

**DEPARTMENT OF EDUCATION  
CHILD AND ADULT CARE FOOD PROGRAM &  
SUMMER FOOD SERVICE PROGRAM  
INVITATION TO BID**

Specifications and contract may be obtained as of **Month Day , Year** from **Sponsor Name**. Sealed bids clearly marked on the outside envelope, "Child and Adult Care Food Program & Summer Food Service Program Bid," along with a sample lunch, are to be received by **Month Day, Year** at **Time AM/PM** at **Name and Location of Bid Opening** at which time all bids will be opened.\*\*

DATE: \_\_\_\_\_

Attached hereto is a bid bond in the amount of \_\_\_\_\_ dollars and \_\_\_\_\_ cents.

We, the undersigned hereinafter contractor, hereby agree to furnish and deliver, per specifications, the item(s) listed below to: **Sponsor Name**, hereinafter sponsor.

**Sponsor must complete Program, meal type, approximate quantity, # of days, and description.  
Vendor must complete unit price, extended price, grand total,**

Program	Meal Type	Approx. Quantity	# of Days	Description	Unit Price	Extended Price
					\$	\$
					\$	\$
					\$	\$
					\$	\$
					\$	\$
					\$	\$
					\$	\$
					\$	\$
					\$	\$
				GRAND TOTAL		\$

\*Please see Schedules A & E for details on specific breakdowns of serving sizes and sites for delivery.

Location of Bidders' Preparation Facility: \_\_\_\_\_  
\_\_\_\_\_

FIRM (Corporation, Partnership, Individual): \_\_\_\_\_  
 PER (Name, typed or printed): \_\_\_\_\_  
 TITLE: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 FAX: \_\_\_\_\_  
 FEDERAL I.D. \_\_\_\_\_

**BASIC SPECIFICATIONS FOR THE SPONSOR NAME  
CHILD AND ADULT CARE FOOD PROGRAM & SUMMER FOOD SERVICE PROGRAM**

**QUANTITIES:**

Bid to include preparation, packaging, and delivery of meals as outlined below:

Approximately \_\_\_ **Program and Meal/Snack Type**, including Milk for approximately \_\_\_ days.\*

\*Please see Schedules A & E for details on specific breakdowns of serving sizes and sites for delivery.

Approximately \_\_\_ **Program and Meal/Snack Type** for approximately \_\_\_ days.\*

\*Please see Schedules A & E for details on specific breakdowns of serving sizes and sites for delivery.

**INSERT ADDITIONAL LINES AS NEEDED**

**DELIVERIES:**

Contractor to deliver all food and liquids within required temperatures to each of the designated sites. Designated representatives shall be available at each site and will be responsible for the receiving of all items and supervision of feeding. All deliveries are to be made according to Schedules A & E to ensure a smooth operation. Contractor must strictly adhere to delivery schedule.

Items delivered frozen will cause entire days meals to be disallowed unless expressly agreed to by sponsor.

**SITE LOCATION**

The attached listed sites constitute the tentative delivery locations. (Schedules A and E)

**TIME PERIOD**

Program to commence on **DATE** and to continue every **Day** through **Day** until **Date**.

**FOOD REQUIREMENTS**

Meals must comply with minimum meal pattern requirements established by the USDA, located in schedule B of this document. The menu, prepared by the sponsor and approved by the state agency, must be strictly adhered to. Sponsor specifically forbids serving juice of any kind.

**GENERAL CONDITIONS**

1. Bidder may contact the following individual for additional information concerning this proposal:

**Sponsor Contact Name**  
**Sponsor Name**  
**Sponsor Address**  
**Sponsor Phone**  
**Sponsor Email**

2. Bidder must complete cover sheet with all required information and submit a copy of health permit and inspection documentation with bid response.

3. Quantities rendered are approximated to fulfill the requirement for the operating period. The Sponsor reserves the right of ordering more or less than the stated estimated amounts at any time, in such quantities as needed and successful contractor will deliver to any directed site such quantities as designated at the bid price.

4. Contractor shall supply sufficient containers for distribution of milk and lunches to satellite feeding points. These containers are to be Styrofoam or equivalent, with lids. Ice is to be provided where necessary, as determined by the Sponsor, at no additional charge.

