Fixed Price

FOOD SERVICE MANAGEMENT COMPANY (FSMC) REQUEST FOR PROPOSAL AND CONTRACT

Local Education Agency Name (LEA): Name

Agreement No.: 000-000

Send Sealed Proposal to:

LEA Contact Person

Street Address

City, State, Zip

Contact Phone Number

All proposals must be received by:

Time

Date

To be filled in after contract awarded by LEA.

FSMC Awarded: FSMC Name

LOCAL EDUCATION AGENCY (LEA) INFORMATION – (LEA COMPLETE PAGES 1-10)

This solicitation is for the purpose of entering into a contract for the operation of a food service program between the school/ district hereinafter referred to as the Local Education Agency (LEA) and the Food Service Management Company (FSMC).

Each bidder must submit a complete response to this solicitation ***using the forms provided.*** No other documents submitted with the Request for Proposal (RFP)/contract will affect the contract provisions. *If the FSMC provides additional provisions they must be included on the RFP/contracts additional provisions page and they must be reviewed and approved by the State Agency.*

1. A pre-proposal meeting to review the RFP, to clarify any questions, and for a walk-through of the facilities with school officials on , Date , Time **at** Location Name , Location Address .

2. Proposals are to be submitted to:

LEA	LEA Name
Address	Address
City, State, Zip	City, State and Zip
Email Address	Email Address

3. Proposals must be submitted by Date Time . Proposals will not be accepted after the deadline.

4. This contract shall become effective Date and terminate on June 30, **2021** The effective date may be different from July 1, but the termination date must be June 30. The effective date may not occur prior to the date on which the contract is signed.

5. The FSMC shall conduct the food service in such a manner as will ensure compliance with the rules and regulations of the Missouri Department of Elementary and Secondary Education, Food and Nutrition Services Section, hereinafter referred to as the State Agency (SA) and the United States Department of Agriculture (USDA) regarding Child Nutrition Programs.

   Check only the programs the LEA operates. If a program is added later (i.e., a breakfast program), the appropriate procurement procedures must be followed.

   - ☐ National School Lunch Program (NSLP) (Regular Term)
   - ☐ NSLP (Summer Term)
   - ☐ School Breakfast Program (SBP) (Regular Term)
   - ☐ SBP (Summer Term)
   - ☐ Seamless Summer Option (SSO)
   - ☐ After-School Snack Program (ASSP)
   - ☐ Child & Adult Care Food Program (CACFP) Administered by the Department of Health and Senior Services (DHSS)
   - ☐ Special Milk Program (SMP)
   - ☐ A la Carte
   - ☐ Adult Meals
   - ☐ Outside Catered Events
   - ☐ Fresh Fruit and Vegetable Program (FFVP)
   - ☐ USDA Foods (Commodities)
   - ☐ Summer Food Service Program (SFSP) Administered by DHSS

   If CACFP or SFSP are marked please see Appendix A

6. The contract charge for meal service is based on an estimated minimum number of # full serving days.

7. The LEA will ☐ will not ☐ require the FSMC to perform a security (background) check on any FSMC employee.

8. The LEA must designate if current LEA employees, including site and area managers as well as any other staff, will be retained by the LEA or be subject to employment by the FSMC.

   Employees retain by: ☐ LEA ☐ FSMC ☐ Both LEA and FSMC

9. ☐ LEA ☐ FSMC shall be responsible for any costs for the storage and delivery of federally USDA foods used by the food service program.

10. ☐ LEA ☐ FSMC shall be responsible for any costs resulting from the processing of federally USDA foods.

11. Type of food service preparation: ☐ On-site preparation ☐ Vended

12. The LEA shall provide the FSMC with a schedule of employees, positions, assigned locations, salaries, and hours to be worked on the Labor Worksheet (Page 6).

13. The LEA authorizes the FSMC to exclusively manage and operate on its behalf the school cafeterias, kitchens, snack bars, and related food facilities located within the premises of all LEA schools specified on LEA/Site Building Listing-General Data (Page 7).

14. Attach the LEA's calendar for the current school year.

15. Attach participation information for lunch and/or breakfast and/or al a carte receipts from August through November of the prior school year broken down by each school.

16. The LEA will provide a 21-day menu cycle (lunch, breakfast and after school snack, as applicable). LEA's with no capability to prepare a cycle menu may, with state agency approval, require that each FSMC include a 21-day menu cycle, developed in accordance with the provisions of 210.10 & 220.8, with its proposal.

Select One of the following:

☐ LEA provides 21 day menu cycle

☐ FSMC requested to provide 21 day menu cycle

If additional information is required, please contact Contact Person Phone Number or Email Address.

The LEA must obtain written approval of the RFP by the SA before issuance.

RFP/Contract Additional Provisions

Additional requests made by the LEA are to be included on this page. The additions are limited exclusively to insert clauses that cover issues not otherwise covered in the prototype. LEA additional RFP/contract provisions must be reviewed and approved by the State Agency.

Division of Responsibilities for Food Service Program

Mark with an "X" those that will be the responsibility of the FSMC, the LEA, both LEA and FSMC or Not Applicable (NA).

COSTS	FSMC	LEA	NA
Food Cost (food, condiments, beverages)			
Food Purchasing			
Processing of Invoices			
Payment of Invoices			
Donated Food Inventory Control			
Storage/Delivery Charges of Donated Foods			
Inter-LEA Delivery of Donated Foods			
Labor Cost			
Payment of Managers, and/or Supervisors:			
Payment of Hourly Wage Employees			
Payroll Taxes of all Employees			
Preparation of all Employee Payroll			
Processing of all Employee Payroll			
Retirement for Contractor's employees			
Unemployment Insurance for Contractor's employees			
Workers' Compensation for Contractor's employees			
Health Insurance for Contractor's employees			
Life Insurance and Disability for Contractor's employees			
Holidays for Contractor's employees			
Labor Charges for Supervision of Outside Groups using Facilities			
Student Labor (IF Any)			
Other Purchased Services			
Telephone, local service			
Telephone, long distance			
Utilities (heat, power, water)			
Extermination			
Laundry			
Removal of Trash and Garbage from Kitchen			
Removal of Trash and Garbage from Premises			
Other			
Supplies			
Disposable Service ware			
Cleaning Supplies			
Paper Supplies			
Uniforms			
Menu Paper			
Menu Printing			
Promotional Materials			
Nutrition Education and Materials			
Office Supplies			
Postage			
Facilities			
Routine Cleaning of Cafeteria Walls and Floors			
Routine Cleaning of Kitchen Walls and Floors			
Periodic Waxing and Buffing of Floors			
Sanitation and Proper Use of Equipment			
Daily Cleaning of Cafeteria Tables and Chairs			

Division of Responsibilities for Food Service Program

Capital Improvement	FSMC	LEA	NA
Painting			
Other			
NSLP Free/Reduced Application Verification			
NSLP Free/Reduced Application Approval			
Records Supporting Reimbursement Claims			
Point-of-Sale Accountability			
Collection and deposit of Daily Cash Receipts			
Menu			
Development			
Menu Distribution			
Inter-LEA Deliver to Satellite Areas			
Vehicle Lease of Purchase			
Vehicle Maintenance			
Vehicle Fuel and Oil			
Vehicle Taxes			
Vehicle Insurance			
Vehicle Licenses			
Vehicle Registration			
Depreciation			
Audit fees			
Licenses/Permits			
Promotions			
Mileage			
Employee Physicals			
Sales Tax			
Performance Bond (if applicable)			
Liability Insurance			

LABOR WORKSHEET

To be completed by the LEA for LEA employees pay rates for the school.

