



DEPARTMENT OF EDUCATION

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SCHOOL NUTRITION PROGRAMS CONTRACT FOR FOOD SERVICE MANAGEMENT COMPANIES

Made and entered into this _____ day of _____ by and between the School Food Authority (SFA) _____ and the Food Service Management Company (vendor) _____ address _____.

The vendor, _____ shall comply with the rules, regulations and any additions or amendments thereto of the United States Department of Agriculture (USDA), including, but not limited to, Title 7 CFR Parts 210, 215, 220, 226, 245, and 250.

This contract shall be in effect from _____ (date), to _____ (date). The SFA may exercise the option to renew this contract with the vendor by mutual agreement for two one-year periods with prior approval from the Delaware Department of Education (DDOE).

The SFA or the vendor may terminate the contract for cause by giving thirty (30) days written notice.

The SFA or the vendor may terminate the contract for convenience by giving sixty (60) days written notice.

At any time, because of circumstances beyond the control of the vendor, the vendor or the SFA may terminate the contract by giving (ten) 10 days written notice to the other party.

Neither the vendor nor the 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, floods, acts of God, or for any acts not within the control of the vendor or the SFA, respectively, and which by the exercise of due diligence unable to prevent.

The USDA food-based menu plan and nutrient standards must be used to create the cycle menu. The SFA must submit a copy of the vendor's cycle menu to DDOE prior to contract approval. The cycle menu must include the planned portion sizes for each food item.

MEAL TYPE	DAILY EST. SERVINGS	EST. # SERVING DAYS PER YEAR	PRICE PER MEAL	ESTIMATED YEARLY TOTAL
BREAKFAST				
LUNCH				
SNACK				

TERMS AND CONDITIONS

1. The SFA and the vendor agree that this contract is neither a "cost-plus-a-percentage-of-income" nor a "cost-plus-a-percentage-of-cost" contract as required under Title 7 CFR Parts 3016.36 (f) and 3019.44 (c).
2. The vendor will prepare the number of meals/snacks as specified on a daily basis or other mutually agreed upon period of time, in accordance with the pre-approved planned cycle menu. The SFA will furnish the vendor with the number and specification of meals/snacks by service type, for delivery to each site when applicable. When an emergency situation exists preventing the vendor from preparing a specified meal/snack component, the vendor shall notify the SFA immediately to discuss and agree on substitutions.
3. The vendor shall comply with the Buy American Provision for contracts involving the purchase of food (7 CFR, Part 210.21 (d) and 7 CFR 220.16 (d)).
4. The vendor invoice shall not include incomplete, damaged, or spoiled meals/snacks. The vendor will provide adequate refrigeration or heating to ensure the wholesomeness of food in accordance with state and/or local health codes.
5. The vendor will comply with all provisions of Executive Order Number 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The vendor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (the "Act"), 40 U.S.C. §§ 327-330, as supplemented by the Department of Labor regulations, 29 CFR, Part 5. Under Section 103 of the Act, the vendor is required to compute the wages of every laborer on the basis of a standard workday of eight (8) hours and a standard workweek of forty (40) hours. Work in excess of the standard workday or standard workweek is permissible, compensation provided at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or forty (40) hours in any work week.
7. The vendor and SFA have signed the Certification of Independent Price Determination, Appendix A, attached as an addendum and incorporated herein by reference and made a part of this contract.
8. This contract shall be followed under the laws of the State of Delaware. The appropriate courts of the State of Delaware shall hear any action or proceeding arising out of this contract. No waiver of any default shall constitute a waiver of any subsequent claim.
9. This contract, the Request for Proposal, and any riders, addenda or appendices thereto, constitute the entire contract between the SFA and the vendor.
10. The vendor and SFA shall regard any silence, absence, or omission from contract specifications concerning any point as meaning that only the best commercial practices

prevail. The vendor shall use materials (e.g., food, supplies, etc.) and workmanship of a quality normally specified by the SFA.

11. In the event of the vendor's nonperformance under this contract and/or the violation or breach of the contract terms, the SFA shall have the right to pursue administrative, contractual, and legal remedies against the vendor and shall have the right to seek appropriate sanctions and penalties.
12. The vendor has liability for payment of overclaims resulting from USDA/State reviews or audits, which are caused by vendor nonconformance with the contract terms.

AGREEMENT PAGE (initial before each condition)

- _____ The vendor certifies that he/she shall operate in accordance with all applicable State and federal regulations.
- _____ The vendor agrees to provide the School Food Authority with all menus, product labels, and recipes as required to certify compliance with USDA Food Based Menu Planning.
- _____ The vendor certifies that all terms and conditions within the Bid Solicitation shall be considered a part of the contract as if incorporated therein.
- _____ The vendor will maintain a valid Delaware Business License and will provide a copy to the SFA.
- _____ The vendor will maintain a current Food Establishment Permit in the state of Delaware and will submit a copy of the most recent health inspection.
- _____ The vendor certifies that they have neither been excluded nor disqualified from doing business with federally funded School Nutrition Programs.
- _____ This agreement shall be in effect for one year and may be renewed by mutual agreement for two one-year periods with prior approval by Delaware Department of Education.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representative this _____ day of _____, in the year _____.

**ATTEST:
SCHOOL FOOD AUTHORITY**

**ATTEST:
VENDOR**

Printed Name of Authorized Representative

Printed Name of Authorized Representative

Signature of Authorized Representative

Signature of Authorized Representative

Title of Authorized Representative

Title of Authorized Representative

**ATTEST:
DELAWARE DEPARTMENT OF EDUCATION**

Aimee F. Beam, MS, RD, LDN
Education Associate, Nutrition Programs

Date

Revised: June 2022

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.

Civil Rights Assurance - According to FNS 113-1, Appendix B, (D)(2)(c)

“The Program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by the regulations of the Department of Agriculture (7 CFR Part 15), DOJ (28) CFR Parts 42 and 50) and FNS directives or regulations issued pursuant to that Act and the regulations, to the effect that, no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the Program applicant received Federal financial assistance from USDA; and hereby gives assurance that it will immediately take any measures necessary to fulfill this agreement.”

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

Appendix A:

Certificate of Independent Price Determination

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

NAME OF FOOD SERVICE MANAGEMENT
COMPANY/FOOD VENDOR

NAME OF SCHOOL FOOD AUTHORITY

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

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

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

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

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

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

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

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

Signature of Food Service Management
Company’s Authorized Representative

Title

Date

In accepting this offer, the SFA certifies that no representative of the SFA has taken any action that may have jeopardized the independence of the offer referred to above.

Signature of School Food Authority
Company’s Authorized Representative

Title

Date

NOTE: ACCEPTING A BIDDER’S OFFER DOES NOT CONSTITUTE AWARD OF THE CONTRACT.