5. Deliveries to be made within the designated hours, indicated in basic specification. Emergency situations affecting the contractor's ability to deliver or the Sponsor's ability to receive meals for a reasonable length of time, will be mutually resolved between the contractor, sponsor, and state agency.
6. Successful bidder will have a turnaround time of 24 hours or less for changes in the number of meals (increases and decreases) delivered daily. Counts for the next days' delivery will be called into contractor **Time** daily.
7. Sponsor and allied governmental agencies reserve the right to visit and inspect the bidder's preparation facilities prior to and during the contract period, which may form the basis of determining the capability of the bidder to perform or fulfill the contract.
8. Successful contractor to provide copy of insurance showing public liability, vehicle liability, and property damage insurance.
9. Successful contractor or bidder will ensure that all delivery staff will have been screened using a national background check which includes a Sexual Offender database check. Individuals listed in Sexual Offender databases are not permitted on Sponsor's property. Successful contractor will provide a list of delivery staff members at the start of the contract and will notify Sponsor of changes.
10. Hold Harmless: The bidder, if awarded a contract, agrees to protect, defend, and hold harmless the Sponsor against any damage for payment for the use of any patented material, process, article, or device or from a part of the work covered by his contract; and he further agrees to indemnify and save harmless description brought against it, for or on account of any injuries or damages received or sustained by any parties, by or from any acts of the contractor, his servants to agents.
11. All bidders are requested to arrange for site visitations so as to inform themselves of locations and delivery condition.
12. All bidders must provide sponsor with a sample meal at the bid opening. Meal must be packaged and presented as it will be delivered during the program.

## **I. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION**

1. 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:
  - a. 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;
  - b. 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 advertisement procurement, or prior to aware in the case of a negotiated procurement, directly or indirectly to any other offeror or to any competitor;
  - c. 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.

## **II. INSTRUCTION TO BIDDERS**

1. **Definitions**, as used herein:
  - a. The term "Bid" means the bidder's offer.
  - b. The term "bidder" means a food service management company submitting a bid in response to this invitation for bid.
  - c. The term "contractor" means a successful bidder who is awarded a contract by a sponsor under the CACFP & SFSP.

- d. The term “food service management company” in this invitation for Bid and Contract means an organization other than a public or private nonprofit school, with which an institution may contract for preparing and, unless otherwise provided for, delivering meals, with or without milk for use in the Program.
  - e. The term “invitation to bid” hereafter referred to as IFB, means the document where the procurement is advertised. In the case of this program, the IFB becomes a part of the contract once both parties agree in writing to all terms and conditions of the IFB.
  - f. The term “Sponsor” means the Service Institution which contracts with the Department of Education to operate and manage the Child and Adult Care Food Program & the Summer Food Service Program.
  - g. The term “unitized meal” means an individual pre-portioned meal consisting of a combination of foods meeting the Child and Adult Care Food Program (CACFP) and/or Summer Food Service Program (SFSP) meal pattern requirements (meal milk may be unitized with other components or be delivered in bulk). The State Agency may approve exceptions to the unitized meal such as separate hot and cold packs and/or Family Style Meal Service.
  - h. Other Terms shall have the meanings ascribed to them in the CACFP regulations 7 CFR 226 or in the SFSP regulations 7 CFR Part 225.
  
2. **Explanation to Bidders:** Any explanation desired by a bidder regarding the meaning or interpretation of the IFB specification, etc., must be requested in writing prior to bid opening and with sufficient time allowed for a reply to reach all bidders before bid opening. Oral explanations given to a prospective bidder concerning an IFB will be furnished to all prospective bidders as an amendment of the IFB, if such information is necessary to bidders in submitting bids on the IFB, or if the lack of such information would be prejudicial to uniformed bidders.
  
3. **Acknowledgment of Amendments of IFBs:** The sponsor must acknowledge receipt of an amendment to an IFB by a bidder by signing and returning this amendment. Such acknowledgment must be received prior to the hour and date specified for bid opening.
  
4. **Bidders Having Interest In More Than One Bid:** If more than one bid is submitted by any one person, by or in the name of a clerk, partner, or other person, all such bids shall be rejected.
  
5. **Errors in Bids:** Bidders or their authorized representatives are expected to fully inform themselves as to the conditions, requirements and specifications before submitting bids; failure to do so will be at the bidder’s own risk and relief cannot be secured on the plea of error. Neither law nor regulations make allowance for error either of omission or commission on the part of the bidders. In the case of error in extension of prices in the bid, the unit price shall govern.
  
