally Required Records.** FSMC shall not remove federally required records from SFA premises upon contract termination.

13 EMPLOYEES

- 13.1 Staffing Plan.** FSMC shall provide SFA with a schedule of FSMC employees, positions, assigned locations, salaries, and hours to be worked as part of this proposal on **Attachment 3**. Specific locations and assignments will be provided to SFA two full calendar weeks prior to the commencement of operation.
- 13.2 Reduction in Employee Hours.** In the event a reduction in FSMC 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 **Attachment 3** 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.
- 13.3 Level of Service.** The FSMC must ensure that the FSMC employees' hours listed on **Attachment 3** are maintained throughout the duration of the contract. The level of service for the federal child nutrition programs may not decrease as a result of catering, special functions or any non-program food handling.
- 13.4 Free from Disease.** 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.
- 13.5 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.
- 13.6 Fair Labor Standards Act.** The FSMC shall pay all FSMC employees in accordance with the Fair Labor Standards Act and any other applicable statutes.
- 13.7 Personnel Policies.** The FSMC shall provide the SFA with a list of its personnel policies and employee handbook.

- 13.8 Professional Standards.** The FSMC shall comply with USDA professional standards requirements for staff employed at the SFA. Documentation shall be readily available upon request.
- 13.9 Site Manager.** SFA shall have final approval regarding the hiring of FSMC's site manager. Any site manager proposed by FSMC must meet the minimum hiring qualifications for School Nutrition Program Directors set forth in the USDA Final Rule: Professional Standards for School Nutrition Programs Personnel as Required by the Healthy, Hunger-Free Kids Act of 2010.
- 13.10 Wage and Hour Requirements.** FSMC shall comply with all wage and hours of employment requirements of federal and state laws. FSMC shall be responsible for supervising and training personnel, including SFA-employed staff. Supervision activities include employee and labor relations, personnel development, and hiring and termination of FSMC management staff, except the site manager. FSMC shall also be responsible for the hiring and termination of non-management staff who are employees of FSMC.
- 13.11 Workers' Compensation.** FSMC shall provide Workers' Compensation coverage for all its employees.
- 13.12 SFA Policies.** FSMC shall instruct its employees to abide by the policies, rules, and regulations with respect to use of SFA's premises as established by SFA and which are furnished in writing to FSMC.
- 13.13 Staffing Patterns.** Staffing patterns, except for the site manager, shall be mutually agreed upon.
- 13.14 Facilities.** SFA shall provide sanitary toilet and hand washing facilities for the employees of FSMC.
- 13.15 Removal of Employees.** SFA may request, in writing, the removal of any employee of FSMC who violates health requirements or conducts himself or herself in a manner that is detrimental to the well-being of the students, provided such request is not in violation of any federal, state, or local employment laws. In the event of the removal or suspension of any such employee, FSMC shall immediately restructure the food service staff without disruption of service.
- 13.16 Emergency Procedures.** All SFA and/or FSMC personnel assigned to the food service operation in each school shall be instructed in the use of all emergency valves, switches, and fire safety devices in the kitchen and cafeteria areas.
- 13.17 Background Check.** SFA may require FSMC to perform a criminal background check on any of FSMC employee that will be working at SFA and disclose results to SFA.
- 13.18 Civil Rights Compliance.** The FSMC will assure conformance with all civil rights requirements that are applicable to the SFA. The FSMC shall conduct civil rights training for all food service employees, including front-line staff, on an annual basis. Specific subject matter required, but not limited to:
- a. Public notification systems,
 - b. Collection and use of data,
 - c. Requirements for language assistance,
 - d. Requirements for reasonable modifications to accommodate disabilities,
 - e. Complaint procedures,

- f. Civil Rights Reviews,
- g. Resolution of noncompliance,
- h. Customer service, and
- i. Conflict resolution.