Site or School	Employee Name (Optional)	Job Title	Hourly Rate ($)	Daily Hours	Number of Days Paid	Total Annual Wage ($)
TOTAL LABOR						$
Retirement						$
Substitute Pay						$

LEA SITE/BUILDING LISTING – GENERAL DATA

School	Address	Grade Levels	Enrollment	Type of Meal Service (vended or on-site prep)	No. of serving periods	Beginning and Ending Times of Meal Service			No. of Serving Days
						Breakfast	Lunch	Snack	

Evaluation and Award Process

After determining that a bid satisfies the mandatory requirements stated in the RFP, the LEA shall use both objective analysis and subjective judgment in conducting a comparative assessment of the bid. The LEA must evaluate the bids and must state in the RFP/ contract how they plan to evaluate the bids.

Weight	Criteria
points	Price/Cost (Price must be primary factor)
points	Service Capability Plan
points	Experience, References
points	Financial, Condition/Stability, Business Practices
points	Accounting and Reporting Systems
points	Personnel Management
points	Innovation
points	Promotion of the School Food Service Program
points	Involvement of Students, Staff, and Patrons
0 **Total**	**(Must equal 100)**

While price alone is not the sole basis for award, price remains the primary consideration when awarding a contract under the competitive proposal method.

The LEA's officers, employees, board members, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors nor potential contractors. To the extent permissible under state law, rules, or regulations, such standards shall be provided for appropriate penalties, sanctions, or other disciplinary actions to be applied for violations of such standards.

Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. (2 CFR 200.319)

Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;
(2) Requiring unnecessary experience and excessive bonding;
(3) Noncompetitive pricing practices between firms or between affiliated companies;
(4) Noncompetitive contracts to consultants that are on retainer contracts;
(5) Organizational conflicts of interest;
(6) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance or other relevant requirements of the procurement; and
(7) Any arbitrary action in the procurement process

FSMC INFORMATION – (FSMC COMPLETE PAGES 9-13)

Fixed Price Financial Agreements

LEA must choose option A or B. The SA mandates the Meal Equivalent Factor. If chose option A the fixed price per meal and outside catered events will be subject to the percent change in the Consumer Price Index (CPI) for all Urban Consumers from May of the previous year to May of the current year, at the time of contract renewal. The specific CPI used will be published in Federal Register Notice, Department of Agriculture, Food and Nutrition Service, National School Lunch, Special Milk, and School Breakfast Programs, National Average Payments/ Maximum Reimbursement Rates. If chose option B, fixed prices must be stated for the current year and the additional four renewal years.

A. ☐ The financial arrangements between the LEA and FSMC for the management of the school food services are as follows:

FSMC COMPLETE THE BELOW INFORMATION	
Fixed price per student lunch for the 2020-2021 regular school year:	
Fixed price per student breakfast for the 2020-2021 regular school year:	
Fixed price per after school snack for the 2020-2021 regular school year:	
Fixed price per non-student lunch for the 2020-2021 regular school year:	
Fixed price per non-student breakfast for the 2020-2021 regular school year:	
The meal equivalent factor for the 2020-2021 regular school year (state mandated):	
The meal equivalent factor for outside catered events for the 2020-2021 school year:	
ONLY COMPLETE BELOW IF ADMINISTER NSLP (SUMMER) OR SSO (SUMMER)	
Fixed price per student breakfast for the 2020-2021 summer school:	
Fixed price per student lunch/supper for the 2020-2021 summer school:	
Fixed price per student snack for the 2020-2021 summer school:	
ONLY COMPLETE BELOW FOR NUTRITION PROGRAMS ADMINISTERED BY DHSS	
Fixed price per Student **CACFP** Breakfast for the 2020-2021 school year:	
Fixed price per Student **CACFP** Lunch/Supper for the 2020-2021 school year:	
Fixed price per Student **CACFP** Snack for the 2020-2021 school year:	
Fixed price per Student **SFSP** Breakfast for the 2020-2021 school year:	
Fixed price per Student **SFSP** Lunch/Supper for the 2020-2021 School year:	
Fixed price per Student **SFSP** Snack for the 2020-2021 School year:	

B. ☐ The financial arrangements between the LEA and FSMC for the management of the school food services are as follows:

	2020-2021	2021 2022	2022-2023	2023 2024	2024-2025
FSMC COMPLETE THE BELOW INFORMATION					
Fixed price per student lunch:					
Fixed price per student breakfast:					
Fixed price per student after school snack:					
Fixed price per non-student lunch:					
Fixed price per non-student breakfast:					
The meal equivalent factor (state mandated):					
The meal equivalent factor for outside catered events:					
ONLY COMPLETE BELOW IF ADMINISTER NSLP (SUMMER) OR SSO (SUMMER)					
Fixed price per student breakfast for summer school:					
Fixed price per student lunch/supper for summer school:					
Fixed price per student snack for summer school:					
ONLY COMPLETE BELOW FOR NUTRITION PROGRAMS ADMINISTERED BY DHSS					
Fixed price per Student **CACFP** Breakfast:					
Fixed price per Student **CACFP** Lunch/Supper:					
Fixed price per Student **CACFP** Snack:					
Fixed price per Student **SFSP** Breakfast:					
Fixed price per Student **SFSP** Lunch/Supper:					
Fixed price per Student **SFSP** Snack:					

Description and History of FSMC

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

1. Name and address of FSMC.

2. The duration and extent of experience in the operation of school food services.

3. A list of similar operations and locations where FSMC is operating or has operated school food services. Give length of time, name, address, and telephone number of contact person of each operation.

4. A summary of the FSMC's experience during the past 3 years of successfully operating a school food service program requiring nutritious meals that comply with applicable regulations.

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

LABOR WORKSHEET

To be completed by the FSMC for FSMC employees pay rates for the school year .

SITE OR SCHOOL	EMPLOYEE	JOB TITLE	HOURLY RATE ($)	DAILY HOURS	NUMBER OF DAYS PAID	TOTAL ANNUAL WAGE ($)
TOTAL LABOR						$
Retirement						$
Substitute Pay						$

CERTIFICATION REGARDING LOBBYING

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts, Exceeding $100,000 in Federal Funds.

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding $100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

_____

Name/Address of Organization

_____

Name/Title of Submitting Official

Signature_____Date Date

RFP/Contract Additional Provisions

Additional requests made by the FSMC are to be included on this page. FSMC additional RFP/contract provisions must be reviewed and approved by the SA.

