



# Food Service Management Company (FSMC) Fixed Price Contract

PI- 63006B (Rev. November 2025)

SFA 6-Digit Agency Code  
538023

This contract ("Contract") is entered into by and between The Lincoln Academy herein after referred to as the School Food Authority (SFA), and \_\_\_\_\_, Food Service Management Company (FSMC) herein after referred to as the Contractor. The effective date of this Contract is July 1, 2026.

This Contract sets forth the terms and conditions upon which the SFA retains the Contractor to manage its food service operations. The SFA and Contractor agree to abide by the rules and regulations governing the Child Nutrition Programs, in accordance with federal regulations including policy and instructions issued by the United States Department of Agriculture (USDA). The applicable regulations include but are not limited to 7 CFR 210 (National School Lunch Program), 7 CFR 215 (Special Milk Program), 7 CFR 220 (School Breakfast Program), 7 CFR 245 (Determining Eligibility for Free and Reduced-Price Meals and Free Milk), 7 CFR 250 (Food Distribution Program), 7 CFR 225 (Summer Food Service Program for Children), 7 CFR Part 226 (Child and Adult Care Food Program), and 7 CFR 3052 (Audit Requirements) as well as abide by regulations outline in 2 CFR 200.

**Contract Attachments and Appendixes**—This Contract incorporates the FSMC Fixed Price Request for Proposal (RFP) issued on 2/1/26, Fixed Price Excel Workbook, proposal from Contractor selected for awarded contract, all attachments, addenda, and documents accompanying the RFP, all attachments, addenda, and documents accompanying the proposal, any official amendments or addenda issued during the RFP process, all written clarifications provided by the SFA, and all written clarifications provided in response to inquiries from prospective Contractors.

**RECITALS**—This Contract is made with reference to the following:

**Whereas** The SFA desires the Contractor to provide service of a FSMC; and

**Whereas** The Contractor is willing to provide such services to the SFA on a fixed meal price basis.

**Therefore**, both parties hereto agree as follows:

**CONTRACT**—Now, therefore, in consideration of the foregoing Contract attachments, appendixes, and recitals, which are hereby incorporated and made a part of this Contract, and in further consideration of the promises set forth below, the SFA and Contractor hereby agree as follows:

FSMC services as described in the Contract will be provided at the address(es) listed on Fixed Price Excel Work Attachment M: SFA Site/Building Listing—Services to Be Provided.

SFA Contact Information		Contractor Contact Information	
Contact Person	Title	Contact Person	Title
Amber Aulozzi	(		
Email Address amber.aulozzi@tlabeloit.com		Phone Number (608) 690-5115	
Address Street, City, State, Zip 608 Henry Ave, Beloit, WI, 53511		Address Street, City, State, Zip	

The following Fixed Prices are provided as if no USDA Foods are used:

Breakfast		
Per Meal Rate		<i>Rates must match rates listed on Fixed Price Excel Work Attachment D: Proposed Fixed Meal Rates</i>
Lunch		
Per Meal Rate		
Afterschool Snack		
Per Meal Rate		
Nonprogram Food		
Per Meal Rate		

## Table of Contents

Scope and Purpose .....	3
Payment and Costs .....	3
Designation of Program Expenses .....	6
Standard Terms and Conditions .....	7
A. Signature Authority .....	7
B. Free and Reduced-Price Meals Policy .....	8
C. USDA Foods .....	8
D. Food Safety .....	10
E. Meals .....	10
F. Books and Records .....	11
G. Employees .....	12
H. Professional Standards for School Nutrition Programs Personnel .....	12
I. Monitoring .....	13
J. Use of Advisory Group/Menus .....	13
K. Use of Facilities, Inventory, Equipment, and Storage .....	13
L. Purchases .....	14
M. Sanitation .....	15
N. Licenses, Fees, and Taxes .....	15
O. Nondiscrimination .....	15
P. Emergency Closing .....	16
Q. Terms for Termination of the Awarded Contract .....	16
R. Nonperformance by Contractor .....	17
S. Certification .....	17
T. Miscellaneous .....	21
U. Insurance .....	21
V. Acquisition of Equipment, Marketing Materials, or Supplies for the Food Service Program .....	22
W. Trade Secrets and Proprietary Information .....	23
X. Summer Food Service Program (SFSP) .....	23
Y. Child and Adult Care Food Program (CACFP) .....	23
Z. Fresh Fruit and Vegetable Program (FFVP) .....	24
AA. General Assurances and Contract Signatures .....	24
List of Contract Attachments .....	26
Attachment N: Minimum Food Specifications .....	27
Attachment O: Sample 21-Day Cycle Lunch Menu .....	28
Attachment P: Sample -Day Cycle Breakfast Menu .....	29
Attachment Q: Sample -Day Cycle Snack Menu .....	30
Attachment R: Holiday Schedule .....	31
Attachment S: Independent Price Determination Certificate .....	32
Attachment T: Suspension and Debarment Certification .....	33
Attachment U: Lobbying Certification .....	35
Attachment V: Disclosure of Lobbying Activities .....	36
Attachment W: Instructions for Completion of Disclosure of Lobbying Activities Form .....	37

## Scope and Purpose

A. The Awarded Contract shall be for a period of up to one year, beginning on July 1, 2026 and ending on June 30, 2027, with up to four (4) one- (1)-year renewals with mutual agreement between the SFA and the Contractor.

B. The Contractor shall operate in conformance with the SFA's Permanent Agreement/Policy Statement with DPI for the selected program(s) listed below. Contractor shall provide sufficient services to operate these program(s) in accordance with CNP and as required by this RFP and subsequent Awarded Contract.

The programs listed below shall be the same as those listed in Attachment M SFA Site/Building Listing—Services to Be Provided.

Additional program(s) may be considered in the future. The SFA will conduct a cost analysis to rule out the possibility of material changes to the Awarded Contract. If a material change is ruled out, the SFA will issue an addendum with proposed cost and fee structures for the new program for the Contractor to either accept or reject. The Contractor may negotiate a higher cost and fee structure, but any accepted cost and fee structure by the SFA must be below the range used in the cost analysis to negate the possibility of a material change to the Awarded Contract.

<input checked="" type="checkbox"/> National School Lunch Program (NSLP)	<input checked="" type="checkbox"/> A la carte Sales
<input checked="" type="checkbox"/> School Breakfast Program (SBP)	<input checked="" type="checkbox"/> Adult Meals
<input type="checkbox"/> After School Care Snack Program (ASCSP)	<input checked="" type="checkbox"/> Catering
<input type="checkbox"/> Special Milk Program (SMP)	<input type="checkbox"/> Contract Meals
<input type="checkbox"/> Wisconsin School Day Milk Program (WSDMP)	<input type="checkbox"/> Vending/Concessions
<input checked="" type="checkbox"/> <a href="#">Fresh Fruit and Vegetable Program (FFVP)</a>	<input type="checkbox"/> <a href="#">Child and Adult Care Food Program (CACFP)</a>
<input type="checkbox"/> Wisconsin Elderly Program (WI EN)	<input checked="" type="checkbox"/> <a href="#">Summer Food Service Program (SFSP)</a>

### C. SFA Scope of Work and other SFA specific added terms and conditions additions to the FSMC Contract:

The Lincoln Academy is planning to expand in the 2027-2028 school year with about 372 additional scholars that year, and every year adding additional scholars until we are at full capacity in the 2030-2031 school year with a total of 1566 scholars.