6. **Evaluation of Bidders/Award of Contract:**
  - a. The contract will be awarded to that responsive and responsible bidder whose bid conforms to the IFB and will be most advantageous to the sponsor, lowest total estimated amount of bid, price and other factors considered.
  - b. The sponsor reserves the right to reject any or all bids and to waive informalities and minor irregularities in bids received.
  - c. The sponsor reserves the right to reject the bid of a bidder who previously failed to perform properly, or complete on time, contracts of a similar nature, or the bid of a bidder whose investigation shows is not in a position to perform the contract.
  - d. Sponsor reserves the right to accept any bid within 30 days from the date of bid opening.
  
7. **Late Bids, Modification of Bids, or Withdrawal of Bids**
  - a. Any bid received after the exact time specified for receipt of bids will not be considered.
  - b. Any modification or withdrawal of bid is subject to the same conditions as in (A) above, except that withdrawal of bids by telegram is authorized. A bid may also be withdrawn in person by a bidder or an authorized

representative, provided their identity is made known and he or she signs a receipt for the bid, but only if the withdrawal is made prior to the exact time set for the receipt of bids.

- c. Notwithstanding the above, a late modification of an otherwise successful bid which makes its terms more favorable to the sponsor will be considered at any time it is received and may be accepted.

### III. SCOPE OF SERVICES

1. United States Department of Agriculture regulations 7 CFR Part 226, entitled Child and Adult Care Food Program, and 7 CFR Part 225, entitled Summer Food Service Program, are hereby incorporated by reference.
2. Contractor agrees to deliver unitized meals inclusive of milk and/or juice to locations set out in Schedules A and E, attached hereto and made a part thereof, subject to the terms and conditions of this solicitation.
3. All meals furnished must meet or exceed USDA requirements set out in Schedule B, attached hereto and made a part hereof.
4. Contractor shall furnish meals as ordered by the sponsor during the period of operation specified on page 1 and as further specified in Schedules A and E.
5. **Pricing** shall be on the menus described in Schedule C. All bidders must submit bids on the same menu cycle provided by the sponsor. Deviation from this menu cycle shall be permitted only upon authorization of the sponsor. Bid price must include the price of food components (including milk and/or juice, if part of unitized meal), packaging, transportation and all other related costs (e.g. condiments, utensils, etc.).
6. **Meal quantities** are estimated. They are the best known estimates for requirements during the operating period. The sponsor reserves the right to order more or less than estimated at the beginning of the operating period. Contractor will be paid at the unit price rate for the actual number of meals delivered each day for the program period specified. Sponsor does not guarantee orders for quantities shown. The maximum number of meals will be determined based on the approval level of meal service designated by the administering office for each site serving meals provided by the contractor.
7. **Meal Orders:** Sponsors will order meals on Wednesday of the week preceding the week of delivery; orders will be placed for the total number of operating days in the succeeding week and will include breakdown totals for each site and each type of meal.

The sponsor reserves the right to increase or decrease the number of meals ordered on a 24-hour notice. Time may be less if mutually agreed upon between the parties to this contract.

#### 8. **Meal-Cycle Change Procedure**

Meals will be delivered on a daily basis in accordance with the menu cycle which appears in Schedule C. Menu changes may be made only when agreed upon by both parties. When an emergency situation exists which might prevent the contractor from delivering a specified meal component, the sponsor shall be notified immediately so substitutions can be agreed upon. The sponsor reserves the right to suggest menu changes within the vendor's suggested food cost, periodically throughout the contract period.

#### 9. **Noncompliance**

The sponsor reserves the right to inspect and determine the quality of food and reject any meals which do not comply with the requirements and specifications of the contract. The contractor will not be paid for unauthorized menu changes, incomplete meals, rejected meals not delivered within the specified delivery time period, and meals rejected because they do not comply with the specifications. The sponsor reserves the right to obtain meals from other sources, if meals are rejected due to any of the stated reasons. The contractor will be responsible for any excess cost, but will receive no adjustment in the event the meals are procured at lesser cost. The sponsor or inspecting agent shall notify the contractor in writing as to the number of meals rejected and the reasons for rejection.

The CACFP and SFSP regulations provide that statistical sampling methods may be used to disallow payments for meals which are not served in compliance with program regulations. In the event disallowances are made on the basis of

statistical sampling, the sponsor and the contractor will be notified in writing by the administering agency as to the number of meals disallowed, the reasons for disallowance, and the methodology of the statistical sampling procedures employed.