General Information – Terms and Conditions to be Included in RFP\Contract (Pages 14-27)

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

1. The food service program provided shall be operated and maintained as a benefit to the LEA students, faculty, and staff.
2. The FSMC must give evidence of financial stability.
3. The FSMC must be licensed to do business in the State of Missouri.
4. Award shall be made to a qualified and responsible offer whose proposal is most responsive to this solicitation. A responsible offer is one who's financial, technical, and other resources indicate an ability to perform the services required by this solicitation.
5. The FSMC or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting proposals; failure to do so will be at the FSMCs own risk and cannot secure relief on the plea of error.
6. The LEA is not liable for any cost incurred by the FSMC prior to the signing of a contract by all parties. **Paying the FSMC from the Child Nutrition Program funds is prohibited until the contract is approved by the SA, and signed by both parties.**
7. Provisions for equipment purchases that entail repayment to the FSMC over a period in excess of one year are not permitted.
8. No oral interpretation will be made to any FSMC as to the meaning of the RFP. Any oral communication will be considered unofficial and non-binding on the LEA. Unauthorized contact by the FSMC with other LEA employees or LEA Board Member regarding the RFP may result in disqualification. Each request for such interpretation shall be made in writing to the LEA. Every interpretation made to the FSMC will be in the form of an addendum to the specification, mailed to each FSMC, and will be on file at the school. All such addenda shall become part of the final contract and FSMC shall be bound by such addenda.
9. In the event the contract initially awarded by the LEA is terminated for any reason within 120 days of the due date for proposals, the LEA reserves the right to accept any other submitted proposal in conformance to the requirements of this solicitation including submission by the original date by which such proposals where due.
10. A material change is a change that, had other bidders known of the change at the time they submitted their responses, would have caused them to bid differently. In this instance, the LEA should publish a new solicitation that accounts for anticipated changes in labor fees and award a new contract for the next school year. *Scenario:* fees requested by a FSMC that are in addition to the fixed price as agreed to in a contract awarded through means of an (a)IFB or (b)an RFP cannot be paid from the nonprofit school food service account (NSFSA). The additional fees represent a material change to the contract.

Intent

1. The FSMC shall conduct the food service in such a manner as will ensure compliance with the rules and regulations of the SA and the USDA regarding Child Nutrition Programs.
2. The LEA is prohibited from entering into contracts that are on a "cost-plus-a-percentage of cost" or "cost-plus-a-percentage-of-income" basis.
3. If the LEA determines that significant changes are necessary, the LEA must rebid the contract. The following changes would normally not substantially change the contract.

   Number of schools - new schools added;

   Changes in enrollment - decreased and increased in student enrollment and the corresponding change expected in participation;

   Changes in meal prices charged to students by LEA - meal price changes (determined by the LEA);

   Cost increases - cost increases limited to a measurable index (such as the Consumer Price Index for all Urban Consumers).Examples of substantive changes which could require the LEA to rebid the contract include; the addition of a program, such as the SBP; major changes to the formula for determining meal equivalence; or major shift in responsibilities for the LEA/FSMC staff.

   Economic price adjustment - subject to the percent change in the CPI. The specific CPI must be used for all additional fees requested by the FSMC. Contract management would require that the LEA verifies all increase/decrease in price adjustment.

4. The FSMC shall cooperate with the LEA in promoting nutrition education and coordinating the LEA's food service with classroom instructions.
5. The LEA reserves the right to maintain present food and beverage vending machines in its facilities.
6. The FSMC will be required to use the LEA's point of sale software. Information regarding the software will be available at the pre-bid conference.
7. The FSMC shall be an independent contractor and not an employee of the LEA. The employees of the FSMC shall not be employees of the LEA.
8. The FSMC shall provide additional food service, such as banquets, parties, refreshments for meetings, etc, as requested by the LEA. The LEA or requesting organization will be billed for the actual cost of food, supplies, labor, and the FSMC's overhead and administrative expense if applicable to providing such service. USDA donated foods shall not be used for these special functions.
9. This contract constitutes the entire agreement between the LEA and the FSMC and may not be changed, extended orally, or altered by cause of conduct.
10. No provision of this contract shall be assigned or subcontracted without prior written consent of the LEA.
11. Any agreement between the LEA and the FSMC shall be subject to approval by the SA.

Duration and Termination

1. This contract shall be for duration of no longer than one year; and options for the yearly renewal of a contract may not exceed four (4) additional years. (7 CFR 210.16(d))

2. Either party may cancel for cause with 60 day notification. (7CFR 210.16(d))

3. Any amendment, addendum, and/or renewal to the contract shall become effective at the time specified and must be sent to the SA.

4. Neither the FSMC nor the LEA shall be responsible for any losses resulting if the fulfillment of the terms of the contract is delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or any other acts which could not have been prevented by the exercise of due diligence.

5. Ensure that the SA has reviewed and approved contract terms and that the LEA has incorporated all SA required changes into the contract or amendment before any contract or amendment to an existing FSMC contract is executed. Any changes made by the LEA or FSMC to a SA pre-approved prototype contract or SA approved contract term must be approved in writing by the SA before the contract is executed. When requested, the LEA must submit all procurement documents, including responses submitted by potential contractors, to the SA, by the due date established by the SA.
(7 CFR 210.16(a)(10))

Fixed Price Financial Agreements

1. Meal equivalent factor to be used is mandated by the SA. The LEA will require the FSMC to convert all receipts from cash or a la carte sales to equivalent meals and charges to LEA made at the student lunch contract rate according to the following formula:

   Amount LEA is to be billed for a la carte program = (total a la carte sales) / (meal equivalent factor) (X) fixed price per meal.

   Example: a la carte revenue $100,000 / (divide) meal equivalent factor (mandated by SA) **3.75= (equals)** meal equivalents 26,667 meal equivalents **26,667 X (times)** fixed price per meal (mandated by SA) **$2.00 = (equals)** charge to LEA by FSMC $53,334.

2. Meal equivalent factors shall be utilized in determining equivalent meals for a la carte sales and sales accruing from a LEA sponsored catered events.

3. For outside catered events not directly invoiced to the LEA the meal equivalent factor will be utilized to determine the appropriate credit to the LEA.

4. The fixed price must include all labor (including bonuses, if any) and expenses as shown below. They may not be charged back to the LEA in any other manner.
    - Menu development specific to the operation
    - Nutrition education materials and program expense
    - Design services specific to the operation
    - Education program via assembly programs, school room programs, parent/teacher meetings, and school food advisory committee meetings
    - Personal representation, visitation, and coverage on a regular basis by a principle of FSMC
    - All accounting
    - All payroll costs and documentation
    - Administrative dietetic, nutritional, sanitation, and personnel advice
    - All costs incurred in hiring and relocating, if necessary, the FSMC management team
    - All training costs for FSMC employees
    - All miscellaneous costs to operate the program; i.e., consumable marketing materials
    - One-time performance bond

5. The FSMC shall submit an invoice to the LEA weekly based upon the actual number of meals served during that calendar week, or monthly based upon the actual number of meals served during the calendar month multiplied by the daily rates for the total billing.

6. The LEA's failure to pay as invoiced shall constitute a breach of the contract. In the event any invoice is unpaid for more than 45 days, the FSMC shall have the right upon ten (10) days written notice to terminate performance under this contract. The LEA further agrees to pay all costs of collection of amounts due including a reasonable attorney's fee. Waiver by FSMC of the right to terminate for one or more late payments shall not constitute waiver of FSMC's rights for future last payments.

7. Fixed price per meal contracts awarded on a per meal basis and revenues from nonprogram foods sales converted into meal equivalents to which the fixed price cost is applied, the FSMC will annually provide infromation 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 a 7 CFR 201.14(f).

