

State of New Jersey
Department of Agriculture

**FOOD SERVICE MANAGEMENT COMPANY
PROTOTYPE CONTRACT LANGUAGE
SCHOOL YEAR 2013-2014**

THIS SECTION HAS BEEN LEFT BLANK INTENTIONALLY TO ADD AN OPENING PARAGRAPH IDENTIFYING THE LOCAL EDUCATION AGENCY ("LEA") AND THE FOOD SERVICE MANAGEMENT COMPANY ("FSMC")

Article I: Federal and State Required Contract Language

A. CONTRACT DURATION / RENEWALS

- 1) This contract is for a term not longer than one year in duration, beginning on _____ and ending on _____,
(date) (date)

unless earlier terminated by either party as provided herein. [7CFR 210.16(d)].

- 2) This contract may be renewed annually by mutual written agreement of the Local Education Agency (the "LEA") and the Food Service Management Company (the "FSMC"), for up to four additional one-year periods [7CFR 210.16(d)], subject to the following limitations:
- a. Each renewal shall be awarded by resolution of the LEA upon a finding that the services are being performed in an effective and efficient manner;
 - b. The contract shall not be renewed or extended so that it runs for more than a total of five consecutive years;
 - c. Any price change included as part of a renewal shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or renewal, and shall not exceed the change in the Index Rate (as defined in Public Schools Contract Law, N.J.S.A. 18A:18A-1 *et seq.*) for the 12 months preceding the most recent quarterly calculation available at the time the contract is renewed; and
 - d. The terms and conditions of the contract shall remain substantially the same. [N.J.S.A. 18A:18A-42].
- 3) Each contract renewal is contingent upon the fulfillment by the FSMC of all provisions in this contract related to USDA donated foods [7CFR 250.53(a) (12)].
- 4) Each contract renewal must use the current prototype addendum approved by the Division of Food and Nutrition in the New Jersey Department of Agriculture (the "State Agency"). Any change to the prototype addendum must be approved in writing by the State Agency before it is executed by either party. [7CFR 210.16(a) (10)].

B. LOCAL EDUCATION AGENCY RESPONSIBILITIES

- 1) The LEA shall ensure that the food service operation is in conformance with the Agreement for School Nutrition Programs between the LEA and the State Agency (the "Program Agreement") and shall monitor the food service operation through periodic on-site visits. [7CFR 210.16(a) (2), (3)].
- 2) The LEA shall retain control of the quality, extent and general nature of its food service, and the prices charged to the children for meals. [7CFR 210.16(a) (4)].
- 3) The LEA shall retain signature authority on the Program Agreement, the LEA's Free and Reduced Price Policy Statement, and Claims for Reimbursement. [7CFR 210.16(a) (5)].
- 4) The LEA shall ensure that all federally donated foods received by the LEA and made available to the FSMC accrue only to the benefit of the LEA's nonprofit school food service and are fully utilized therein. [7CFR 210.16(a) (6)].
- 5) The LEA shall maintain applicable health certification and assure that all State and local regulations are being met by the FSMC preparing or serving meals at a LEA facility. [7CFR 210.16(a) (7)].
- 6) The LEA shall establish an advisory board composed of parents, teachers and students to assist in menu planning. [7CFR 210.16(a) (8)].
- 7) The LEA shall retain control of the nonprofit school food service account and overall financial responsibility for the School Nutrition Programs, and shall make expenditures of nonprofit school food service revenues in accordance with the financial management system established by the State Agency. [7 CFR 210.14(a)].