## 10. Specifications

### a. Packaging

- i. Hot Meal Unit – Package suitable for maintaining meals in accordance with local health standards. Container and overlay should have an air-tight closure, be of non-toxic material, and be capable of withstanding temperatures of 400° (204° C) or higher.
- ii. Cold Meal Unit (or Unnecessary to Heat) – Container and overlay to be plastic or paper and non-toxic.
- iii. Sandwich is to be individually wrapped in addition to the overlay on the container.
- iv. Cartons – Each carton to be labeled. Label to include:
  1. Processor's name and address (plant)
  2. Item identity, meal type
  3. Date of production
  4. Quantity of individual units per carton
- v. Meals shall be delivered with appropriate non-food items: condiments, straws for milk, napkins, single service ware, etc. Sponsors shall insert the types of condiments that are necessary for the meals on Schedule C.
- vi. Individual containers shall be delivered in cartons constructed to prevent damage to the containers inside. An equal number of containers must be in each carton, except one, which may have fewer to allow for the exact number of meals ordered.
- vii. The sponsor may require that contractor provide means for maintaining adequate temperatures of meals after delivery for a period that covers said meal service (i.e. two hours for lunch, one hour for all other meal types).
- viii. All contractors shall have on file, the name of the supplier, the telephone number, and a product label specifying ingredients for any food product utilized for meals under this contract. The contractor shall be able to immediately supply this information to the sponsor, State Agency, or health department for any meal served at any site listed on Schedules A and E.
- ix. All components of a cold meal shall be unitized in a container before delivery to a site. Container and overlay shall be plastic, paper, non-toxic metallic, or biodegradable material. Milk may be enclosed in the unitized container.
- x. All components of a hot meal shall be unitized in one or two containers before delivery to site. If two containers are used, one will store the hot and one the cold portions of the meal. Container and overlay should be an air-tight closure and shall be aluminized or non-toxic metallic or biodegradable nonflammable material. Milk may be enclosed in the cold portion container.
- xi. Containers shall be sufficient strength to prevent crushing of food and shall package the meals so that they are completely unexposed to the elements.
- xii. All components of a family style hot/cold lunch/supper shall be packaged by meal component and separated by classroom to facility smooth food service operations. Containers should be labeled with the room name and quantity.

## 11. Delivery

- a. Meals are to be delivered daily, unloaded, and placed in the designated location by the contractors' personnel at each site and serving time listed on Schedules A and E.

- b. The contractor shall be responsible for delivery of meals at the specified time. Adequate refrigeration or heating shall be provided during delivery of all food to ensure the wholesomeness of food at delivery in accordance with state or local health codes.
- c. The sponsor reserves the right to add or delete food service centers by amendment of the initial list of approved centers in Schedules A and E and make changes in the approved level for the maximum number of meals which may be served under the program at each center. The sponsor shall notify contractor by providing an amendment to Schedules A and E of all sites which are approved, canceled or terminated, subsequent to acceptance of this contract and of any change in the approved level of meal service for a site. Such amendments shall be provided within 24 hours or less and vendor must comply with changes.
- d. The delivery of more than one meal type per day at any site shall be made separately within one hour of the beginning of meal service for lunch and within one-half hour of the beginning of meal service for breakfast or supplement and in accordance with the serving time schedule (Schedules A and E). Where holding facilities have been approved by the state agency, contractor can deliver two meal types together according to the meal service time for early meals. Where emergency affects the ability of contractor to deliver meals separately or sponsor to utilize meals delivered separately, each situation is to be resolved by mutual agreement of contractor, sponsor and state agency.
- e. The contractor must provide exactly the number of meals ordered. Counts of meals will be made by the sponsor at all sites after meals are accepted. Damaged or incomplete meals will not be included when the number of reimbursable meals is determined.
- f. The contractor shall provide sponsor with a separate listing of sites to be serviced by each truck used for delivery one week prior to the first day of meal service.
- g. Hot and cold portions of meals must be delivered at the same time.
- h. Cold meals shall be delivered at the site at a maximum temperature of 41°F but shall not have a temperature of less than 32°F at scheduled time of meal service.
- i. The vehicle and/or carton utilized to deliver cold meals shall have the capability of keeping the product below 41°F until time of site delivery.
- j. Hot meals shall be delivered at the site at a temperature of at least 135°F but shall not exceed 160°F at the scheduled time of meal service.
- k. The vehicle or carton utilized to deliver hot meals shall have the capability of keeping the product above 135°F until time of site delivery.