Professional Standards for Local School Nutrition Personnel

The final rule seeks to insure that local school nutrition personnel in the National School Lunch and School Breakfast Programs have the knowledge and skills to manage and operate the programs correctly and successfully. The training standards apply to contract employees that are involved in the management or operation of the school nutrition programs, regardless of the contract duration. The LEA must request documentation from the FSMC to show compliance with the annual training standards.

Training standards do not apply to a vended meal provider commercial entity off-site from the school food service that provided pre plated meals. However, the LEA director must insure that vendors providing meals for the school nutrition programs have the knowledge and skills to supply safe and nutritious meals that meet the meal patterns and dietary specifications.

Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms (2 CFR 200.321)

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
(b) Affirmative steps must include:
(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum

participation by small and minority businesses, and women's business enterprises;
(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Food Service Management Company Responsibilities

1. The FSMC shall comply with the rules, regulations, policies, and instructions of the SA and USDA and any additions or amendments thereto, including USDA Regulation 7 CFR Part 210, 220, 245, 250, 3016, 3017, 3018, and 3019.

2. The FSMC shall not sell or offer on the premises of any school, any food, or beverage item other than the prescribed meals except those a la carte items authorized by theLEA.

3. The FSMC shall serve, on such days and at such times as requested by the LEA:
    a. Lunches, breakfasts, and after school snack priced as a unit, which meet the requirements prescribed by USDA.
    b. Milk, served to all children.
    c. Other foods as may be agreed upon by the FSMC and the LEA.

4. The FSMC shall serve free and reduced-priced meals, after school snacks or free milk to those children designated by the LEA.

5. The FSMC is required to make meal modifications for students with a disability. Substitutions are made on a case-by-case basis and must be supported by a medical statement describing the student's physical or mental impairment. The medical statement must be signed by a medical authority (Physician – M.D. or D.O., Physician Assistant, Assistant Physician or Nurse Practitioner). The FSMC is permitted to make meal modifications for a student without a disability if the modification can be made within the meal pattern.

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

7. The FSMC shall implement the collection procedures as specified by the LEA.

8. The FSMC shall deposit daily all monies in the LEA account.

9. The FSMC shall prepare and maintain such records as the LEA will need to support its claim for reimbursement, and shall, at a minimum, report claim information to the LEA at the end of each calendar month and available upon request. (7 CFR 210.16(c)(1))

10. The FSMC agrees to provide the LEA with necessary financial information, to include detailed breakouts of all income and expenditure categories for reporting to the SA.

11. The FSMC shall not use LEA facilities for preparation of food to be served at any location other than for the LEA's approved program without the permission of the LEA.

12. If food or meals are proposed to be prepared outside the school, the FSMC shall maintain State and local health certification of their facility, and shall maintain this health certification for the duration of the contract. (7CFR 210.16(c)(2))

13. If reimbursement is denied as a direct result of the failure of the FSMC to comply with the provisions of this contract, the FSMC shall assume responsibility for the amount denied.

14. However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and paid reimbursable lunches to all eligible children. (7CFR 210.16(a)).

15. The FSMC must provide to the LEA a breakdown of charges for the district in order for the LEA to complete the Financial Report. If the LEA participates in the Summer Feeding Program with DHSS those charges must be kept separate.

LEA Responsibilities

1. The LEA shall ensure that FSMC operation of the LEA's school food service is in conformance with the LEA's agreement under the program. (7CFR 210.16(a)(2))

2. The LEA shall retain control of the quality, extent and general nature of its food service and the prices to be charged to the children for meals, milk, after school snack, a la carte items, adult meals, and vending machine items, as applicable. (7CFR 210.16(a)(4))

3. The LEA must receive all food service revenue, including rebate payments resulting from participation in the Rebate Program offered through the State of Missouri Commodity Processing Program for processed donated foods. The food service revenue shall flow through the LEA chart of accounts. The food service revenue shall be used only for the LEA nonprofit food service. (7CFR 210.14 (a))

4. The LEA shall monitor the food service program through periodic on-site reviews to include the inspection of meals, food preparation, storage and service areas, sanitation practices, and procedures for accurately counting and claiming meals. (7CFR 210.16 (a)(3))

5. The LEA shall retain the right to approve the menus and recipes for meals and other food to be served or sold to students to ensure compliance with the rules and regulations of the SA and the USDA.

6. The LEA shall approve all a la carte items and the prices charged for those items in advance of their sale by the FSMC.

7. The LEA shall ensure that an advisory board composed of parents, teachers, and students to assist in menu planning is established. (7CFR 210.16(a)(8)

8. The LEA shall retain signature authority on the SA-LEA agreement, free and reduced price policy statement and claims for reimbursement. (7CFR 210.16(a)(5))

9. The LEA has responsibility for developing, distributing, and collecting free and reduced price letter/application. (7CFR 245.10(a)) The LEA also has responsibility for determination of eligibility, conducting hearings, and for verification. (7CFR 245.6(a), 245.6(b), 245.7)

10. The LEA is responsible for participation in Direct Certification.

11. The LEA shall ensure applicable health certification(s) is maintained and that all State and local regulations are being met by FSMC preparing or serving meals at LEA's facilities. (7CFR 210.16(a)(7))

12. The LEA shall conduct annual reviews of storage facilities regarding storage and inventory management of donated USDA foods. The annual review shall include a physical inventory reconciled with the inventory records maintained by the LEA and FSMC. (7 CFR 250.14(e))

13. The LEA shall inform FSMC of any requested adjustments to menus and monitor implementation of said adjustments.

14. The LEA shall be responsible for resolution of program review and audit findings.

15. The LEA reserves the right to cancel or shorten any school day and agrees to give FSMC at least twenty-four (24) hours advance notice of such changes except in an emergency when as much advance notice as possible will be given.

16. The LEA ensures that any invitation to bid or request for proposal indicate that nonperformance subjects the FSMC to sanctions in instances that the FSMC violates or breeches the terms of the contract. Sanctions may include a specific time to correct the violation or breech, withholding payment to the FSMC or termination of the contract. The LEA shall ensure that any sanctions are in accordance with the procurement provisions stated in 210.21.

Use of Facilities and Equipment

1. The LEA shall have access, with or without notice to the FSMC, to all the LEA's facilities used by the FSMC for purposes of inspection of audit.

2. The LEA shall make available without any cost or charge to the FSMC the areas and premises agreeable to both parties in which the FSMC shall render its services. The FSMC shall make no alterations, changes, or improvements to said areas without obtaining written consent from the LEA.

3. The FSMC shall operate and care for all equipment and food service areas in a clean, safe, and healthy condition in accordance with standards acceptable to the LEA and comply with all applicable laws, ordinances, rules, and regulations of federal, state, and local authorities.

4. The LEA shall provide at its expense necessary expendable equipment including, but not limited to, silverware, table service, chinaware, serving trays, glassware, pots, pans, and utensils; and shall periodically replace said expendable equipment as items become worn, broken, used, lost, or otherwise disposed of up to the amount of the original inventory, except for replacements caused by FSMC's negligence which shall be the responsibility of the FSMC.

5. The LEA shall provide and maintain at its expense necessary inter-school vehicles, satellite transporter units, and equipment including operating costs for it.

6. The FSMC shall take reasonable care in the use of the premises, equipment, vehicles, and other items furnished by LEA.