13.19 Training. The FSMC shall ensure employees providing services for the SFA have the annual training required by the USDA. The FSMC must provide annual documentation showing the training hours and topics completed by their employees.

14 MONITORING

- 14.1 SFA Observation.** SFA shall monitor the food service operation of FSMC through periodic on-site SFA school building visits to ensure that the food service is in conformance with USDA program regulations (**7 CFR 210.16**). Further, if there is more than one school site, there is an additional requirement that SFA conduct an on-site review of the counting and claiming system no later than February 1 of each year as required by **7 CFR 210.8**.
- 14.2 Review of Records.** The records necessary for SFA to complete the required monitoring activities must be maintained by FSMC under this contract and must be made available to the Inspector General, USDA, SA, and SFA upon request for the purpose of auditing, examination, and review.
- 14.3 SFSP Sites.** If applicable, SFA, as an SFSP sponsor, is responsible for conducting and documenting the required SFSP site visits of all sites for preapproval and during operation of the program.

15 USE OF FACILITIES AND EQUIPMENT

- 15.1 Use of Space.** SFA will make available, without cost or charge to FSMC, area(s) of the premises agreeable to both parties in which FSMC shall render its services.
- 15.2 Inventory.** 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**.
- 15.3 Inventory Levels.** FSMC shall maintain the inventory of silverware, chinaware, kitchen utensils, and other operating items necessary for the food service operation at the inventory level as specified by SFA.
- 15.4 Equipment.** The FSMC awarded the Contract shall be responsible for providing and installing, as applicable, all equipment as designated in **Exhibit I** (Request for Equipment to be Purchased), if necessary, for the provision of the contractual

services required by the Contract. **Exhibit I** must state how the equipment will be purchased and who is responsible for payment.

- 15.5 Keys.** FSMC shall provide SFA with one set of keys for all food service areas secured with locks.
- 15.6 Regulatory Compliance.** SFA shall furnish and install any equipment and/or make any structural changes needed to comply with federal, state, or local laws, ordinances, rules, and regulations.
- 15.7 Equipment or Utility Malfunction.** SFA shall be responsible for any losses, including USDA Foods, which may arise due to equipment malfunction or loss of electrical power not within the control of FSMC.
- 15.8 SFA Equipment.** All food preparation and serving equipment owned by SFA shall remain on the premises of SFA.
- 15.9 FSMC Equipment.** FSMC shall notify SFA of any equipment belonging to FSMC on SFA premises within 10 days of its placement on SFA premises. SFA shall not be responsible for loss or damage to equipment owned by FSMC and located on SFA premises.
- 15.10 Access to Facilities.** SFA shall have access, with or without notice, to all SFA's facilities used by FSMC for the purposes of inspection and audit.
- 15.11 Use of Facilities Other Than for Programs.** FSMC shall not use SFA's facilities to produce food, meals, or services for other organizations without the approval of SFA. If such usage is mutually acceptable, there shall be a signed agreement which stipulates the fees to be paid by FSMC to SFA for such facility usage.
- 15.12 Return of Equipment.** FSMC shall surrender to SFA, upon termination of the contract, all equipment and furnishings in good repair and condition, reasonable wear and tear expected.
- 15.13 Facility Care.** The SFA shall 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.
- 15.14 Loss or Damage.** 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.
- 15.15 SFA Rules.** FSMC shall comply with all SFA building rules and regulations.

16 SANITATION

- 16.1 Trash Removal.** FSMC shall place garbage and trash in containers in designated areas as specified by SFA. SFA shall remove all garbage and trash from the designated areas.
- 16.2 Cleaning of Service Areas.** FSMC shall clean the meal production, storage and service areas used, and shall clean and sanitize dishes, pots, pans, utensils, equipment, and similar items. 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).