D. The Contractor shall have the exclusive right to operate the above program(s) at the sites specified by the SFA in Excel Workbook Attachment L SFA Site/Building Listing—General Data.

E. The Contractor shall be an independent contractor and not an employee of the SFA. The employees of the Contractor are not employees of the SFA.

F. The food service provided by the Contractor shall be operated and maintained as a benefit to the SFA's students, faculty, and staff.

G. All income accrued as a result of payments by students and adults, federal reimbursements, and all other income from sources such as donations, special functions, catering, a la carte sales, vending, concessions, contract meals, grants, and loans shall be deposited daily in the SFA's nonprofit food service account. Any profit or guaranteed return shall remain in the SFA's nonprofit food service account. The SFA and the Contractor agrees that the Awarded Contract is neither a *cost-plus-a-percentage-of-income* nor a *cost-plus-a-percentage-of-cost* contract as describe under United States Department of Agriculture (USDA) Regulations 7 CFR 210.16(c) and 2 CFR 200; these types of contracts are not allowable.

H. The SFA shall be legally responsible for the conduct of the food service program and shall supervise the food service operations in such manner as will ensure compliance with the rules and regulations of the state agency and USDA regarding each of the CNPs covered by this contract.

## Payment and Costs

A. The SFA shall retain control of the CNP nonprofit food service account and overall financial responsibility for the CNP.

B. The SFA shall establish all selling prices, including price adjustments, for all reimbursable and non-reimbursable meals/milk and non-program foods sales (including a la carte, vending, adult meals, contract meals, and catering) prices. (Exception: Non-pricing programs need not establish a selling price for reimbursable meals.)

C. The Contractor shall provide additional food services such as banquets, parties, and refreshments for meetings as requested by the SFA. The SFA may request additional food service programs from the Contractor; however, the SFA reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after the SFA's regularly scheduled lunch or breakfast periods, provided such is not prohibited by federal program regulations.

D. The fixed price per meal equivalent rate for nonprogram foods sales (including a la carte, vending, adult meals, contract meals, and catering) will be determined by the following.

### **Computation of Meal Equivalency Rate (MER) for Nonprogram Foods Sales**

The computation below for MER must be used at a minimum in computing the MER, but the SFA should establish the rate based on other district criteria in efforts to promote reimbursable meals over nonprogram Foods sales.

<b>Year One Nonprogram Food Meal Equivalency Rate per Meal</b>	
1. Current Year per meal Federal Free Rate of Reimbursement .....	\$4.7100
2. Current Year per meal State Match of Reimbursement .....	\$0.0520
3. Current Year per meal Value of USDA Entitlement USDA Foods.....	\$0.3050
<b>Total Nonprogram Food Meal Equivalency Rate Sum of 1+2+3.....</b>	<b>\$5.0670</b>

If the Awarded Contract is renewed, the MER will need to be recomputed with the current year's Federal Free Rate of Reimbursement, State Match Reimbursement Rate, and Value of USDA Foods Entitlement.

E. The Contractor shall cooperate with the SFA in promoting nutrition education and coordinating the SFA's food service with classroom instruction.

F. The Contractor shall comply with the rules, regulations, policies, and instructions of the State of Wisconsin, DPI and USDA and any additions or amendments thereto, including USDA regulations 7 CFR Parts 210, 215 (SMP), 220, 225 (SFSP), 226 (CACFP), 245, 250, and 2 CFR 200, if applicable.

G. **Allowable Costs:** In accordance with applicable federal regulations, for all reimbursable costs or purchases (i.e., equipment, kitchen remodeling, or other investment costs) made by or on behalf of SFA outside the fixed meal price.

1. Allowable costs will be paid from the nonprofit school food service account to the Contractor net of all discounts, rebates, and other applicable credits accruing to or received by the Contractor or any assignee under the Awarded Contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA.

2. The Contractor must separately identify each cost submitted for payment to the SFA.

a. The amount of that cost that is allowable (i.e., can be paid from the nonprofit school food service account) and the amount that is unallowable (i.e., cannot be paid from the nonprofit food service account); or

b. The Contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records management process have been established that maintain the visibility and transparency of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification.

3. The Contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars.

4. The Contractor must identify the amount of each discount, rebate, and other applicable credit on bills and invoices presented to the SFA for payment and individually identify the amount as a discount, rebate, or in case of other applicable credits, the nature of the credit. The SFA may permit the Contractor to report this information on a less frequent basis than monthly, but no less frequent than annually. The Contractor must identify the method by which it will report discounts, rebates, and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract.

5. The Contractor must maintain documentation of costs and discounts, rebates, and other applicable credits and must furnish such documentation upon request to the SFA, DPI, or USDA.
6. No expenditure may be made from the nonprofit school food service account that permits or results in the Contractor receiving payments in excess of the Contractor's actual, net allowable costs.
7. The Contractor shall provide staff to manage the SFA's food service operations and supervise all employees.

#### **H. Invoicing and Payment Terms**

The SFA strives to maintain processes that ensure prompt payment for goods and services received. Upon receipt of an invoice and resolution of all credits, the SFA will make payments within 30 business days and in accordance with the terms of the Awarded Contract. All statements received for payment will be processed in compliance with SFA's policy. Additional invoicing and payment terms are as follows:

1. The Contractor shall invoice SFA at the end of each month. No advance payments are allowed to be paid to the Selected FSMC.
2. Only fixed meal price(s) described in this RFP and resulting Awarded Contract will be paid.
3. Invoice must be net all rebates, discounts, and credits, including any crediting of USDA Foods.
4. Invoice shall provide enough detail to allow SFA to determine allowable costs and determine that crediting of USDA Foods has been deducted.
5. All fixed meal price(s) invoiced to the SFA shall contain sufficient details to ensure contract fixed meal price(s) are being adhered to. This level of invoicing detail is important to support transparency in the payments to the Contractor by the SFA and requests made by internal SFA staff, state, and federal auditors including possible open records requests. The Contractor cannot claim any reimbursable costs invoiced to SFA are proprietary.
6. SFA reserves the right to request additional details for any item on an invoice which groups more than one item together for payment.
7. The SFA shall make payments within 30 business days of the invoiced date.
8. Upon termination of the Awarded Contract, all outstanding amounts shall immediately become due and payable.

#### **I. Fixed Meal Price(s) and Reimbursable Cost Requirements**

**Fixed Price Contract Requirements:** The Contractor's proposed fixed meal price(s) shall include but is not limited to administration of all services identified in the RFP and Contractor's administrative costs and profit allocable to the Awarded Contract.