## 12. Food Preparation

Meals shall be prepared under properly controlled temperatures and assembled not more than 24 hours prior to delivery. Any determination made by sponsor or state agency to the contrary will result in immediate disallowance of all meals assembled outside the allowable timeframe.

## 13. Food Specifications

- a. All meals must meet the food specifications and quality standards as incorporated in the menu cycle (Schedule D).
- b. All meat, meat products and poultry, except sausage products, shall have been slaughtered, processed and manufactured in plants inspected under USDA approved inspection program and bear the appropriate seal. All meat and meat products must be sound, sanitary, and free of objectionable odors or signs of deterioration on delivery.
- c. Milk and milk products are defined as “. . . pasteurized fluid types of flavored or unflavored whole milk, low-fat milk, skim, or cultured buttermilk which meets State and local standards for such milk . . . All milk should contain

vitamins A and D at the levels specified by the Food and Drug Administration and consistent with State and local standards for such milk." Milk delivered hereunder shall conform to these specifications.

#### **IV. GENERAL CONDITIONS**

##### **1. Supervision and Inspection of Facility**

- a. The contractor shall provide management supervision at all times and maintain constant quality control inspections to check for portion size, appearance, and packaging, in addition to the quality of products.
- b. The contractor hereby agrees to supervise at its place of business the preparation and assembly of meals and to conduct quality control inspections to check portions, size and appearance of packaging as well as quality of product. Contractor recognizes right of representative of sponsor, Delaware Department of Education and/or representatives of the United States Department of Agriculture to inspect contractor's food service facilities at any time during contract period. Such inspection may proceed with or without notice to contractor.
- c. The contract shall provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacterial levels in the meals being served. Such levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals served by other establishments in the locality.

##### **2. Recordkeeping**

- a. Delivery tickets must be prepared by the contractor at a minimum in three copies: one for the contractor, one for the site personnel, and one for the sponsor. Delivery tickets must be itemized to show the number of meals of each type delivered to each site. Designees of the sponsor at each site will check adequacy of delivery and meals before signing the delivery ticket. Damaged or incomplete meals or inaccurate counts of meals reflected on delivery slips will not be included when the number of reimbursable meals is determined. Invoices shall be accepted by the sponsor only if signed by sponsor's designee at the site.
- b. The contractor shall maintain records supported by delivery tickets, invoices, receipts, purchase orders, production records for this contract, or other evidence for inspection and reference to support payments and claims.
- c. The books and records of the contractor pertaining to this contract shall be available for a period of three years from the date of submission of the sponsor's final claim for reimbursement or until the final resolution of any audits for inspection and audit by representatives of the state agency, representative of the U.S. Department of Agriculture, the sponsor and the U.S. General Accounting Office at any reasonable time and place.
- d. Sponsor shall notify contractor within 24 hours of notification of disallowed meals. Sponsor must put notification in writing by end of business Tuesday for preceding week. This requirement is in no way to be construed so as to impair the independent duty of the state agency to disallow any portion of a claim for reimbursement.

##### **3. Method of Payment**

- a. The contractor shall submit its itemized invoices to the sponsor weekly. Each invoice shall give a detailed breakdown of the number of meals delivered at each site during the preceding period. The vendor shall calculate the number of meals delivered each week. Payment will be made at the unit price. Each payment period will be calculated and paid for independent of other periods. No payment shall be made unless the required delivery receipts have been signed by the site representative of the sponsor.
- b. The contractor shall be paid by the sponsor for all meals delivered in accordance with this contract and CACFP/SFSP regulations. However, neither the department nor the State Agency assumes any liability for payment of differences between the number of meals delivered by the contractor and the number of meals served by the sponsor that are eligible for reimbursement.

##### **4. Bond Requirements**



- a. Bid Bonds:
  - i. For bids over \$150,000, a bid bond in the amount of 10 percent of the estimated value of the contract for which the bid is made must accompany the bid. The bid bond must be from a company listed in the current United States Department of Treasury Circular 570 certified to do business in Delaware. No other type of bid bond is acceptable.
- b. Performance Bonds
  - i. The procuring agency shall require the successful bidder to execute a good and sufficient bond to the State for the benefit of the agency. In cases where contracts for the purchase of material with a value less than the \$25,000 formal purchase threshold, a SFA or a CACFP sponsor may waive, or reduce, the performance bond requirement from the successful bidder. Such a waiver or reduction must be stated in the bid specifications. The Performance bonds shall be with a corporate surety authorized to do business in this state and be in a sum equal to 100% of the contract award. The performance bond must be from a company listed in the current United State Department of Treasury Circular 570 certified to do business in Delaware. The contractor must furnish a copy of the bond to the sponsor within 10 days of the contract's award. The performance bond must include the entire period that the sponsor will operate the feeding program. Sponsors may not accept cash, letter of credit, trust account, land or any other form of guarantee in lieu of the performance bond.