7. The FSMC and the LEA shall inventory the equipment and supplies owned by the LEA at the beginning of the school year, including but not limited to flatware, trays, chinaware, glassware, and kitchen utensils.

8. The FSMC shall maintain the inventory of expendable equipment necessary for the food service and at the inventory level as specified by the LEA.

9. The LEA shall furnish and install any equipment and make any structural changes needed to comply with federal, state, and local laws, ordinance, rules, and regulations.

10. The FSMC shall not remove food preparation and serving equipment owned by the LEA.

11. The LEA shall repair and service equipment except when damages result from the use of less-than-reasonable care by the employees of the FSMC.

12. The LEA shall not be legally responsible for loss or damage to equipment owned by the FSMC located on the LEA premises except when damages result from the use of less than reasonable care by employees.

13. The FSMC shall provide a written notification to the LEA of any equipment belonging to the FSMC within ten days (10) of its placement on LEA premises.

14. The LEA reserves the right, at its sole discretion, to use its facilities to sell or dispense any food or beverage before or after the regularly scheduled lunch or breakfast periods provided such use does not interfere with the operation of the Child Nutrition Programs.

15. The LEA shall return facilities and equipment to the FSMC in the same condition as received when the LEA uses the facilities for extra-curricular activities.

16. The LEA shall be responsible for removing rubbish and garbage resulting from food service operation after it has been placed by FSMC in containers furnished by the LEA for such purposes.

17. The LEA shall furnish at its expense, space, light, heat, power, hot and cold water, and other utilities as are necessary for the operation of the food services to be furnished hereunder.

18. The LEA shall not permit any interruptions in utility service except in an emergency or for necessary repairs or for improvement of the service, and in such case the LEA agrees to notify the FSMC immediately of any interruption or proposed interruption in utility service.

19. The LEA shall provide sanitary toilet facilities for the employees of the FSMC.

20. The LEA shall provide the FSMC with local telephone service.

21. The LEA must give prior approval and have final authority for the purchases of the equipment used for storage, preparation, or delivery of school meals.

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

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

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

Sanitation

1. The FSMC shall place garbage and trash in containers in designated areas as specified by the LEA.

2. The LEA shall remove all garbage and trash from the designated areas.

3. The FSMC shall clean the kitchen and dining room area.

4. The LEA shall clean ducts and hoods above the filter line.

5. The LEA shall provide extermination services as needed.

6. The FSMC shall comply with all local and state sanitation requirements in the preparation of food.

Employees

1. The FSMC shall be responsible for supervising and training personnel, including LEA-employed staff. Supervision activities include employee and labor relations personnel development, and hiring and termination of FSMC management staff, except for the site manager. The FSMC shall also be responsible for the hiring and termination of nonmanagement staff who are employees of the FSMC.

2. The LEA and FSMC shall comply with the Fair Labor Standards Act, as amended, to include Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5) pursuant to 7 CFR, Section 3016.36 (i)(6).

3. The FSMC shall instruct its employees to abide by the policies, rules, and regulations, with respect to use of LEA premises, as established by the LEA and furnished in writing to the FSMC.

4. The FSMC shall provide daily on-site supervisory personnel for the overall food service.

5. The FSMC shall provide worker's compensation coverage and unemployment insurance for its employees.

6. The FSMC shall maintain its own personnel and fringe benefit policies for its employees, subject to review by the LEA.

7. If the FSMC is obligated by the LEA to hire more than the number of employees required for efficient operation, the FSMC will not be responsible for this excess.

8. The FSMC shall provide the LEA with a list of its personnel policies.

9. The LEA shall have final approval regarding the hiring of the FSMC's site manager.

10. The FSMC and LEA shall mutually agree upon staffing patterns.

11. The LEA and FSMC shall mutually agree upon the use of student workers.

12. The LEA may request in writing the removal of an employee of the FSMC who violates health requirements or conducts himself/herself in a manner of which is detrimental to the physical, mental, or moral well being of students or staff.

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

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

15. The inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

16. All contracts in excess of $10,000 must address termination for cause and for convenience by the on Federal entity including the manner by which it will be effected and the basis for settlement. In addition to the provision of termination for cause, the LEA may also want to include a termination for convenience provision that provides adequate advance notice that would permit the LEA sufficient time to arrange alternate food services if the FSMC exercises the clause.

USDA Donated Foods

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

2. The FSMC must credit the LEA for the value of all donated foods received for use in the LEA'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).

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

4. The LEA shall ensure that all federally donated foods are received by LEA and made available to the FSMC and shall accrue only to the benefit of the LEA's nonprofit school food service and are utilized therein. (7 CFR 210.16(a)(6))

5. The FSMC shall ensure that all federally donated foods received by the LEA and made available to the FSMC accrue only to the benefit of the LEAs nonprofit school food service and are fully utilized therein. (7 CFR 210.16(a)(6))

6. The FSMC will not itself enter into the processing agreement utilizing USDA donated foods on behalf of the LEA as required in subpart C of 7 CFR part 250.

7. The LEA and FSMC shall consult and agree on end products to be produced from USDA donated foods during the time of this contract. If agreement cannot be reached, the FSMC shall utilize the donated foods in the form that was furnished by USDA.

8. The FSMC must credit the LEA for the value of USDA donated foods received on the monthly billing statement.

9. The USDA donated food value used in crediting will be determined by using the USDA pound/unit value.

10. The FSMC will comply with the storage and inventory requirements for donated foods.

11. An end of school year reconciliation shall be conducted by the LEA to ensure and verify that the correct and proper credit has been received for the full value of all USDA donated foods received by the FSMC during the contract year. Including the value of donated foods contained in processed end products, in accordance with the contingencies in 250.51(a). The LEA reserves the right to conduct donated food credit audits throughout the year to ensure compliance with federal regulations. (7 CFR 210 and 7 CFR 250).

12. The FSMC and LEA agree to comply with federal regulations 7 CFR Part 250, Section 250.12(b)(3) which states that LEAs have and preserve a right to assert claims against other persons to whom donated foods are delivered for care, handling, and distribution. Section 250.12(b)(4) states that LEA will take action to obtain restitution in connection with claims for improper distribution, use, or loss, or damage to donated foods. (7CRF 250.12(b)(3) and (b)(4))

13. FSMC must accept liability for any negligence on their part that results in any loss, damage, out of condition or improper use of donated foods, and shall credit the LEA the value of said donated foods, at the LEAs option, either monthly or through a end of school year reconciliation.

14. The LEA shall be legally responsible for any loss of federally donated food that may arise due to equipment malfunctions or loss of electrical power not within the control of the FSMC.

15. The FSMC shall have records maintained and available to substantiate the receipt, use, storage, and inventory compliance of USDA donated foods in accordance with 250.54(b). The FSMC must submit to the LEA monthly inventory reports showing all transactions for processed and non-processed donated foods.

16. The FSMC will use all donated ground beef and ground pork products, and all processed end products, in the LEA's food service.

17. The FSMC will use all other donated foods, or will substitute commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the LEA's food service.18. Extensions or renewal of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to donated foods.

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

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

20. The SA, or LEA, the Comptroller General, the Department of Agriculture, or their duly authorized representative, may perform on-site reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of donated foods.