C. FOOD SERVICE OPERATION

- 1) In the operation of the LEA's food service, the FSMC shall comply with the requirements of the Program Agreement and with all applicable USDA program policies and regulations, including 7 CFR Parts 210, 220, 245, 250 and 3016. In order to operate an a la carte food service, the FSMC agrees to offer free, reduced price and full price reimbursable meals to all eligible children. [7CFR 210.16(a)].
- 2) The FSMC shall adhere to the 21-day cycle menu contained in the LEA's Request for Proposal for the first 21 days of meal service. Changes thereafter may be made with the approval of the LEA. [7CFR 210.16(b) (1)].
- 3) No payment shall be made for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the LEA for each food component specified in 7CFR 210.10 (the School Lunch Pattern), or do not otherwise meet the requirements of the contract. [7CFR 210.16(c) (3)].
- 4) The FSMC shall purchase, to the maximum extent possible, domestic commodities or products. "Domestic commodity or product" means an agricultural commodity that is produced in the United States, and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. [7CFR 210.21(d)].
- 5) The FSMC shall not directly or indirectly restrict the sale or marketing of fluid milk (as described in paragraph (m) (1) (ii) of 7CFR 210.10) at any time or in any place on school premises or at any school-sponsored event. [7CFR 210.21(e)].

- 6) The FSMC shall comply with the competitive food policy established by the State Agency and set forth in N.J.A.C. 2:36-1.11, which restricts items that may be served, sold or given away as a free promotion anywhere on school property at any time before the end of the school day. [7CFR 210.11].

D. HEALTH CERTIFICATION

The FSMC shall have State or local health certification for any facility outside the school in which it proposes to prepare meals and the FSMC shall maintain this health certification for the duration of the contract. [7CFR 210.16(c) (2)].

E. USDA DONATED FOODS

- 1) All USDA donated foods received for use by the LEA for the school year and made available to the FSMC shall be used in the LEA's food service. [7CFR 250.50(a)].
- 2) The FSMC shall perform the following activities related to USDA donated foods, and shall perform such activities in accordance with the applicable requirements in 7CFR Part 250:
 - a. Preparing and serving meals;
 - b. Ordering or selection of donated foods in coordination with the LEA;
 - c. Storage and inventory management of donated foods;
 - d. Payment of processing fees or submittal of refund requests to a processor on behalf of the LEA, or remittance of refunds for the value of donated foods in processed end products to the LEA; and
 - e. Procurement of processed end products on behalf of the LEA.

[7CFR 250.53(a) (4)].

- 3) The FSMC shall credit the LEA for the value of all USDA donated foods received for use in the LEA's meal service in the school year (including both entitlement and bonus foods), and including the value of donated foods contained in processed end products, if applicable. [7CFR 250.53(a) (1)].

The FSMC shall perform such crediting

- each [insert frequency: at least annually]
- by [insert method: invoice reductions shown by separate line item; refunds; etc.]. [7CFR 250.53(a) (2)].

If for the school year immediately preceding the beginning of this contract the LEA's food service was self-operating, the FSMC shall also credit the LEA for the value of all USDA donated foods in the LEA's inventory carried over from the preceding school year.

- 4) In crediting the LEA for the value of USDA donated foods, the FSMC shall use the market value of donated foods as identified on the monthly allocation notice from the New Jersey Department of Agriculture Food Distribution Program (the "Distributing Agency") at the time the LEA receives the donated foods. In crediting for the value of donated foods contained in processed end products, the FSMC shall use the annual processing agreement value established in the Distributing Agency's State Processing Agreement. [7CFR 250.53(a) (3)].

- 5) The FSMC will use all donated ground beef and ground pork products, and all processed end products, in the LEA's food service. [7CFR 250.53(a) (5)]. The FSMC will use all other donated foods, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the LEA's food service. [7CFR 250.53(a) (6)].
- 6) In the procurement of processed end products on behalf of the LEA, the FSMC will comply with the requirements of Subpart C of 7CFR Part 250 and with the provisions of the Distributing Agency or LEA processing agreements, and will credit the LEA for the value of donated foods contained in such end products at the processing agreement value. The FSMC will not itself enter into the processing agreement with the processor. [7CFR 250.53(a) (7), (8)].
- 7) The FSMC will comply with the storage and inventory requirements for USDA donated foods set forth in 7CFR 250.14(b) and 250.52. [7CFR 250.53(a) (9)]. The FSMC shall ensure that its system of inventory management does not result in the LEA being charged for USDA donated foods. [7CFR 250.53(b)].
- 8) The FSMC shall maintain accurate and complete records with respect to the receipt, use/disposition, storage and inventory of all USDA donated foods. The FSMC will maintain records to document its compliance with the requirements relating to donated foods, in accordance with 7CFR 250.54(b). [7CFR 250.53(a) (11)].
- 9) The LEA, the Distributing Agency, the USDA, the Comptroller General, or their duly authorized representatives, may perform onsite reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of donated foods. [7CFR 250.53(a) (10)].
- 10) Upon termination of this contract, the FSMC shall return all unused donated ground beef, donated ground pork and processed end products, including those that may be stored off the LEA's premises, and shall also return all other unused donated foods that may be stored on or off the LEA's premises. [7CFR 250.52(c)].
- 11) The LEA shall conduct a reconciliation at least annually, and upon termination of this contract, to ensure that the FSMC has credited it for the value of all donated foods received for use in the LEA's food service in the school year, including the value of donated foods contained in processed end products. [7CFR 250.54(c)].