**Reimbursable Cost Requirements:** Reimbursable costs when using a fixed meal price contract are purchases made on behalf of the SFA by the Contractor for products and services not included in the fixed meal price or other fixed management/administrative fees. Furthermore, a reimbursable cost means a purchase made by or on behalf of the SFA, which provides for payment of incurred costs to the allowable extent prescribed in the Awarded Contract. For the purposes of the RFP and resulting Awarded Contract, all prices invoiced to the SFA for reimbursement shall be priced as pass-through prices invoiced to the Contractor from any sources such as a manufacturer, supplier, or distributor. The Contractor shall not markup reimbursable costs invoiced to SFA for any reason. Furthermore, the Contractor must pass-through all credits, rebates, and discounts received by the Contractor as a result of purchases on behalf of the SFA. Upon request, Contractor shall provide SFA or government agency procurement and purchasing records such as copies of its invoices for purchases made on behalf of the SFA. Access to these records will be limited to confirmation of product prices, Awarded Contract adherence, confirmation of required federal and state terms and conditions in Awarded Contracts used for SFA purchases, and determination of all credits, rebates, and discounts were properly passed through to the SFA's nonprofit food service account.

#### **J. Renewal of Awarded Contract—Fixed Meal Price(s)**

In the event of a renewal of the Awarded Contract, the Fixed Meal Price(s) shall be adjusted annually by the lower of either a cap of three (3) percent or a percentage equal to the minimum percentage increase in the Consumer Price Index ("CPI") Food Away From Home, Midwest Region, for the month of December of the current contracted School Year.

#### **K. Substitutions**

The Contractor shall make substitutions in the food components of the meal pattern for students with disabilities when their disability restricts their diet as stated in the students' Individual Educational Plans (IEPs) or 504 Plans and those nondisabled students who are unable to consume regular meals because of medical or other special dietary needs. Substitutions shall be made on a case-by-case basis when supported by a medical statement of the need for substitutes as prescribed by a State Licensed Healthcare Professionals that includes recommended alternative foods, unless otherwise exempted by USDA. Such a statement shall be signed by a recognized medical authority. There will be no additional charge to the student for such substitutions.

#### L. Site Operational Dates

The SFA will make the final determination of the opening and closing dates of all sites, if applicable.

## Designation of Program Expenses

- A. The Contractor will be responsible for the expenses as checked under Column I. The Contractor shall be responsible for negotiating/ paying all employee fringe benefits, employee expenses, and accrued vacation and sick pay for staff on their payroll.
- B. The SFA shall pay those expenses as checked under Column II.

Description	Column I (Contractor)	Column II (SFA)
<b>Labor</b>		
Managers and/or Supervisors	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Full and Part-time Workers	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Monitors	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Employee Benefits</b>		
Unemployment Insurance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Medical Insurance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dental Insurance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vision Insurance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Longevity or Annuity	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Life Insurance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Retirement Plans	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FICA	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Workers Compensation	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Labor Relations	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Uniforms	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Processing and Payment of Payroll	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Food</b>		
Commercial Foods	<input checked="" type="checkbox"/>	<input type="checkbox"/>
USDA Foods		
DPI Handling and Processing Charges	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Direct Diversion Charges	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Commercial Distribution Charges	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Other Expenses</b>		
Accounting		
Bank Charges	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Data Processing	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Recordkeeping	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Processing and Payment of Invoices	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Description	Column I (Contractor)	Column II (SFA)
Equipment – Major		
Original Purchase	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Routine Maintenance	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Major Repairs	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Replacement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Equipment – Expendable (e.g., trays, tableware, glassware, utensils)		
Original Purchase	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Replacement	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cleaning/Janitorial Supplies	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Insurance		
Liability Insurance	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Insurance on Supplies/Inventory	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Laundry and Linen	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Office Materials	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paper/Disposable Supplies	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pest Control	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Postage	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Printing	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Product Testing	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Promotional Materials	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Taxes and License	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Telephone		
Local	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Long Distance	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Medium of Exchange for Point of Service Counts	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Training	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Transportation of Meals	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Trash Removal		
From Kitchen	<input checked="" type="checkbox"/>	<input type="checkbox"/>
From School Premises	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Travel		
Required	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Requested	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Utilities	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Vehicles	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## Standard Terms and Conditions

Management functions which SFAs may not contract out under any circumstance include claim submission, monitoring, corrective action, and preparation of application materials.

### A. Signature Authority

The SFA shall retain signature authority for the application/agreement, free and reduced-price policy statement, and programs indicated in Section I, Item B on page 9 and the monthly claim for reimbursement. (Reference 7 CFR 210.9(a) and (b) and 7 CFR 210.16(a)(5))

## B. Free and Reduced-Price Meals Policy

1. The SFA shall be responsible for the establishment and maintenance of the free and reduced-price meals eligibility roster.
2. The Contractor shall implement an *accurate point of service* count using the counting system submitted by the SFA in its application to participate in the CNP and reviewed by DPI in the annual contract between the SFA and DPI for the programs listed in Section I, Item B on page 10, as required under USDA regulations. Such a counting system must eliminate the potential for the overt identification of free and reduced-price eligible students under USDA Regulation 7 CFR 245.8.
3. The SFA shall be responsible for the development and distribution of the parent letter, and Application for Free and Reduced Price Meals, Direct Certification and determination of eligibility for free or reduced-price meals. The Contractor may act as an agent for the SFA related to these responsibilities.
4. The SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free or reduced-price meals.

## C. USDA Foods

1. Any USDA Foods received (when the food arrives at the school kitchen, SFA storage facility, or Contractor storage facility in either raw form or in processed end products) by the SFA and made available to the Contractor must accrue solely to the benefit of the SFA's nonprofit school food service and SFSP programs, if applicable, and shall be fully utilized therein. The Contractor shall have records available to substantiate that the full value of all USDA Foods is used solely for the benefit of the SFA.

Year-end reconciliation shall be conducted by the SFA to ensure and verify correct and proper credit has been received for the full value of all USDA Foods received by the Contractor during the fiscal year. The SFA reserves the right to conduct USDA donated food credit audits throughout the year to ensure compliance with federal regulations 7 CFR 210 and 7 CFR 250.

2. The SFA shall retain title to all USDA Foods and the Contractor will conduct all activities relating to USDA Foods for which it is responsible in accordance with 7 CFR Parts 210, 220, 225, 226, and 250 as applicable.
3. Contractor is prohibited from entering into any processing contracts utilizing USDA Foods on behalf of the SFA. Contractor agrees that any procurement and/or utilization of end products by Contractor on behalf of the SFA will be in compliance with the requirements in subpart C of 7 CFR Part 250 and with the provisions of SFA's processing agreements.
4. USDA Foods allocated to the SFA will be delivered to and utilized by the Contractor equitably for lunches served to students at the SFA. The SFA's monthly USDA Foods handling charges [including storage, delivery (if applicable), administration, and processing fees (if applicable)] will be deducted by DPI from the SFA's monthly federal reimbursement. The SFA's monthly USDA Foods handling charges are not reimbursable costs to the Contractor because they are charged directly to the SFA.
5. Based on actual bulk USDA Foods received, it may be necessary for the Contractor to make adjustments to the SFA at the end of the school year. The SFA is responsible for assuring adjustments are made. The SFA must receive all discounts or rebates for USDA Foods purchases made on its behalf. All refunds received from processors must be retained by the nonprofit SFA account.