21. The FSMC assures that any activities related to donated foods that the FSMC will be responsible for, will be performed in accordance with 250.50(d) and all other applicable requirements in 7 CFR part 250.

22. The FSMC will ensure that its system of inventory management will not result in the LEA being charged for donated foods.

Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

1. Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5,''Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction''). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland ''Anti-Kickback'' Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3,''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

2. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

3. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of ''fundingagreement'' under 37 CFR § 401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental,developmental, or research work under that ''funding 21 agreement,'' the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

4. Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33U.S.C. 1251–1387), as amended Contracts and sub grants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C.7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C.1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

5. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of ''federally assisted construction contract'' in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, ''Equal Employment Opportunity'' (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and implementing regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

6. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p.189)and 12689 (3 CFR part 1989 Comp., p. 235), ''Debarment and Suspension.'' SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Licenses and Taxes

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

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

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

Insurance

1. The LEA shall be named as additional insured on General Liability, Automobile, and Excess Umbrella.
2. The contract of insurance shall provide for notice to the LEA of cancellation of insurance policies 30 days before such cancellation is to take effect

Miscellaneous

1. The LEA, in the event that the FSMC is not able to perform under this contract due to events beyond the reasonable control of FSMC; i.e., strike, labor or material shortage, fire, flood, or other casualty or Acts of God, may, at their option, terminate this contract and assume control of the facilities, equipment, food supplies, expendables, etc., necessary for the continued operation of the LEA's food service operation.
2. Both LEA and FSMC agree to comply with Section 306 of the Clear Air Act of 1970 as amended (42 USC 1857 [h]), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR, Part 15).
3. The LEA and FSMC must recognize energy efficiency standards contained in State Energy Conservation Plan in compliance with the Energy Policy and Conservation Act (P.L. 94-163).
4. No payment shall be made for meals that are spoiled or unwholesome at the time of delivery, or do not meet detailed specifications as developed by the LEA for each food component as specified in 7 CFR, Part 210.10 and 7 CFR Part 220.8, or do not otherwise meet the requirements of the contract. (7CFR 210.16(c)(3))
5. The FSMC must not directly or indirectly restrict the sale or marketing of fluid milk at any time or in any place on school premises or at any school-sponsored event. (7CFR210.21(e))
6. Refer to Grade and Quality Specification sheet containing purchased food specifications; i.e., grade, purchase units, style, condition, weight, ingredients, formulations and delivery times, as outlined by LEA and agreed to by FSMC in procuring food components. (7CFR 210.6(c)(3))
7. The FSMC shall maintain such records as the LEA will need to support its claim for reimbursement under this part, and shall, at a minimum, report claim information to the LEA promptly at the end of each month. Such records shall be made available to the LEA upon request, and shall be retained in accordance with 210.23(c). (7 CFR 210.16(c)(1))
8. Upon request, make all accounts and records pertaining to its LEA available to the SA and to Food Nutrition Services (FNS), for audit or review at a reasonable time and place. Such records shall be retained for a period of 3 years after the date of the final claim for reimbursement for the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the 3 year period as long as required for resolution of the issues raised by the audit. (7 CFR 210.9(b)(17))
9. SA representatives and auditors of the USDA and the Comptroller General of the United States and the LEA's independent auditors shall have access to all such records for audit and review upon request at a reasonable time and place. Authorized representatives of the LEA, the SA, or the USDA shall have the right to conduct on-site administrative reviews of the food service program.
10. The LEA may terminate this contract for breach/neglect as determined by LEA when considering such items as failure to maintain and enforce required standards of sanitation, failure to maintain proper insurance coverage as outlined by contract, failure to provide required periodic information/statements, or failure to maintain quality of service at a level satisfactory to LEA. The LEA is the responsible authority without recourse to FNS or the SA for the settlement and satisfaction of all contractual and administrative issues arising from the transaction. Such authority includes, but is not limited to, source evaluation, protests, disputes, claims, or other matters of contractual nature. Matters concerning

violations of the law will be referred to the local, state, or federal authority that has proper jurisdiction. (7 CFR 210.16(b)(2), 210.21(b))

11. During the term of the contract, the FSMC may grant to the LEA a nonexclusive right to access certain proprietary materials of the FSMC, including menus, recipes, signage, food service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed by the FSMC), and similar compilations regularly used in FSMC business operations (trade secrets). The LEA shall not disclose any of the FSMC's trade secrets or other confidential information, directly or indirectly, during or after the term of the contract. The LEA shall not photocopy or otherwise duplicate any such material without the prior written consent of the FSMC. All trade secrets and other confidential information shall remain the exclusive property of the FSMC and shall be returned to the FSMC immediately upon termination of the contract. The LEA shall not use any confusingly similar names, marks, systems, insignia, symbols, procedures, and methods. Without limiting the foregoing and except for software provided by the LEA, the LEA specifically agrees that all software associated with the operation of the food service, including without limitation, menu systems, food production systems, accounting systems, and other software, are owned by or licensed to the FSMC and not the LEA.

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

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

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

Buy American

The Buy American provision for contracts that involve the purchase of food, as required by the Buy American provision, all products must be of domestic origin as required by 7 CFR Part 210.21(d).

i) The LEA participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals. A "domestic commodity or product" is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR Part 210.21(d).

ii) Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request. To be considered for the alternative or exception, the request must be submitted in writing to SFA and approved and will be retained with purchase records. The request must include the:

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

        (a) Price of the domestic food alternative substitute (s); and

        (b) Availability of the domestic alternative substitute (s) in relation to the quantity ordered.

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

        (a) Price of the domestic food product; and

        (b) Price of the non-domestic product that meets the required specification of the domestic product.

Geographic Preference

LEAs may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing geographic preference to procure such products, the LEA making the purchase has the discretion to determine the local area to which the geographic preference option will be applied; For the purpose of applying the optional geographic procurement preference, "unprocessed locally grown or locally raised agricultural products" means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); the addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk. (7CFR210.21).

Locally Grown

The FSMC, as the agent of the LEA, will maximize the use of Missouri (MO) grown/locally grown products, included but not limited to, fruits, vegetables and dairy products, whenever possible, and when purchased by the LEA directly, such fruits, vegetables, and dairy products must be used by the FSMC in the SFA's Food Service Program.

The FSMC shall engage in MO's Farm-to-School initiative in an effort to connect schools (K-12) with MO/local farms in order to serve healthy meals using locally grown produced foods.

The FSMC shall produce a monthly report with documents the procurement of MO grow/locally products including the local farm source, the product(s) purchased and the value of the products purchased on behalf of the LEA.

Department of Defense Produce

The LEA, at its discretion, may procure fresh produce through the USDA Department of Defense (DOD) contracts utilizing commodity entitlement dollars. The LEA may use another vendor for these items at their discretion.

Civil Rights

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

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

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (566) 632-9992. Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;

(2) fax: (202) 690-7442; or

(3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

GRADE AND QUALITY SPECIFICATIONS

A. **Meats**

(1) Beef --- All beef cuts will be USDA Top Range Choice steer and heifers used only. Primal cuts purchased will include round, loin, flank, rib, and chuck. No plate or shank cuts will be used.

(2) Pork --- USDA No. 1, cured, smoked, and fresh.

(3) Lamb --- U.S. Choice, no mutton used.

(4) Veal --- U.S. Choice.