F. PURCHASE OF FRESH MILK

- 1) For all purchases of fresh milk for the LEA, the FSMC shall purchase an amount of fresh milk from New Jersey producers at least equal to the amount of fresh milk proposed to be furnished to the LEA, in accordance with N.J.S.A. 18A:18A-6 and N.J.A.C. 2:55-1.1 *et seq.*
- 2) Should the FSMC choose to purchase fresh milk for the LEA through a vendor, the FSMC shall require each vendor to agree in writing to purchase an amount of fresh milk from New Jersey producers at least equal to the amount of fresh milk proposed to be furnished to the LEA, in accordance with N.J.S.A. 18A:18A-6 and N.J.A.C. 2:55-1.1 *et seq.* The FSMC shall provide copies of any such agreements to the LEA for filing with the New Jersey Department of Agriculture, Division of Markets, PO Box 330, Trenton, NJ 08625-0330.
- 3) The FSMC shall be responsible for ensuring that all fresh milk purchases are made in conformance with N.J.S.A. 18A:18A-6 and N.J.A.C. 2:55-1.1 *et seq.*

- 4) The LEA shall file a copy of this agreement along with a copy of any vendor agreements received from the FSMC in accordance with N.J.S.A. 18A:18A-6 and N.J.A.C. 2:55-1.1 *et seq.*

G. ENVIRONMENTAL PROTECTION / ENERGY CONSERVATION

- 1) In the performance of this contract, the FSMC shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40CFR Part 15). [7CFR 3016.36(i) (12)].
- 2) The FSMC shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act. [7CFR 3016.36(i) (13)].

H. EQUAL EMPLOYMENT / AFFIRMATIVE ACTION

During the performance of this contract, the FSMC agrees as follows [N.J.S.A. 18A:18A-4.4d; N.J.A.C. 17:27-3.5; 3.7]:

- 1) It will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the FSMC will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The FSMC agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the LEA Compliance Officer setting forth provisions of this nondiscrimination clause.
- 2) It will in all solicitations or advertisements for employees placed by or on behalf of the FSMC, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.
- 3) It will send to each labor union with which it has a collective bargaining agreement, a notice to be provided by the LEA contracting officer, advising the labor union of the FSMC's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 4) The FSMC agrees to comply with any regulations promulgated by the State Treasurer pursuant to N.J.S.A. 10:5-31 *et seq.*, as amended and supplemented from time to time, and the Americans with Disabilities Act.
- 5) The FSMC agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
- 6) The FSMC agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and

labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

- 7) The FSMC agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable federal law and applicable federal court decisions.
- 8) In conforming with the targeted employment goals, the FSMC agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey and applicable federal law and applicable federal court decisions.
- 9) Prior to executing this contract, the FSMC submitted to the LEA [**insert one of the following**].
 - a Letter of Federal Affirmative Action Plan Approval
 - a Certificate of Employee Information Report
 - an Employee Information Report Form AA302
- 10) The FSMC shall furnish such reports or other documents to the New Jersey Department of Treasury, Division of Purchase & Property, Contract Compliance Audit Unit, EEO Monitoring Program, as may be requested by the office from time to time in order to carry out the purposes of the regulations, and the LEA shall furnish such information as may be requested by the Division of Purchase & Property, Contract Compliance Audit Unit, EEO Monitoring Program for conducting a compliance investigation pursuant to subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

I. WORK HOURS

The FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.327-330) as supplemented by U.S. Department of Labor regulations (29 CFR Part 5). [7CFR 3016.36(i) (6)].