The Contractor must credit the SFA for the value all USDA Foods received for use in the SFA's meal service in the school year or fiscal year (including both entitlement and bonus foods) and include the value of USDA Foods contained in processed end products, in accordance with the contingencies in 7 CFR 250.51(a).

The Contractor shall provide the method and frequency by which crediting will occur, and the means of documentation to be utilized to verify that the value of all USDA Foods has been credited.

The Contractor shall use the USDA Foods values and handling fees as posted on DPI's USDA Foods website including the value and handling fees of USDA bonus foods.

The Contractor shall be responsible for activities related to USDA Foods in accordance with 7 CFR 250.50(d) and must ensure that such activities are performed in accordance with the applicable requirements in 7 CFR part 250.

The Contractor will use all USDA Foods ground beef and ground pork products, and all processed end products, without substitution, in the SFA's food service.

The Contractor will use all other USDA Foods or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the USDA Foods, in the SFA's food service.

The procurement of processed end products on behalf of the SFA, as applicable, will ensure compliance with the requirements in subpart C of 7 CFR part 250 and with the provisions of distributing or SFA processing agreements, and will ensure crediting of the SFA for the value of USDA Foods contained in such end products at the processing agreement value.

The Contractor will not, itself, enter into the processing agreement with the processor required in subpart C of 7 CFR part 250.

The Contractor will comply with the storage and inventory requirements for USDA Foods.

The distributing agency, sub distributing agency, SFA, the Comptroller General, the USDA, or their duly authorized representatives, may perform on-site reviews of the Contractor's food service operation, including the review of records, to ensure compliance with the requirements for the management and use of USDA Foods.

The Contractor will maintain records to document its compliance with requirements relating to USDA Foods, in accordance with 7 CFR 250.54(b).

Extensions or renewals of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to USDA Foods.

The Contractor will ensure that its system of inventory management will not result in the SFA being charged for USDA Foods.

**In support of the activities and requirements described in this section (USDA Foods) of the RFP and subsequent Awarded Contract, the SFA, by checking this box is acknowledging and authorizing the Contractor the following:**

**Direct Diversion Agreement and/or Commercial Distribution of USDA Foods:**

The Contractor is allowed to sign the Direct Diversion Agreement and/or Commercial Distribution Agreement on behalf of the SFA in DPI's USDA Foods Distributing Program (FDP) system when setting up the SFA for USDA Foods, entering/submitting USDA Foods survey orders, and reviewing order management details in the FDP system.

Furthermore, the SFA, by checking this box, is acknowledging it has read and understands the terms, conditions, and requirements of the Direct Diversion Agreement and/or Commercial Distribution Agreement. The SFA cannot delegate its responsibility for oversight and compliance with the USDA Foods Program or other State or Federal responsibilities as it relates to Child Nutrition Program obligations and responsibilities.

6. The Contractor shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA Foods.

7. The Contractor shall accept and use USDA Foods in as large quantities as may be efficiently utilized in the SFA's nonprofit food service, subject to approval of the SFA. The SFA shall consult with the Contractor in the selection of USDA Foods; however, the final determination as to the acceptance of USDA Foods must be made by the SFA.

8. The Contractor shall account for all USDA Foods separately from purchased foods. The Contractor is required to maintain accurate and complete records with respect to the receipt, use/ disposition, storage, and inventory of USDA Foods. Failure by the Contractor to maintain the required records under this contract shall be considered *prima facie* evidence of improper distribution or loss of USDA Foods.

9. Since the SFA is using the Contractor's distributor for the delivery of its USDA Foods, the SFA shall enter into a separate agreement with Contractor's distributor as required by the "Agreement for School Food Authorities Participating in the USDA Foods Program and Contract with Commercial Distributor" entered into and between the SFA and DPI, which states the following in section "The School Food Authority Agrees to", subsection 22:

*"If SFA contracts with a Food Service Management Company or a Food Vendor for their meal service, SFA must hold the contract with the Commercial Distributor. Should the SFA no longer contract with the Food Service Management Company or Food Vendor, the SFA must fulfill the contract with the Commercial Distributor."*

A copy of this agreement is located in the USDA Foods online portal: "USDA Foods Program SFA Agreement for Commercial Distribution of USDA Foods in WI".

10. This USDA Foods section shall survive the termination of the Awarded Contract, either by termination with or without cause, when the Awarded Contract is terminated mid school year or when termination occurs and the Contractor's distributor is designated as the commercial distribution of USDA Foods for the handling of SFA's USDA Foods on DPI's USDA Foods online ordering system.

To fully terminate this section of the Awarded Contract the following must accrue:

- a. The Contractor shall provide SFA with records to substantiate that the full value of all USDA Foods, including handling fees, have been received by the SFA.
- b. Year-end reconciliation shall be conducted by the SFA to ensure and verify correct and proper credit has been received for the full value of all USDA Foods received by the FSMC, as well as credit for all applicable handling charges.

**D. Food Safety**

1. The SFA shall comply with food safety inspection requirements as prescribed by USDA for its facilities and shall ensure that all state and local regulations are being met by the Contractor preparing or serving meals at any SFA facility.
2. The Contractor shall maintain state and/or local health certifications for any facility outside the SFA in which it proposes to prepare meals and shall maintain this health certification for the duration of the Awarded Contract as required under USDA Regulations 7 CFR 210.16(c) and shall comply with food safety inspection requirements as prescribed by USDA for its facilities and shall ensure that all state and local regulations are being met in its facilities.
3. The Contractor must have a restaurant license and maintain applicable certification(s) as required by the 2015 Wisconsin Act 46—School Food Safety Bill which states in section 1. 254.71 (1m) of the statute "*no person may conduct, maintain, manage, or operate a school lunchroom that is in a school that is participating in the national school lunch program under 42 USC 1751 to 1769j for which food service is directly provided by the school unless the operator or manager of the lunchroom, or his or her designee, is a certificate holder. For purposes of this subsection, the "operator or manager of the lunchroom" is the individual responsible for the administration of food services for a private school, charter school established under s. 118.40 (2r), or school district. A private school, charter school established under s. 118.40 (2r), or school district complies with the requirements of this subsection if the school or school district has one certificate holder.*"

**E. Meals**

1. The Contractor shall serve meals on such days and at such times as requested by the SFA.
2. The SFA shall retain control of the quality, extent, and general nature of the food service.
3. The Contractor shall offer free, reduced price, and full price reimbursable meals to all eligible children participating in the programs indicated in Section I, Item B on page 10.
4. In order for the Contractor to offer a la carte sales food service, the Contractor must offer free, reduced price, and full price reimbursable meals to all eligible children.
5. The Contractor shall provide meals that meet the National School Lunch Program/School Breakfast Program (NSLP/SBP) Meal Pattern requirements.
6. The Contractor shall promote efforts to increase participation in the CNPs.
7. The Contractor shall provide the specified types of service in the schools/sites listed in the attachment sections of this RFP, which is part of the Awarded Contract.

8. The Contractor shall sell on the premises only those foods and beverages authorized by the SFA and only at the times and places designated by the SFA.

9. No payment will be made to the Contractor for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the SFA for each food component in the meal pattern, or do not otherwise meet the requirements of this RFP.