- 16.3 General Care.** FSMC shall operate and care for all equipment and food service areas in a clean, safe, and healthy condition in accordance with standards acceptable to SFA and comply with all applicable laws, ordinances, regulations, and rules of federal, state, and local authorities, including laws related to recycling.
- 16.4 Ventilation Hoods.** SFA shall clean ducts and hoods where applicable.
- 16.5 Local and State Requirements.** FSMC shall comply with all local and state sanitation requirements in the preparation of food.

17 LICENSES AND TAXES

- 17.1 Taxes.** FSMC shall be responsible for paying all applicable taxes and fees, including (but not limited to) excise tax, state and local income tax, payroll and withholding taxes for FSMC employees. FSMC shall hold SFA harmless for all claims arising from payment of such taxes and fees.
- 17.2 Licenses.** 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.

18 NONDISCRIMINATION

- 18.1 Nondiscrimination.** As noted in the USDA Non-Discrimination Statement for Child Nutrition Programs at the beginning of this Request For Proposal, in accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

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

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

mail:
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or
fax:
(833) 256-1665 or (202) 690-7442; or
email:
program.intake@usda.gov

This institution is an equal opportunity provider.

- 18.2 Civil Rights.** In the operation of the Program, no child shall be denied benefits or be otherwise discriminated against because of race, color, national origin, age, sex (including gender identity or sexual orientation) or disability. State agencies and school food authorities shall comply with the requirements of: Title VI of the Civil Rights Act of 1964; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Department of Agriculture regulations on nondiscrimination (7 CFR parts 15, 15a, and 15b); and FNS Instruction 113-1.
- 18.3 Additional Rights.** Both SFA and FSMC further agree that no child who participates in a Child Nutrition program will be discriminated against on the basis of creed, marital status, gender identity, or sexual orientation in employment or in any program or activity conducted or funded by the State of Vermont.

19 EMERGENCY CLOSING

- 19.1 Utility Interruption.** SFA shall notify FSMC of any interruption in utility service of which it has knowledge.
- 19.2 School Closing.** SFA shall notify FSMC of any delay in the beginning of the school day or the closing of school(s) due to snow or other emergency conditions.

20 TERMS AND TERMINATION

- 20.1 Remedies for Nonperformance.** In the event of FSMC's nonperformance under this contract and/or the violation or breach of the contract terms, SFA shall have the right to pursue all administrative, contractual, and legal remedies against FSMC and shall have the right to seek all sanctions and penalties as may be appropriate.
- 20.2 Fiscal Penalties.** FSMC shall reimburse SFA for the full amount of any fiscal penalties resulting from adjusted or disallowed claims which are attributable to FSMC's negligence, including those fiscal penalties based on reviews or audit findings that occurred during the effective dates of original and renewal contracts.
- 20.3 Force Majeure.** Neither FSMC nor SFA shall be responsible for any losses resulting if

the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, flood, acts of God, or for any acts not within the control of FSMC or SFA, respectively, and which, by the exercise of due diligence, it was unable to prevent.

20.4 Termination for Cause. In the event either party commits a material breach, including, but not limited to, violation of program regulations, the non-breaching party may terminate this agreement for cause by giving 60 days written notice. If the breach is remedied prior to the proposed termination date, the non-breaching party may elect to continue this agreement. **(7 CFR, 210.16[d]).**

20.5 Termination for Convenience. At any time SFA may terminate the contract by giving 60 days written notice to FSMC. Following any termination for convenience, the FSMC shall be entitled to compensation for services completed upon submission of invoices and proof of claim for services provided under the Contract up to and including the date of termination. The 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.

20.6 Loss of Funding Source. 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.

20.7 Immediate Termination. Notwithstanding the notice period in paragraph 20.5, 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.

20.8 Rights Beyond Termination. The right of termination referred to in the Contract is not intended to be exclusive and is in addition to any other rights available to either party at law or in equity. If the FSMC breaches a material provision of the Contract and fails to cure such breach within thirty (30) days after receiving written notice of such breach the 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]**

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

20.10 Notification of Termination: The Vermont Agency of Education shall be notified immediately by the SFA of termination action and reason for termination.