J. MANAGEMENT FEE(S) / GUARANTEES

THIS SECTION HAS BEEN LEFT BLANK INTENTIONALLY TO INCLUDE:

- 1) **ALL POTENTIAL FEES**
- 2) **ALL POTENTIAL GUARANTEE LANGUAGE**
- 3) **ALL POTENTIAL GUARANTEE CONDITIONS**

K. REBATES, DISCOUNTS AND CREDITS

- 1) The FSMC shall charge the LEA only for costs that are actual and allowable, net of all discounts, rebates and other applicable credits accruing to or received by the FSMC, to the extent those credits are allocable to the allowable portion of the costs billed to the LEA. The FSMC's determination of allowable costs shall be made in compliance with the

applicable USDA and Child Nutrition Program regulations and Office of Management and Budget Cost Circulars. [7CFR 210.21(f) (1) (i) and (iii)].

[CHOOSE EITHER A OR B AND INSERT HERE:]

A. The FSMC will separately identify on its billing documents, for each cost submitted for payment, the amount that is allowable and the amount that is unallowable.

OR

B. The FSMC will exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and that records have been established that maintain visibility of unallowable costs, including directly associated costs, in a manner suitable for contract cost determination and verification. [7CFR 210.21(f) (1) (ii)].

- 2) The FSMC shall identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the LEA for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit.

The FSMC shall report this information [**insert frequency:** may not be less frequent than annually.] [7CFR 210.21(f) (1) (IV)].

- 3) The FSMC shall report discounts, rebates and other applicable credits allocable to the contract, that are not reported prior to the conclusion of the contract, by [**insert description** of specific method(s) of reporting]. [7CFR 210.21(f) (1) (v)].
- 4) The FSMC shall maintain documentation of costs and discounts, rebates and other applicable credits, and shall furnish such documentation upon request to the LEA, State Agency or USDA. [7CFR 210.21(f) (1) (VI)].
- 5) No expenditure shall be made from the nonprofit school food service account that permits or results in the FSMC's receiving payments in excess of its actual, net allowable costs. [7CFR 210.21(f) (2)].

L. RECORDS

- 1) The FSMC shall maintain such records as the LEA will need to support its claim for reimbursement, shall report claim information to the LEA promptly at the end of each calendar month, at a minimum, and shall make such records available to the LEA upon request. [7CFR 210.16(c) (1)].
- 2) The FSMC shall grant the LEA, the New Jersey Department of Education, the New Jersey Department of Agriculture, the United States Department of Agriculture, the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers and records of the FSMC which are directly pertinent to this contract, for the purpose of making audit, examination, excerpts and transcriptions. [7CFR 3016.36(i) (10)].
- 3) The FSMC shall retain all records required or necessary under this contract for a period of three years from the date of final payment hereunder; except that if any audit findings have not been resolved, the records shall be retained beyond the three-year period as long as required for the resolution of the issues raised by the audit. [7CFR 210.23(c) and 3016.36(i) (11)].
- 4) The FSMC shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records

shall be made available to the New Jersey Office of the State Comptroller upon request. [N.J.A.C. 17:44-2.2(b)].

M. SOC 1 REPORT

The FSMC shall have an annual service audit of the FSMC's internal controls performed by an independent audit firm engaged by the FSMC. The service audit shall be as prescribed in A.I.C.P.A. Statement on Standards for Attestation Engagements (SSAE) No. 16. The FSMC shall provide the LEA with a SOC 1 Type 2 Report in conformity with SSAE No. 16 to enable the LEA to meet its annual audit obligation under New Jersey Department of Treasury Circular No. 04-04-OMB. [7CFR 3016.26; 7CFR 3052.210(f); N.J.S.A. 18A:23-1].