10. Infant Meals: When applicable, the Contractor shall provide Infant Meals compliant with applicable meals pattern components and other nutritional requirements as described in USDA memorandum, SP 01-2018, titled "Updated Infant and Preschool Meal Patterns in the National School Lunch Program and School Breakfast Program; Questions and Answers" dated October 19, 2017. In summary, for reimbursable Infant Meals serviced on or after October 1, 2017, the updated Child and Adult Care Food Program (CACFP) meal pattern will replace the meal pattern options for SFAs serving infants and/or children aged 1-5 years old and not yet in kindergarten. The CACFP meal pattern applies to meals served to infants, childcare, preschool, and pre-kindergarten students participating in the NSLP and SBP.

#### **F. Books and Records**

1. The Contractor shall maintain such records (supported by invoices, receipts, or other evidence) as the SFA will need to meet monthly and annual reporting responsibilities and shall submit monthly operating statements in a format approved by the SFA no later than the tenth calendar day succeeding the month in which services were rendered. Participation records, including claim information by eligibility category, shall be submitted no later than the fifth working day succeeding the month in which services were rendered. The SFA shall perform edit checks on the participation records provided by the Contractor prior to the preparation and submission of the claim for reimbursement.

2. The Contractor will submit meal count records in a timely manner to facilitate claims submission by SFA no later than the tenth calendar day succeeding the month in which services were rendered. SFA will perform edit checks on the meal count records provided by Contractor prior to the preparation and submission of the claim for reimbursement.

3. The Contractor shall maintain records at the SFA to support all allowable expenses appearing on the monthly operating statement. These records shall be kept in an orderly fashion according to the expense categories.

4. The Contractor shall provide the SFA with a year-end statement.

5. The Contractor will annually provide SFA with information on food costs and revenues for reimbursable meals and for nonprogram foods to determine compliance with program requirements for revenue from nonprogram foods.

6. Books and records of the Contractor pertaining to the Awarded Contract shall be made available, upon demand, in an easily accessible manner for a period of three years after the final claim for reimbursement for the fiscal year to which they pertain. The books and records shall be made available for audit, examination, excerpts, and transcriptions by the SFA, state or federal representatives, or auditors. SFA shall pay the cost of such audits, except when such an audit finds uncredited revenue, or improperly charged costs. Under such circumstances, Contractor shall promptly reimburse SFA for revenue not credited, or costs improperly charged and for the cost of such audit. If audit findings regarding the Contractor's records have not been resolved within the three-year record retention period, the records must be retained beyond the three-year period for as long as required for the resolution of the issues raised by the audit. Reference 7 CFR 210.9(b)(17), and the following record retention and access requirements found in 2 CFR Part 200: Record Retention and Access, 2 CFR §200.333 Retention requirements for records, 2 CFR §200.334, Requests for transfer of records, 2 CFR §200.335 Methods for collection, transmission and storage of information, 2 CFR §200.336 Access to records, and 2 CFR §200.337 Restrictions on public access to records.

7. Upon termination of the contract, Contractor will surrender to SFA all records pertaining to the operation of the food service, including food and non-food inventory records, menus, production records, product invoices, claim documentation and financial reports. The Contractor will not remove state or federal required records from SFA premises upon contract termination.

8. The Contractor shall not remove federally required records from SFA premises.

## G. Employees

1. The SFA employees, including site and area managers as well as any other staff, will be indicated on RFP Workbook Tabs Attachments A and B Labor and Benefits Worksheets.
2. In accordance with this RFP, section IX: *Employees*, subsection A, *Employees retained* by the Contractor's Proposal shall provide a schedule of employees, positions, assigned locations, salaries, and hours to be worked. If applicable, specific locations and assignments will be provided to the SFA two full calendar weeks prior to the commencement of operation.
3. The SFA shall have final approval regarding the hiring of the Contractor's site manager.
4. **Employee Non-Compete Agreements and Clauses:** If the Contractor has a non-compete agreement with the site manager or food service director, this agreement must be disclosed as part of its Proposal. The SFA will not allow any non-compete terms and conditions related to employment to be added to the Awarded Contract. Furthermore, the SFA reserves the right to hire, without penalty, fees, or other obligation, any employee paid directly with funds from the School Non-Profit Food Service Account including but not limited to the food service director in the event the Awarded Contract is terminated or not renewed.
5. The Contractor shall comply with all wage and hours of employment requirements of federal and state laws. The Contractor shall be responsible for supervising and training personnel, including SFA-employed staff. Supervision activities include employee and labor relations, personnel development, and hiring and termination of Contractor management staff, except the site manager. The Contractor shall also be responsible for the hiring and termination of non-management staff who are employees of the Contractor.
6. The Contractor shall provide Workers' Compensation coverage for all its employees.
7. The Contractor shall instruct its employees to abide by the policies, rules, and regulations with respect to use of SFA's premises as established by the SFA and which are furnished in writing to the Contractor.
8. Staffing patterns shall be mutually agreed upon and based on Contractor's proposed staffing pattern in *Attachment B Proposed Operations*—Labor and Benefits Worksheet. Deviations (more or less than staffing pattern) from the proposed staffing pattern will need to be offset by a reduction in affected Fixed Meal Price(s). FSMC operated SFAs will be allowed to operate for 30 days, only, without the designated Food Service Director hours as submitted on *Attachment B Proposed Operations* within the contract. After the 30-day timeframe, there must be a per meal price reduction for a Fixed Price FSMC Contract or a management fee reduction for a Cost Reimbursable FSMC Contract. Any requested changes, increase or decrease, to the staffing pattern will require SFA agreement and DPI approval, if resulting in a proposed change to the Fixed Meal Price(s). Not all requests will be approved
9. **The Contractor must be fully aware USDA will monitor this requirement.**
10. The Contractor shall not be responsible for hiring employees in excess of the number required for efficient operation.
11. The SFA shall provide sanitary toilet and hand washing facilities for the employees of the Contractor. The SFA may request in writing the removal of any employee of the Contractor who violates health requirements or conducts himself or herself in a manner that is detrimental to the well-being of the students, provided such a request is not in violation of any federal, state, or local employment laws.
12. In the event of the removal or suspension of any such employee, the Contractor shall immediately restructure the food service staff without disruption of service.
13. All SFA and/or Contractor personnel assigned to the food service operation in each school shall be instructed in the use of all emergency valves, switches, and fire safety devices in the kitchen and cafeteria areas.
14. The SFA will require the Contractor to perform a criminal background check on any of the Contractor employees that will be working at the SFA and disclose results to the SFA.

## H. Professional Standards for School Nutrition Programs Personnel

1. In accordance with Professional Standards for State and Local School Nutrition Programs Personnel as Required by the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). The final rule, published March 2, 2015, requires a minimum

amount of annual training hours for all school nutrition program directors, managers, and staff. Required training topic areas will vary according to position and job requirements. The Contractor must follow regulations as described in this section of the RFP which govern the professional standards of its employees and/or employees of the SFA working under the terms and conditions of the Awarded Contract. Additional information related to this requirement can be found on the professional standards website at <https://www.fns.usda.gov/cn/professional-standards> and state resources at <https://dpi.wi.gov/school-nutrition/program-requirements/professional-standards>.