21 TRADE SECRETS AND PROPRIETARY INFORMATION

- 21.1 FSMC Trade Secrets.** During the term of the Agreement, FSMC may grant to SFA a nonexclusive right to access certain proprietary materials of FSMC, including menus, recipes, signage, food service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed by FSMC), and similar compilations regularly used in FSMC's business operations (trade secrets). SFA shall not disclose any of FSMC's trade secrets or other confidential information, directly or indirectly, during or after the term of the Agreement. SFA shall not photocopy or otherwise duplicate any such material without the prior written consent of FSMC. All trade secrets and other confidential information shall remain the exclusive property of FSMC and shall be returned to FSMC immediately upon termination of the Agreement. Without limiting the foregoing and except for software provided by SFA, SFA specifically agrees that all software associated with the operation of the food service, including without limitation, menu systems, food production systems, accounting systems, and other software, are owned by or licensed to FSMC and not SFA. Furthermore, SFA's access or use of such software shall not create any right, title interest, or copyright in such software and SFA shall not retain such software beyond the termination of the Agreement. In the event of any breach of this provision, FSMC shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. This provision shall survive the termination of the Agreement.
- 21.2 Right to Inventions.** Any discovery, invention, software, or programs paid for by SFA shall be the property of SFA to which the SA and USDA shall have unrestricted rights including copyrights.
- 21.3 Confidential Information.** Each Party, including its agents and subcontractors, to the Contract may have or gain access to confidential and proprietary data or information of the other Party including, without limitation, other technical information (including functional and technical specifications, designs, drawings, analysis, research, processes, computer programs, methods, ideas, "know how," and the like), business information (sales and marketing research, materials, plans, accounting and financial information, personnel records, and the like), all 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.

22 INSURANCE

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

1. Comprehensive General Liability - includes coverage for:
 - a. Premises – Operations;
 - b. Products - Completed Operations;
 - c. Contractual Insurance;
 - d. Broad Form Property Damage;
 - e. Independent Contractors;
 - f. Personal Injury.

\$2,000,000 Combined Single Limit;
2. Automobile Liability: \$1,000,000 Combined Single Unit;
3. Workers' Compensation-Statutory; Each party shall maintain Workers' Compensation Insurance coverage as required by state law, and Employers' Liability in the amount of one million dollars (\$1,000,000.00) for each accident covering all employees employed in connection with child nutrition program operations;
4. Excess Umbrella Liability: \$2,000,000 Combined Single Unit.

22.2 SFA as Additional Insured. SFA shall be named as additional insured on General Liability, Automobile, and Excess Umbrella.

22.3 FSMC Property Coverage. The FSMC shall provide fire and theft insurance at its own expense to cover any risk created by fire and/or theft to its property located on the premises of the SFA, including but not limited to, equipment, supplies, clothes, garments and other articles owned by their employees.