**5. Insurance**

The successful bidder shall procure and maintain the following insurance:

- a. Workers' Compensation in accordance with the laws of the State of Delaware.
- a. Liability coverage for bodily injury, property damage and products liability, including bodily injury and property damage caused by automobiles, with limit of \$500,000 for injury or death of any one person and \$1,500,000 for injury or death of two or more persons in any one accident, \$100,000 property damage and \$200,000 products liability for any single occurrence.
- b. Contractor shall furnish sponsor with such evidence of insurance as sponsor may reasonably require, including insurance covering contractor's contractual liability.
- c. Contractor shall indemnify sponsor and state against loss or damage including attorney fees and costs of litigation caused by negligent acts of contractor or of contractor's agents or employees. Contractor expressly agrees to defend any suit against sponsor for personal injury, sickness or disease arising out of consumption or use of products purchased from contractor (as well as suit for loss resulting from pilferage by contractor's employees). Sponsor shall promptly notify contractor and Delaware Department of Education in writing of any claims against either contractor or sponsor, and if suit has been filed, shall forward to contractor and state all papers received in connection thereof. Sponsor shall not incur expense or enter into settlement without contractor's consent, provided however, that if contractor shall refuse or fail to defend, sponsor may defend, adjust or settle any such claim, and the costs thereby incurred, including reasonable attorney fees, are to be charged to contractor.

**6. Availability of Funds**

The sponsor reserves the right to cancel this contract if the federal funding to support the CACFP or SFSP is withdrawn. It is further understood that, in the event of cancellation of the contract, the sponsor shall be responsible for meals that have already been assembled and delivered in accordance with this contract.

**7. Emergencies**

- a. In the event of unforeseen emergency circumstances, the contractor shall immediately notify the sponsor by telephone or fax of the following: (1) the impossibility of on-time delivery; (2) the circumstance(s) precluding delivery, and (3) a statement of whether or not succeeding deliveries will be affected. No payments will be made

for deliveries made later than two hours after specified meal time began (lunch) and one hour after specified meal service time began for breakfast and supplement.

- b. Emergency circumstances at the site precluding utilization of meal are the concern of the sponsor. The sponsor may cancel orders provided the contractor is contacted by 7:00 a.m. on the day of delivery or in time to “hold” or “recall” delivery if mutually agreed upon between the parties to this contract.
- c. Adjustments for emergency situations affecting the contractors’ ability to deliver meals, or sponsor’s ability to utilize meals, for periods longer than 24 hours will be mutually worked out between the contractor and sponsor.
- d. In event of contractor’s default with respect to a particular delivery or in other cases of nonperformance or noncompliance, sponsor reserves right to secure meals from an alternate source. Contractor shall be liable to sponsor for all costs incurred in securing such replacement meals.