2. Contractor must provide documentation to show compliance with all annual training standards. This documentation shall include at a minimum training hours and topics completed by FSMC and SFA staff.

3. Contractor must provide evidence that the FSMC and SFA staff have the knowledge and skill to supply safe and nutritious meals that meet meal requirements.

4. Contractor must provide documentation to show compliance with all *School Nutrition Program Director Professional Standards*. This documentation shall provide evidence such as a diploma or resume, all of which must be verified, showing compliance with all requirements, as applicable, listed below in the *Summary of School Nutrition Program Director Professional Standards by Local Educational Agency (LEA) Size*. **All directors hired on or after July 1, 2015, are subject to the education and experience requirements.**

**I. Monitoring**

1. The SFA shall monitor the food service operation of the Contractor through periodic on-site SFA school building visits to ensure that the food service is in conformance with USDA program regulations. (Reference 7 CFR 210.16) Further, if there is more than one school site, there is an additional requirement that the SFA conduct an on-site review of the counting and claiming system no later than February 1 of each year as required by 7 CFR 210.8.

2. The records necessary for the SFA to complete the required monitoring activities must be maintained by the Contractor under this contract and must be made available to the Auditor General, USDA, the state agency, and the SFA upon request for the purpose of auditing, examination, and review.

**J. Use of Advisory Group/Menus**

1. The SFA shall establish, and the Contractor shall participate in the formation, establishment, and periodic meetings of the SFA advisory board composed of students, teachers, and parents to assist in menu planning. (Reference 7 CFR 210.16(a)(8))

2. Check the appropriate box below.

The Contractor will complete menu cycles for all programs.  
 The SFA will complete menu cycles for all programs.

3. The Contractor must comply with the 21-day menu cycle and specifications (Attachment N *Minimum Food Specifications* and Attachment O *Sample 21-day Cycle Lunch Menu*) developed for the NSLP unless the SFA opts for the FSMC to complete the 21-day cycle menu. The Contractor must also comply with the menu patterns and cycles as specified by the SFA for the SBP (Attachment P *Sample Breakfast Menu*), ASCSP (Attachment Q *Sample Snack Menu*). Any changes made by the Contractor after the first initial menu cycle for the NSLP, SBP, ASCSP, SFSP, and/or CACFP may be made only with the approval of the SFA. The SFA shall approve the menus no later than two weeks prior to service. (Reference 7 CFR 210.16(b)(1))

**K. Use of Facilities, Inventory, Equipment, and Storage**

1. The SFA will make available, without any cost or charge, to the Contractor, area(s) of the premises agreeable to both parties in which the Contractor shall render its services.

2. The SFA may request of the Contractor additional food service programs; however, the SFA reserves the right, at its sole discretion, to sell or dispense food or beverages, provided such use does not interfere with the operation of the CNP. Any additional food service that is a substantive change to the value of the contract which involves a total cost of \$150,000 or more must be reviewed by DPI and be competitively procured.

3. Prior to the start of initial operations, the Contractor and the SFA will take a beginning inventory of all usable food, supplies, and USDA Foods on the premises. The Contractor will utilize such inventory at a value determined by

invoice. On termination of the contract, the Contractor and the SFA will take a similar inventory. If the value of the ending inventory is greater than the beginning inventory, the difference shall be added to the Contractor's Cost of Business and if lesser, the difference shall be subtracted from the Contractor's Cost of Business. It is understood that all usable food, supplies, and USDA Foods on the SFA's premises are the property of the SFA and not on loan from the Contractor. The Contractor shall **never** remove any usable food, supplies, or USDA Foods from SFA premises, regardless of ownership, without authorization from SFA. Any missing usable food, supplies, or USDA Foods will be deducted from the Contractor invoice. Any remaining balance will be billed to the Contractor. Supplies include but are not limited to the following: manuals of any kind, menus, small wares, equipment, and office supplies of any kind, furniture, and records of any kind.

4. In section II, "Designation of Program Expenses to be completed by SFA", part B of this RFP, if SFA designates itself under column II (SFA) as the responsible party for described item; "Equipment—Expendable" (e.g., trays, tableware, glassware, utensils, silverware, chinaware, kitchen utensils, and other operating items necessary for the food service operation), the SFA will replace expendable equipment and replace, repair, and maintain nonexpendable equipment **except** when damages result from the use of less than reasonable care by the employees of the Contractor. Otherwise, if the Contractor is designated in column I (Contractor) with this responsibility, the Contractor shall maintain this inventory at the inventory level as specified by the SFA.

5. The Contractor shall maintain the inventory of silverware, chinaware, kitchen utensils, and other operating items necessary for the food service operation and at the inventory level as specified by the SFA.

6. The Contractor shall maintain adequate storage procedures, inventory, and control of USDA Foods in conformance with the SFA's agreement with the DPI.

7. The Contractor shall provide the SFA with one set of keys for all food service areas secured with locks.

8. The SFA shall furnish and install any equipment and/or make any structural changes needed to comply with federal, state, or local laws, ordinances, rules, and regulations.

9. The SFA shall be responsible for any losses, including USDA Foods, which may arise due to equipment malfunction or loss of electrical power not within the control of the Contractor.

10. All food preparation and serving equipment owned by the SFA shall remain on the premises of the SFA.

11. The SFA shall not be responsible for loss or damage to equipment owned by the Contractor and located on the SFA premises.

12. The Contractor shall notify the SFA of any equipment belonging to the Contractor on the SFA premises within 10 days of its placement on SFA premises.

13. The SFA shall have access, with or without notice, to all of the SFA's facilities used by the Contractor for the purposes of inspection and audit.

14. The Contractor shall not use the SFA's facilities to produce food, meals, or services for other organizations outside of the FSMC contract. The Contractor shall surrender to the SFA, upon termination of the contract, all equipment and furnishings in good repair and condition, reasonable wear and tear expected.

## L. Purchases

1. If the Contractor is procuring goods or services which are being charged to the SFA under the Awarded Contract (e.g., equipment), the Contractor is acting as an agent for the SFA and must follow the same procurement rules under which the SFA must operate and that the Contractor may not serve as a vendor. Any rebates, discounts, or commissions associated in any manner with purchases must be returned to the nonprofit school food service account. Only net costs may be charged to the SFA.

2. Any purchase of food must meet the specification listed in Attachment N *Minimum Food Specifications*.

3. **Written Procurement Procedures:** Contractor must follow written procurement procedures established by the SFA when making purchases on behalf of the SFA. These written procedures must be compliant with federal, state, and local government procurement rules and regulations. Written procurement procedures will need to be kept on file at the SFA. These written procurement procedures will need to be made available during SFA's procurement review along with all procurement records.

When making purchases on behalf of the SFA, the Contractor may substitute its own procurement procedures. In this event, the Contractor must provide a copy of its procurement procedures to the SFA for approval by the SFA and procurement record requirements. Contractor procurement procedures when used must be compliant with SFA's procurement procedures as well as compliant with federal, state, and local government procurement rules and regulations.