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

23 CERTIFICATIONS

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

23.2 Health Certification. 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.

- 23.3 Contract Work Hours and Safety Standards Act.** FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act 40 U.S.C. §327-330, as supplemented by Department of Labor regulation, 29 CFR 5. Under Section 103 of the Act, FSMC shall be required to compute the wages of every laborer based on a standard workday of eight hours, and a standard work week of 40 hours. Work in excess of the standard workday or standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or 40 hours in any work week.
- 23.4 Equal Employment Opportunity.** FSMC shall comply with Executive Order 11246, entitled *Equal Employment Opportunity*, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, 41 CFR 60. The [non-Federal entity](#) must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, small businesses, and labor surplus area firms are used when possible.
- 23.5 Civil Rights Law.** FSMC shall comply with the following civil rights laws, as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Executive Order 13166 *Improving Access to Services for Persons with Limited English Proficiency*; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFRs 15, 15a, and 15b; the Americans with Disabilities Act; FNS Instruction 113-1, *Civil Rights Compliance and Enforcement in School Nutrition Programs*; 28 CFR Part 35, Title II, Subtitle A; and the ADA Amendments Act of 2008.
- 23.6 Buy American.** FSMC shall comply with the *Buy American Provision (7 CFR 210.21(d))* for contracts that involve the purchase of food.
1. FSMC shall purchase, to the maximum extent practicable, domestic commodities or products which are either an agricultural commodity produced in the United States (U.S.) or a food product processed in the U.S. substantially using agricultural commodities produced in the U.S.;
 2. FSMC shall seek approval of SFA before purchasing foods under an exception to the Buy American provision and maintain documentation of any such purchases that must include, at a minimum:
 - a. the non-domestic product that was purchased;
 - b. the date of the purchase;
 - c. the reason for the exception;
 - d. any efforts made to find alternate sources or substitute domestic products.
 3. SFA may review vendor purchase records to ensure compliance with the Buy American provision.
- 23.7 Independent Price Determination.** FSMC has signed the *Certification of Independent Price Determination*, [Attachment 6](#), which was attached as an addendum to FSMC's proposal and which is incorporated herein by reference and made a part of this contract.
- 23.8 Disbarment, Suspension, Ineligibility, and Voluntary Exclusion.** FSMC certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. **(2 CFR sections 180 and 417)**. Contract renewals that do not include this certification will not be accepted for consideration.

- 23.9 Clean Air Act.** FSMC shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- 23.10 Lobbying Certification.** FSMC has signed the Lobbying Certification, **Attachment 8**, which was attached as an addendum to FSMC's proposal and which is incorporated and made a part of this contract. If applicable, FSMC has also completed and submitted Standard Form-LLL, *Disclosure Form to Report Lobbying*. The Certification Regarding Lobbying and a Disclosure of Lobbying Activities form (2 CFR Section 418) must accompany each subsequent four (4) additional one-year renewals (2 CFR sections 180 and 417). Contract renewals that do not include this certification will not be accepted for consideration.
- 23.11 Copeland Act.** FSMC shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C.874) as supplemented in Department of Labor regulations (29 CFR 3).
- 23.12 Davis-Bacon Act.** FSMC shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR 5).
- 23.13 Termination.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement Appendix II of 2 CFR 200(B)
- 23.14 Other Pertinent Laws.** FSMC shall comply with all other pertinent state and federal laws.

24 MISCELLANEOUS

- 24.1 Proposal Specifications.** FSMC shall comply with the provisions of the proposal specifications, which are hereby in all respects made a part of this contract including all agreed to negotiations between SFA and selected FSMC which have been approved in writing by the SA.
- 24.2 Subcontracting Prohibited.** No provision of this contract shall be assigned or subcontracted without prior written consent of SFA.
- 24.3 Best Commercial Practices.** Any silence, absence, or omission from the contract specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only materials (e.g. food, supplies, etc.) and workmanship of a quality that would normally be specified by SFA are to be used.
- 24.4 Claims for Adjustment.** Payments on any claim shall not preclude SFA from making a claim for adjustment on any item found not to have been in accordance with the provisions of this contract and proposal specifications.
- 24.5 Program Review Findings.** SFA shall be responsible for ensuring the resolution of program review and audit findings.
- 24.6 State Agency Review.** This contract is subject to review and approval by the SA.

