**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: ATTEST:**

**SCHOOL FOOD AUTHORITY** **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

Director, Nutrition Programs

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date

Revised: November 2024

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:

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

This institution is an equal opportunity provider.

Assurance of Civil Rights Compliance

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

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the 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 SFA/Sponsor agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the SFA/Sponsor.

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 NAME OF SCHOOL FOOD AUTHORITY

COMPANY/FOOD VENDOR

(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 Title Date

Company’s Authorized Representative

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 Title Date

Company’s Authorized Representative

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