**M. Sanitation**

1. The Contractor shall place garbage and trash in containers in designated areas as specified by the SFA.
2. The SFA shall remove all garbage and trash from the designated areas.
3. The Contractor shall clean the kitchen and dining room areas as indicated in Attachment L *SFA Site/Building Listing General Data*.
4. The Contractor shall operate and care for all equipment and food service areas in a clean, safe, and healthy condition in accordance with the standards acceptable to the SFA and comply with all applicable laws, ordinances, regulations, and rules of federal, state, and local authorities, including laws related to recycling.
5. The SFA shall clean ducts and hoods above the filter line.
6. The Contractor shall comply with all local and state sanitation requirements in the preparation of food.

**N. Licenses, Fees, and Taxes**

1. The Contractor shall be responsible for paying all applicable taxes and fees, including (but not limited to) excise tax, state and local income tax, payroll and withholding taxes, for Contractor employees; the Contractor shall hold the SFA harmless for all claims arising from payment of such taxes and fees.
2. The Contractor shall obtain and post all licenses and permits as required by federal, state, and/or local law.
3. The Contractor shall comply with all SFA building rules and regulations.

**O. Nondiscrimination**

Both the SFA and the Contractor agree to the following requirements as outlined in the USDA Nondiscrimination Statement below:

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](mailto:program.intake@usda.gov)

This institution is an equal opportunity provider.

**P. Emergency Closing**

1. The SFA shall notify the Contractor of any interruption in the utility service of which it has knowledge.
2. The SFA shall notify the Contractor of any delay at the beginning of the school day or the closing of school(s) due to snow or other emergency conditions.

**Q. Terms for Termination of the Awarded Contract**

SFA or Contractor may terminate the whole or any part of the Awarded Contract, by written notice from the other party, in any one of the following circumstances:

1. **Termination without Cause.** Either party may terminate the Awarded Contract without cause upon ninety (90) days written notice mailed or personally delivered to the other party.
2. **Termination with Cause.** Either party may terminate the Awarded Contract for cause upon sixty (60) days written notice mailed or personally delivered to the other party (Reference 7 CFR 210.16(d)) except for those conditions covered in subsection "v".

**R. Conditions for cause are as follows:**

- a. If Contractor fails to perform any duties or obligations within the time specified herein or any written extension thereof granted by SFA.
- b. If Contractor fails to make progress as to endanger performance of the Awarded Contract in accordance with its terms.
- c. If either party fails to comply with any of the material terms and conditions of the Awarded Contract. Such termination shall become effective if the notified party does not cure such failure within a period of ten (10) days after written notice of default.
- d. If either party is declared insolvent or bankrupt.
- e. Notwithstanding the provisions listed above, the SFA may *immediately terminate* the Awarded Contract with written notice to the Contractor for breach/neglect as determined by the SFA when considering such items as:
  - 1) failure to maintain and enforce required standards of sanitation,
  - 2) failure to maintain proper insurance coverage as outlined by the Awarded Contract,
  - 3) failure to provide required periodic information/statements, or
  - 4) failure to maintain quality of service at a level satisfactory to the SFA.

The SFA is the responsible authority without recourse to USDA or the state agency to the settlement and satisfaction of all contractual and administrative issues arising from the transaction. Such authority includes, but is not limited to source evaluation, protests, disputes, claims, or other matters of contractual nature. Matters concerning violations of the law will be referred to local, state, or federal authority that has proper jurisdiction.

Upon termination, SFA may procure, upon such terms as it shall deem appropriate, services like those terminated. Contractor shall continue the performance of the Awarded Contract to the extent not terminated.

Neither the Contractor nor the SFA shall be responsible for any losses resulting if the fulfillment of the terms of the Awarded Contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, flood, acts of God, or for any acts not within the control of the Contractor or the SFA, respectively, and which, by the exercise of due diligence, it was unable to prevent.

## S. Nonperformance by Contractor

1. In the event of the Contractor's nonperformance under this Awarded Contract and/or the violation or breach of the Awarded Contract terms, the SFA shall have the right to pursue all administrative, contractual, and legal remedies against the Contractor and shall have the right to seek all sanctions and penalties as may be appropriate.

2. The Contractor shall pay the SFA the full amount of any meal overclaims or meal pattern violations which are attributable to the Contractor's negligence, including those overclaims based on reviews or audit findings that occurred during the effective dates of original and renewal of the Awarded Contracts.

## T. Certification

1. The Contractor shall comply with the mandatory standards and policies relating to energy efficiency that are contained in the state energy plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163, 89 Stat. 871).

2. The Contractor 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 Department of Labor regulation, 29 CFR Part 5. Under Section 103 of the Act, the Contractor shall be required to compute the wages of every laborer on the basis of a standard workday of eight hours, and a standard work week of 40 hours. Work in excess of the standard workday or standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of eight hours on any calendar day or 40 hours in any work week.

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

4. The Contractor shall comply with the following civil rights laws, as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-1, Civil Rights Compliance and Enforcement in School Nutrition Programs.

5. **Buy American:** Contractor shall comply with the Buy American Provision for contracts that involve the purchase of applicable goods and services sold through Child Nutrition Programs the SFA participates, USDA Regulation 7 CFR Part 250. The Buy American provision requirements as stated in section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a provision, Section 12(n) to the National School Lunch Act (NSLA) (42 USC 1760(n)), requiring SFAs to purchase, to the maximum extent practicable, domestic commodities or products.

This Buy American provision supports the mission of the Child Nutrition Programs, which is to serve children nutritious meals and support American agriculture. The Buy American provision applies to SFAs located in the 48 contiguous United States and is one of the procurement standards these SFAs must comply with when purchasing commercial food products served in the school meals programs.

Section 12(n) of the NSLA defines:

"Domestic commodity or product" as an agricultural commodity that is produced in the U.S. and a food product that is processed in the U.S. substantially using agricultural commodities produced in the U.S. Report language accompanying the legislation noted that

"substantially" means over 51% from American products." Therefore, over 51 percent of the final processed product (by weight or volume) must consist of agricultural commodities that were grown domestically.

Thus, for foods that are unprocessed, agricultural commodities must be domestic, and for foods that are processed, they must be processed domestically using domestic agricultural food components that are comprised of over 51 percent domestically grown items, by weight or volume as determined by the SFA.

For the Awarded Contract the requirement means that applicable goods and services procured on behalf of or by SFAs for use in the Child Nutrition Programs using nonprofit food service account funds, the product's food component is considered the agricultural commodity. FNS defines food component as one of the food groups, which comprises reimbursable meals.

The food components are meats/meat alternates, grains, vegetables, fruits, and fluid milk. Refer to 7 CFR 210.2 for full definitions. Any product processed by a winning vendor must contain over 51 percent of the product's food component, by weight or volume, from U.S. origin. This definition of domestic product serves both the needs of schools and American agriculture. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are considered domestic products under this provision as these products are from the territories of the U.S.

The Contractor by signing the Contractor's Proposal is certifying meals sold through the SFA's nutrition program are prepared and processed in the U.S. and contains over 51 percent of its agricultural food component, by weight or volume, from the U.S.