- 24.7 Financial Soundness.** SFA and FSMC shall work together to ensure a financially sound operation.
- 24.8 Unallowable Charges.** All costs resulting from contracts that do not meet the requirements of 7 CFR 210 are unallowable nonprofit school food service account expenses. When SFA fails to incorporate the SA required changes to solicitation or contract documents, all costs resulting from the subsequent contract award are unallowable charges to the nonprofit school food service account.
- 24.9 Execution.** After the complete RFP/contract is approved by the SA, the contract must be signed by all local parties. Changes or amendments are not valid unless approved in writing by the SA prior to execution.
- 24.10 Assignment.** No provision of the Contract shall be assigned or subcontracted without prior written consent of the SFA.
- 24.11 Contract Entirety.** 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. 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.
- 24.12 Binding Contract.** Each party to the Contract represents and warrants to the other that: (a) it has the right, power and authority to enter into and perform its obligations under the Contract and (b) it has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract, and (c) the Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- 24.13 No Waiver.** 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.
- 24.14 Civil Rights Act.** The FSMC shall comply with Title VI of the Civil Rights Act of 1964, as amended; USDA regulations implementing Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; Executive Order 13166 *Improving Access to Services for Persons with Limited English Proficiency*; Age Discrimination Act of 1975; 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.
- 24.15 Parties to the Contract.** Neither the Vermont Agency of Education nor the United States Department of Agriculture are parties to the Contract and are not obligated, liable, or responsible for any action or inaction by the SFA or the FSMC. The SFA has full responsibility for ensuring the terms of the Contract are fulfilled.
- 24.16 Hold Harmless.** 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. This clause shall survive termination of the Agreement.

24.17 Vermont Public Records Law. 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.

24.18 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 FSMC's possession shall be returned to SFA when no longer needed for the purposes for which they were provided, or at 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.

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

1. SFA's policies, practices, and service requirements shall remain materially consistent throughout the contract term and any subsequent contract renewals;
2. Legislation, regulations, and reimbursement rates that create changes in the school lunch program shall remain materially consistent throughout the year;
3. Usable USDA Foods, of adequate quality and variety required for the menu cycle, valued at an amount as set forth by USDA per pattern meal for the contract year will continue to be available;
4. The government reimbursement rates in effect shall remain materially consistent throughout the year;

5. Meal components and quantities required for applicable CNPs remain consistent with prior years;
6. Service hours, service requirements, and type or number of facilities selling food and/or beverages on SFA's premises shall remain materially consistent throughout the year;
7. The state or federal minimum wage rate and taxes in effect shall remain materially consistent throughout the year;
8. The projected number of full feeding days is: **175**;
9. SFA revenue credited to the nonprofit food service program shall include all state and federal amounts received specifically for child nutrition operations.

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

25 SUMMER FOOD SERVICE PROGRAM (SFSP)

If participating in the Summer Food Service Program (SFSP), then the SFA shall offer free meals to all eligible children. If the FSMC will operate the SFSP (including the preparation, record keeping, and delivery of meals), a flat price per meal cost must be submitted as part of this RFP for the SFSP. In accordance with Title 7 CFR §225.15 the SFA cannot contract out the management responsibilities of the SFSP. The SFA shall be responsible for ensuring that the food service operation conforms to all program requirements outlined in Title 7 CFR Part 225. The SFA shall be responsible for determining eligibility for all SFSP sites. The SFA as a SFSP sponsor is responsible for conducting and documenting the required site visits of all sites for pre-approval and during operation of the program.

- 25.1 List of Sites.** SFA shall provide to FSMC a list of State agency approved food service sites, along with the approved level for the number of meals which may be claimed for reimbursement for each site, established under **7 CFR 225.6(d)(2)**, and shall notify FSMC of all sites which have been approved, cancelled, or terminated subsequent to the submission of the initial approved site list and of any changes in the approved level of meal service for a site.
- 25.2 Unitized Meals.** All meals prepared by FSMC shall be unitized, with or without milk or juice, unless the State agency has approved a request for exceptions to the unitizing requirement for certain components of a meal.
- 25.3 Meal Requirements.** Meals served under the contract shall conform to the cycle menus upon which the proposal was based, and to menu changes agreed upon by SFA and FSMC. All meals served under the program must meet the requirements of **7 CFR 225.16**.
- 25.4 Subcontracting.** FSMC shall not subcontract for the total meal, with or without milk, or

for the assembly of the meal; and shall not assign, without the advance written consent of SFA, its contract or any interest therein. In the event of any assignment, FSMC shall remain liable to SFA as principal for the performance of all its obligations under this contract.