B. **Poultry** – U.S Grade "A"

C. **Fish** -- Grade "A" where grade exists.

D. **Grains/Breads**

(1) Products to be made with whole-grain or enriched meal or flour.

(2) Pasta: Made from enriched semolina durum wheat flour.

E. **Dairy -- Minimum Standards**

(1) Milk --- Grade "A" under 30,000 bacterial c.c.

(2) Cream -- 20% butterfat.

(3) Buttermilk -- 8 ¼ % milk solids.

(4) Whipping Cream -- Heavy, 36% butterfat. Whipped topping and dried milk solids shall be used for baking purposes only.

(5) Ice Cream -- U.S, Grade "AA".

(6) Cheese -- U.S. Grade "AA".

F. **Beverages Other Than Milk**

(1) Coffee -- Grade "1", no soluble used.

(2) Tea -- Orange Pekoe and Pekoe or higher grade.

G. **Eggs -** Grade "A" Large, fresh – No storage eggs will be used.

H. **Canned Fruits and Vegetables** -- U.S. Grade "A" or U.S. Fancy only.

I. **Fresh and Frozen Fruits and Vegetables** –

(1) Apples -- U.S. Extra Fancy

(2) Apricots -- U.S. No. 1

(3) Grapes -- Fancy

(4) Winter Pears -- Extra No. 1

(5) Brussels Sprouts -- U.S. No. 1

(6) Broccoli -- Fancy

(7) Tomatoes -- (Greenhouse) Fancy No. 1

Items such as peaches, pears, and fruit cocktail are only available as Grade B. Specifications of these items should not exceed Grade B.

J. **Miscellaneous Groceries** -- Highest grade obtainable. U.S. No. 1.

K. **Condiments** -- U.S. Grade "A".

CONTRACT SIGNATURE PAGE

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

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

(LEA)	(FSMC)
(Signature)	(Signature)
(Title)	(Title)
(Date)	(Date)

ALL CONTRACTS MUST BE APPROVED BY THE STATE AGENCY

This contract is not valid until it is reviewed and approved by the State Agency. The FSMC is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to date below, the State of Missouri may not be obligated for payment. The LEA will receive notification of approval from the SA by approval letter via email.

STATE AGENCY USE ONLY

(State Agency Signature)

(Date)

Summer Food Service Program (SFSP)

A. The LEA shall be responsible for determining eligibility of all SFSP sites. The sponsor shall provide to the food service management company 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 §225.6(d)(2), and shall notify the food service management company of all sites which have been approved, canceled, 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. Such notification shall be provided within the time limits mutually agreed upon in the contract

B. Bonding requirements.

Does the aggregate value of the contract including all Child Nutrition Programs exceed $250,000??

☐ Yes

☐ No

1. Bid bond guarantee (when operating the SFSP any contract that includes the SFSP and is valued, in the aggregate, more than $250,000, then bid and performance bonds must be secured as required by regulation at 7 CFR 225.15(m) and FNS policy memorandum SFSP 14-2016).

   Offeror shall submit with his or her proposal, a bid bond guarantee that is no less than 5 percent or more than 10 percent of the total proposed price, which shall be from a surety company listed in the current Department of the Treasury Circular 570.

   Proposal guarantees, other than bid bonds will be returned (a) to unsuccessful offerors as soon as practicable after the opening of proposals and (b) to the successful offeror upon execution of an awarded contract, offeror may need to obtain additional insurance coverage and bonds as may be required by the RFP.

2. Performance bonds: (when operating the SFSP and the aggregate value of the contract including all Child Nutrition Programs exceeds $250,000):

   The selected FSMC must obtain a performance bond in the amount not less than 10 percent or no more than 25 percent of the value of the awarded contract, which shall be from a surety company listed in the current Department of the Treasury Circular 570. The performance bond must be furnished within 10 days after notice of the awarded contracts.

   Proposal guarantees other than proposal bonds will be returned to unsuccessful offerors as soon as practicable after the opening of proposals or a proposal is withdrawn. Performance bonds for the successful offeror shall be held for the duration of the awarded contract.

C. The LEA shall immediately correct any problems found as a result of a health inspection and shall submit written documentation of the corrective action implemented within two weeks of the citation.

D. The selected FSMC must comply with the cycle menu approved by the LEA for the SFSP meals. The LEA shall approve any changes in the menus no later than two weeks prior to service after the initial cycle has been used.

E. The LEA shall maintain responsibility for submitting SFSP claims for reimbursement and comply with 7 CFR Part 225.15(a) which requires that sponsors operate the food service in accordance with the provisions of 7 CFR Part 225; any instructions and handbooks issued by FNS under 7 CRF Part 225 and any instructions and handbooks issued by the State agency which are not inconsistent with the provisions of 7 CFR Part 225.

F. The FSMC shall comply with all applicable requirements outlined in 7 CFR 225.6(h)(2).

1. All meals prepared by the FSMC will be unitized, with or without milk [7 CFR 225.6(h)(2)(i)]

2. A FSMC entering into a contract with a sponsor under the Program shall not subcontract for the total meal, with or without milk, or for the assembly of the meal.

3. The FSCM shall maintain such records (supported by invoices, receipts, or other evidence) as the sponsor will need to meet its responsibilities under this part, and shall submit all required reports to the sponsor promptly at the end of each month, unless more frequent reports are required by the sponsor.

4. The FSMC must have State or local health certification for the facility in which it proposes to prepare meals for use in the Program. It must ensure that health and sanitation requirements are met at all times. In addition, the FSMC must ensure that meals are inspected periodically to determine bacteria levels present in the meals and that the bacteria levels found to be present in the meals conform with the standards set by local health authorities. The results of the inspections must be submitted promptly to the sponsor and to the State agency.

5. The meals served under the contract shall conform to the cycle menus and meal quality standards and food specifications approved by the State agency and upon which the bid was based.

6. The books and records of the food service management company pertaining to the sponsor's food service operation shall be available for inspection and audit by representatives of the State agency, the Department and 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, except that, if audit or investigation findings have not been resolved, such records shall be retained until all issues raised by the audit or investigation have been resolved.

7. The sponsor and the food service management company shall operate in accordance with current Program regulations.

8. The food service management company shall be paid by the sponsor for all meals delivered in accordance with the contract and this part. However, neither the Department nor the State agency assumes any liability for payment of differences between the number of meals delivered by the food service management company and the number of meals served by the sponsor that are eligible for reimbursement.

9. Meals shall be delivered in accordance with a delivery schedule prescribed in the contract.

10. Increases and decreases in the number of meals ordered shall be made by the sponsor, as needed, within a prior notice period mutually agreed upon.