## **8. Termination**

- a. The sponsor reserves the right to terminate this contract if the contractor fails to comply with any of the requirements of this contract. The sponsor shall notify the contractor and surety company, if applicable, of specific instances of noncompliance in writing. In instances where the contractor has been notified of noncompliance with the terms of the contract and has not taken immediately corrective action, the sponsor shall have the right, upon written notice, of the immediate termination of the contract and the contractor or surety company, if applicable, shall be liable for any damages incurred by the sponsor. The sponsor shall process reprourement action on a competitive basis to arrive at a fair and reasonable price.
- b. The sponsor may, by written notice to the contractor, terminate the right of the contractor to proceed under this contract, if it is found by the sponsor that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the contractor to any officer or employee of the sponsor with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending of the contract; provided that the existence of the facts upon which the sponsor makes such findings shall be in issue and may be reviewed in any competent court.
- c. In the event this contract is terminated as provided in paragraph (B) hereof, the sponsor shall be entitled (i) to pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor, and (ii) as a penalty in addition to any other damages in an amount which shall not be less than three nor more than ten times the costs incurred by the contractor in providing any such gratuities to any such officer or employee.
- d. The rights and remedies of the sponsor provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
- e. This contract is expressly made contingent upon adequate funding from federal, state and local sources. In the event adequate funding is not available and sponsor is unable to satisfy its financial obligation hereunder, sponsor shall have the option to terminate this contract upon five days written notice to contractor. If contract is terminated in this manner, sponsor shall be released from liability for food ordered by contractor but shall remain liable for food prepared for delivery by contractor before notice is given. In contracts over \$150,000 this contract is further made contingent upon delivery by contractor to sponsor of a performance bond in the amount specified on page 1, to be furnished within ten (10) days of award of contract to ensure contractor’s full and faithful performance of its obligations hereunder. Upon satisfactory performance of contractor’s contractual obligations and at the expiration of the contract term, contractor shall be entitled to cancellation of performance bond.
- f. Should contractor default in timely or adequate performance of any of its obligations hereunder, sponsor may, upon notice to contractor and state agency, utilized program payments to satisfy the debt or obligation owed sponsor by contractor.
- g. Sponsor and contractor agree that sponsor may cancel contract with 72 hours notice to the contractor and with approval of the state agency for any one or more of the following documented reasons:

- i. Sponsor disallows 5 percent of all meals delivered in one week or 10 percent of any meal type for one week.
  - ii. Contractor fails to deliver any one meal type on any day without sufficient justification.
  - iii. Ten percent (10%) of a sponsor's sites under this contract, over a one-week period, received meal delivery outside of the approved time.
  - iv. Five percent (5%) of the meals delivered over a one-week period, under this contract, did not follow the approved menu cycle (Schedule C).
  - v. Any part of this contract was assigned or subcontracted to another company for the preparation of the meals.
  - vi. Meals are not in compliance with Section B.
- h. Contractor may cancel this contract for the following documented reason:
- An excess of five percent (5%) of the meals delivered under this contract, over a one-week period were disallowed by the state agency, and are attributed to sponsor's failure to meet its responsibilities under this contact or agreement with the state agency.
- i. Sponsor and contractor verify right of state agency to cancel funding if sponsor and/or contractor fail to abide by regulations or this program.

#### 9. Subcontracts and Assignments

- a. The contractor shall not subcontract for the total meal, or for the assembly of the meal; and shall not assign, without the advance written consent of the sponsor, this contract or any interest herein.
- b. In the event of any assignment, the contractor shall remain liable to the sponsor as principal for the performance of all obligations under this contract.
- c. Contractors which prepare and assemble frozen meals designed to be served hot may, with the approval of the State Agency, contract for the heating and delivery of prepackaged meals for hot service. The heating and delivery must be performed by the same contractor.

#### 10. General Provisions

##### **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708).**

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan/grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or

any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section. **Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387)**, as amended—

#### Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the Sponsor and understands and agrees that the Sponsor will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office, the Federal awarding agency, or the USDA.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000.

#### Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the Sponsor and understands and agrees that the Sponsor will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office, the Federal awarding agency, or the USDA.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000. **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 (42 U.S.C.6201)

**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 governmentwide Excluded Parties List System 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.” The Excluded Parties List System in SAM 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.

1. Sponsors making procurements exceeding \$25,000 must do one of the following to ensure vendors are not debarred or suspended:
  - a. Check the website [www.sam.com](http://www.sam.com) then search for the firm to be awarded the contract, and check that they are not excluded (debarred, suspended, or voluntarily excluded) from doing business with Federal grantees, or
  - b. Develop a certification form; or
  - c. Include a provision in the contract.

**Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more 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.

#### **Equal Employment Opportunity:**

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action 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 contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

## **2 CFR 200.323 Procurement of recovered materials**

In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## **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."

## USDA Nondiscrimination Statement

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/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

mail:

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

fax:

(833) 256-1665 or (202) 690-7442; or

email:

Program.Intake@usda.gov

This institution is an equal opportunity provider.

### **Additional information is included as:**

Schedule A - Program Locations/Meal Service and Delivery Details (1 page) - CACFP

Schedule B - Current CACFP meal pattern & SFSP meal pattern (9 pages)

Schedule C - CACFP Menus & SFSP Menus (4 pages)

Schedule D - Food Product Specifications (5 pages)

Schedule E - Program Locations/Meal Service and Delivery Details (1 page) - SFSP