25.5 Payment for Meals. FSMC shall be paid by SFA for all meals delivered in accordance with this contract and SFSP regulations. However, neither the USDA nor the State agency assumes any liability for payment of differences between the number of meals delivered by the contractor and the number of meals served by the sponsor that are eligible for reimbursement.

25.6 Meal Order Adjustment. SFA reserves the right to increase or decrease the daily number of meals ordered on a 24-hour notice or less if mutually agreed upon by SFA and FSMC.

25.7 Health Certification. The food service management company shall have Federal, State or local health certification for the facility 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.

25.8 Noncompliance. In cases of nonperformance or noncompliance on the part of FSMC, FSMC shall pay SFA for any excess costs which SFA may incur by obtaining meals from another source.

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

25.10 Bonding Requirement. FSMC shall comply with the appropriate bonding requirements, as set forth in **7 CFR 225.15(m)(5) through (m)(7)**.

1. If the estimated SFSP reimbursement based on this RFP exceeds \$250,000, FSMC shall obtain and submit a proposal bond in the amount of **5%** (not less than 5 percent and no more than 10 percent of the value of the contract for which the bid is made) of expected SFSP reimbursement along with its proposal.
2. If the estimated SFSP reimbursement of the awarded contract exceeds \$250,000, FSMC shall obtain a performance bond from a surety company in the amount of **10%** (not less than 10 percent and no more than 25 percent of the value of the contract for which the bid is made) of expected SFSP reimbursement and furnish this bond to SFA within 30 calendar days of contract award, but not later than 7 calendar days prior to contract commencement. FSMCs are prohibited from posting any alternative forms of performance bonds. Cash, certified checks, letters of credit, and escrow accounts are not acceptable substitutes for performance bonds.

26 CHILD AND ADULT CARE FOOD PROGRAMS (CACFP)

If participating in the Child and Adult Care Food Program (CACFP), then the SFA / Sponsor shall offer meals to all eligible children and adults. If the FSMC will operate the CACFP (including the preparation, record keeping, and delivery of meals), a flat price per meal cost must be submitted as part of this RFP for the CACFP. In accordance with **Title 7 CFR 226.15** the SFA / Sponsor cannot contract out the management responsibilities of the CACFP. The SFA / Sponsor shall be responsible for ensuring that the food service operation conforms to all program requirements outlined in **Title 7 CFR Part 226**

- 26.1 Approved Locations.** CACFP Institutions shall provide the food service management company with a list of the State agency approved child care centers, head starts, day care homes, adult day care centers, outside-school-hours care centers, at-risk after school programs, and homeless or emergency shelters to be furnished meals by the FSMC, and the number of meals, by type, to be delivered to each location.
- 26.2 Records.** 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.
- 26.3 Health Certification.** The food service management company shall have Federal, State or local health certification for the facility 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.
- 26.4 Cycle Menus.** The meals served under the contract shall conform to the cycle menus upon which the proposal was based, and to menu changes agreed upon by the institution and food service management company.
- 26.5 Records Retention.** 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.
- 26.6 Program Regulations.** The Food Service Management Company shall operate in accordance with current Program regulations.
- 26.7 Unallowable Meals.** The Food Service Management Company shall not be paid for meals which are delivered outside of the agreed upon delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements

contained in the contract.

- 26.8 Delivery Schedule.** Meals shall be delivered in accordance with a delivery schedule prescribed in the contract.
- 26.9 Meal Count Modification.** 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.
- 26.10 Meal Requirements.** All meals served under the Program shall meet the requirements of 7 CFR 226.20.
- 26.11 Unitization.** 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 7 CFR 226.20.
- 26.12 Non-Subcontract.** A food service management company may not subcontract for the total meal, with or without milk, or for the assembly of the meal.