11. All meals served under the Program shall meet the requirements of §225.16

12. In cases of nonperformance or noncompliance on the part of the food service management company, the company shall pay the sponsor for any excess costs which the sponsor may incur by obtaining meals from another source

13. The FSMC will maintain records of all costs incurred in the sponsor's food service operation.

SUMMER FOOD SERVICE PROGRAM MINIMUM FOOD SPECIFICATIONS

Summer Food Service Program Meal Pattern

Food Components	Breakfast	Lunch or Supper	Snack[1] (Choose two of the four)
Milk			
• Milk, fluid	1 cup (8 fl oz)[2]	1 cup (8 fl oz)[3]	1 cup (8 fl oz)[2]
Vegetables and/or Fruits			
• Vegetable(s) and/or fruit(s), or full-strength vegetable or fruit juice	½ cup	¾ cup total[4]	¾ cup
• An equivalent quantity of any combination of vegetables(s), fruit(s), and juice	½ cup (4 fl oz)		¾ cup (6 fl oz)
Grains and Breads[5]			
• Bread	1 slice	1 slice	1 slice
• Cornbread, biscuits, rolls, muffins, etc.	1 serving	1 serving	1 serving
• Cold dry cereal	¾ cup or 1 oz[6]		¾ cup or 1 oz[6]
• Cooked pasta or noodle product	½ cup	½ cup	½ cup
• Cooked cereal or cereal grains or an equivalent quantity of any combination of grains/breads	½ cup	½ cup	½ cup
Meat and Meat Alternates	(Optional)		
• Lean meat or poultry or fish or alternate protein product[7]	1 oz	2 oz	1 oz
• Cheese	1 oz	2 oz	1 oz
• Eggs	½ large egg	1 large egg	½ large egg
• Cooked dry beans or peas	¼ cup	½ cup	¼ cup
• Peanut butter or soynut butter or other nut or seed butters	2 tbsp	4 tbsp	2 tbsp
• Peanuts or soynuts or tree nuts or seeds, or yogurt, plain or sweetened and flavored	1 oz	1 oz= 50%[8]	1 oz
• An equivalent quantity of any combination of the above meat/meat alternates	4 oz or ½ cup	8 oz or 1 cup	4 oz or ½ cup

For the purpose of this table, a cup means a standard measuring cup.

1 Serve two food items. Each food item must be from a different food component. Juice may not be served when milk is served as the only other component.
2 Shall be served as a beverage, or on cereal, or use part of it for each purpose.
3 Shall be served as a beverage.
4 Serve two or more kinds of vegetable(s) and or fruit(s) or a combination of both. Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.
5 All grain/bread items must be enriched or whole grain, made from enriched or whole-grain meal or flour, or if it is a cereal, the product must be whole-grain, enriched or fortified. Bran and germ are credited the same as enriched or whole grain meal or flour.
6 Either volume (cup) or weight (oz) whichever is less.
7 Must meet the requirements in Appendix A of the SFSP regulations.
8 No more than 50 percent of the requirement shall be met with nuts or seeds. Nuts or seeds shall be combined with another meat/meat alternate to fulfill the requirement. When determining combinations, 1 oz of nuts or seeds is equal to 1 oz of cooked lean meat, poultry, or fish. **The meal must contain, at a minimum, each of the components listed in at least the amounts indicated for the specific age group in order to qualify for reimbursement. Updated CACFP Meal Patterns one-page summaries can be found at the following link: https://www.fns.usda.gov/cacfp/meals-and-snacks for infants, children and adults**

Child and Adult Care Food Program (CACFP)

Important separation of duties with CACFP: When providing food service management duties on behalf of LEA for CACFP, selected FSMC will be limited in its management authority; management functions which institutions may not contract out under any circumstance include claim submission, monitoring, corrective action, and preparation of application materials. Institutions may contract out for specific management tasks, such as bookkeeping (but not claims submission), data processing, or the service of a nutritionist.

A. The LEA shall be responsible for determining eligibility of all CACFP sites.
B. The LEA is responsible for ensuring the selected FSMC conforms to its agreement with the State agency as per all requirements as specified at 7 CFR Part 226.21.
C. The LEA is responsible for the administration of the CACFP according to 7 CFR Part 226 (e.g., submitting the reimbursement claim, monitoring sites if applicable).
D. The LEA shall immediately correct any problems found as a result of a health inspection and shall submit written documentation of the corrective action implemented within two weeks of the citation.
E. The selected FSMC must comply with the cycle menu developed by the LEA for the CACFP.
F. The LEA shall not delegate any CACFP management responsibilities to the selected FSMC as specified in the Food and Nutrition Instruction 792-2, Rev.1 and as specified at 7 CFR 226.15(c).

CACFP MINIMUM FOOD SPECIFICATIONS

CACFP Meal Pattern Requirements—Children (Age 1 through 18)

	Age 1 and 2	Age 3 through 5	Age 6 through 18[i]
BREAKFAST			
1. Milk, fluid [j]	½ cup	¾cup	1 cup
2. Juice [a], fruit, or vegetable or	½ cup	½ cup	½ cup
Fruit(s) or vegetable(s)	¼ cup	½ cup	½ cup
3. Grains/Breads [b]:			
Bread	½ slice	½ slice	1 slice
Cornbread, biscuits, rolls, muffins, etc.[b]	½ serving	½ serving	1 serving
Cereal:			
Cold dry	¼ cup or 1/3 oz[c]	1/3cup or ½ oz[c]	¾ cup or 1 oz[c]
Flakes or rounds	½ cup	½ cup	1 cup
Puffed	¾ cup	¾ cup	1 and ¼ cup
Granola	1/8 cup	1/8 cup	¼ cup
Hot cooked	¼ cup total	¼ cup	½ cup
Cooked pasta or noodle products	¼ cup	¼ cup	½ cup
LUNCH OR SUPPER			
1. Milk, fluid [j]	½ cup	¾ cup	1 cup
2. Meat or meat alternate:			
Meat, poultry, fish, cheese	1 oz	1+½ oz	2 oz
Tofu (commercially prepared, firm or extra firm)	2.2 oz.	3.3 oz.	4.4 oz
Yogurt, plain or flavored, unsweetened or sweetened	4 oz or ½ cup	6 oz or ¾ cup	8 oz or 1 cup
Egg	½ egg	¾ egg	1 egg
Cooked dry beans or peas	¼ cup	3/8 cup	½ cup
Peanut butter or other nut or seed butter	2 Tbsp	3 Tbsp.	4 Tbsp
Peanuts or soynuts or tree nuts or seeds	½ oz = 50%[d]	¾ oz = 50%[d]	1 oz = 50%[d]
Vegetables: (may serve 2 different vege to meet requirements)	1/8 cup	¼ cup	½ cup
Fruits: (may be 1 veg., no more than 1 per meal	1/8 cup	¼ cup	¼ cup
3. Grains/Breads[b]:	½ slice	½ slice	1 slice
SNACK			
Select two of the following five components:			
Milk, fluid (1 year olds – whole age 2 and up – skim or 1%)	½ cup	½ cup	1 cup
Fruit(s) or vegetable(s)	½ cup	½ cup	¾ cup
Grains/Breads[b]:	½ slice	½ slice	1 slice
Meat or meat alternate	½ oz.	½ oz.	1 oz.

Breakfast: Meat/meat alternates may replace the grain ounce for ounce up to 3 times a week.
Grain: At least one whole grain or whole-grain rich (1st grain is whole, rest is enriched) must be served each day. No grain-based desserts (3 or 4 on grain chart).
Milk: Unflavored for 1 through 5 year olds. 6 year olds and up may receive flavored fat free or low fat milk.
Juice must be pasteurized, 100% juice and may only be served once per day to meet the vegetable/fruit component.
Dried fruit credits at twice the amount served. (example: ¼ c dried fruit = ½ c fruit). Leafy greens credit as half the amount (example: ½ c greens = 1/4 c veg.)