N. BREACH BY FSMC / REMEDIES, SANCTIONS

In the event of the FSMC's nonperformance under this contract and/or its violation or breach of the contract terms, the LEA shall have the right to pursue all administrative, contractual, and legal remedies against the FSMC and shall have the right to seek all sanctions and penalties as may be appropriate. [7CFR 3016.36(i) (1)].

O. TERMINATION

- 1) The LEA or the FSMC may cancel this contract for cause by giving 60 days' written notification. [7CFR 210.16(d)].
- 2) The LEA may terminate this contract at any time by giving **[insert number]** days' written notification to the FSMC setting forth the reason for and the effective date of termination. Upon such termination, the LEA and the FSMC shall make settlement of all amounts due hereunder as follows: **[insert description of all applicable payment terms]**. [7CFR 3016.36(i) (2)].

P. NEW JERSEY BUSINESS REGISTRATION REQUIREMENTS

- 1) Prior to entering into this contract, the FSMC provided the LEA with a current Business Registration Certificate issued by the New Jersey Department of Treasury, Division of Revenue or, at the option of the LEA, with sufficient information for the LEA to verify proof of business registration of the FSMC through a computerized system maintained by the State of New Jersey.
- 2) The FSMC shall provide written notice to its subcontractors, if any, of the responsibility to submit proof of business registration to the FSMC. Before final payment on this contract is made by the LEA, the FSMC shall submit an accurate list and the proof of business registration of each subcontractor or supplier used in the fulfillment of this contract, or shall attest that no subcontractors were used.
- 3) For the term of this contract, the FSMC and each of its affiliates shall collect and remit to the Director, New Jersey Division of Taxation, the use tax due pursuant to the Sales and Use Tax Act, P.L.1966, c.30 (C.52:32B-1 *et seq.*) on all sales of tangible personal property delivered into New Jersey. [N.J.S.A. 52:32-44].

Q. POLITICAL CONTRIBUTION DISCLOSURE (all contracts in amount of \$17,500 or greater)

- 1) Included in its response to the LEA's Request for Proposal, the FSMC signed and submitted a Political Contribution Disclosure Form listing the information set forth in N.J.S.A. 19:44A-20.26. [N.J.A.C. 6A:23A-6.3].

- 2) During the term of this contract, the FSMC and any person or business entity having an interest in the FSMC, shall not make any contribution reportable under N.J.S.A. 19:44A-1 *et seq.* to any member of the board of education of the LEA. [N.J.A.C. 6A:23A-6.3].

R. DEBARMENT/SUSPENSION CERTIFICATE

- 1) Included in its response to the LEA's Invitation to Bid or Request for Proposal, the FSMC signed and submitted a Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. [7CFR 3017.300]
- 2) The FSMC shall provide immediate written notice to the LEA if it learns that its certification was erroneous when submitted or has become erroneous due to changed circumstances.

S. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

- 1) Prior to entering into this contract, the LEA and the FSMC executed a Certificate of Independent Price Determination, certifying that the prices in the offer have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition.
- 2) The Certificate of Independent Price Determination shall be kept on file with the signed contract at the LEA.

T. CERTIFICATION REGARDING LOBBYING

- 1) Included in its response to the LEA's Request for Proposal, the FSMC signed and submitted a Certification Regarding Lobbying and, if applicable, a Standard Form LLL – Disclosure of Lobbying Activities.
- 2) During the term of this contract the FSMC, shall file with the LEA a Standard Form LLL – Disclosure of Lobbying Activities at the end of each calendar quarter in which any event occurs that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by the FSMC. [7CFR 3018.110].

U. STATEMENT OF OWNERSHIP INTEREST

Included in its response to the LEA's Request for Proposal, the FSMC submitted a statement setting forth the names and addresses of all stockholders and partners owning 10% or greater interest in the FSMC, as set forth in N.J.S.A. 52:25-24.2. [N.J.S.A. 18A:18A-4.4d].

V. CONSTRUCTION AND EFFECT

The LEA and the FSMC agree that Article I of this contract is intended to comply with applicable federal and State procurement and USDA program requirements. In the event that any provision contained in Article I should conflict with any other provision contained in this contract or any attachment to this contract, the provisions of Article I shall control.

Article II: Additional Contract Language