If requested by the SFA, state, or federal government, the Contractor will supply evidence supporting compliance with the Buy American provision. Additional clarification regarding the Buy American Provision can be found in *USDA Memo Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program* SP 38-2017 dated 06/30/17.

In the event a domestic product is not available, the Contractor must.

- Requests consideration from SFA (written documentation required) on the use of a domestic alternative foods before approving an exception.
- Document the use of a non-domestic food exception when competition reveals the cost of domestic food is significantly higher than non-domestic food.
- Document the use of non-domestic alternative food due to the domestic food not produced or manufactured in sufficient and reasonable available quantities of satisfactory quality.

6. The Contractor shall sign Attachment S *Independent Price Determination Certificate* which is attached as an addendum to the Contractor's Proposal, and which is incorporated herein by reference and made a part of the Awarded Contract.

7. The Contractor shall sign Attachment T Suspension and Disbarment Certification which is attached as an addendum to the Contractor's Proposal, and which is incorporated and made a part of this contract. This is required by 2 CFR 200, Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, subsection H, by 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 exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

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

9. The Contractor shall sign Attachment U Lobbying Certification which was attached as an addendum to the Contractor's Proposal, and which is incorporated and made a part of the Awarded Contract. If applicable, the Contractor has also completed and submitted Attachment V Standard Form-LLL, Disclosure of Lobbying Activities or will complete and submit as required in accordance with its instructions included in Attachment W. In summary this requirement found in 2 CFR 200, Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, subsection I, the Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#))—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must

also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

10. The Contractor and SFA shall comply with both the 2 CFR § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment, and 2 CFR § 200.322 Domestic preferences for procurements as applicable to the contracted services covered by the Awarded Contract.

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

12. The federal Supplemental Nutrition Assistance Program (SNAP) provides benefits to low-income households to buy food. In Wisconsin, the program is referred to as FoodShare Wisconsin, or simply "FoodShare".

13. USDA Regulation 7 CFR Part 16, Equal Opportunity for Religious Organizations, implements executive branch policy, that within the framework of constitutional church-state guidelines, religiously affiliated (or "faith-base") organizations should be able to compete on an equal footing with other organizations for USDA assistance.

14. The Contractor shall comply with all other pertinent state and federal laws.

15. **Recovered Materials:** To the maximum extent practicable, the Contractor will comply with 2 CFR §200.323, Procurement of Recovered Materials, which states the SFA and Contractor in performance of the Awarded contract, must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

16. The Contractor shall comply with 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. Compliance with this regulation requires Contractor and SFA to do the following with contracting:

- a. The Contractor and SFA must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- b. Affirmative steps must include:
  - 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
  - 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
  - 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
  - 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
  - 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

17. The Contractor and SFA agree to comply with 2 CFR 200, Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, subsection F, Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

18. The Contractor and SFA agree to comply with 2 CFR 200, Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, subsection (E) Contract Work Hours and Safety Standards Act ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

## **19. Assurance of Civil Rights Compliance**

The State agency 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 implementation 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 State agency 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 State agency shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the applicant, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA. By signing this application, the person or persons whose signatures appear in the signature section of this application are authorized to agree to this assurance on behalf of the applicant's organization for which this assurance section is binding.

#### **U. Miscellaneous**

1. The Contractor shall comply with the provisions of its submitted proposal specifications, which are hereby in all respects made a part of the Awarded Contract including all agreed upon negotiations between SFA and Contractor which have been reviewed by DPI.
2. No provision of the Awarded Contract shall be assigned or subcontracted without prior written consent of the SFA.
3. No waiver of any default shall be construed to be or constitute a waiver of any subsequent claim.
4. Any silence, absence, or omission from the contract specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only materials (e.g., food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.
5. Payments on any claim shall not preclude the SFA from making a claim for adjustment on any item found not to have been in accordance with the provisions of the Awarded Contract.
6. The SFA shall be responsible for ensuring the resolution of program review and audit findings.
7. The Awarded Contract is subject to review by the DPI.

#### **V. Insurance**

1. The Contractor shall maintain the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the state of Wisconsin. A Certificate of Insurance of the Contractor's insurance coverage indicating these amounts must be submitted at the time of the Awarded Contract. The information below must be completed by the SFA.
  2. Comprehensive General Liability—includes coverage for:
    - i.Premises—Operations
    - ii.Products—Completed Operations
    - iii.Contractual Insurance
    - iv.Broad Form Property Damage
    - v.Independent Contractors
    - vi.Personal Injury
3. \$ 1,000,000 Combined Single Limit.
4. Automobile Liability: \$ 1,000,000 Combined Single Unit.
5. Workers' Compensation-Statutory; Employer's Liability: As required by state regulations.
6. Excess Umbrella Liability: \$ 5,000,000 Combined Single Unit.

6. The SFA shall be named as additional insured on General Liability, Automobile, and Excess Umbrella. The Contractor must provide a waiver of subrogation in favor of the SFA for General Liability, Automobile, Workers' Compensation, and Excess Umbrella.

7. The Contractor shall direct its insurance company to provide for notice to the SFA of cancellation of insurance policies 30 days before such cancellation is to take effect. SFA may ask for proof of such directions in the form letter from the insurance company.

#### W. Acquisition of Equipment, Marketing Materials, or Supplies for the Food Service Program

1. The following provisions will apply to Contractor acquisition of equipment, marketing materials, or other supplies for the food service program:

2. The Contractor may purchase equipment, marketing materials, or other supplies for the food service program in an amount not to exceed \$ 500. **In a Fixed Price Contract, this amount must be included in the per meal fixed price. (Due to this requirement, it is recommended that the purchase threshold does not exceed \$500.00 for a Fixed Price Contract.)** The Contractor shall be subject to the same procurement requirements to which the SFA is subject in any procurement action. The Contractor may not serve as a vendor or supplier when procuring on behalf of the SFA's food service. The SFA shall reimburse the Contractor its actual costs, net of all discounts, rebates and other applicable credits accruing to or received by the Contractor or any assignee under the contract when the equipment, marketing materials, or other supplies were purchased, which shall be charged to the SFA as an operating expense of the food service program. Any such purchases shall be free of Contractor logos; only manufacturer logos are acceptable. Ownership of the equipment, marketing materials, or other supplies will vest in the SFA upon full and final payment to the Contractor. Upon such payment, the Contractor shall deliver a bill of sale evidencing transfer of title to the equipment to the SFA. Purchases made by the Contractor that are part of and/or included in the fixed meal price, administration fee, or management fee are excluded from this subsection of the RFP and as a result, such purchases may contain FSMC logos.

3. If the Awarded Contract expires or is terminated prior to the complete repayment of the equipment, the SFA shall, on the expiration date, or within five days after receipt by either party of any notice of termination under the awarded contract (select one).

Reimburse the Contractor the unpaid portion of the equipment.

OR

Deliver and return ownership of the equipment or other items to the Contractor.

OR

Lease purchase the equipment or other items funded by the Contractor and continue to pay the Contractor a monthly payment in the amount invoiced when the equipment was purchased until the balance is repaid. In this event, the SFA's obligation under the Lease Purchase Agreement with the Contractor shall be subject to the SFA's ratification of the rental agreement for each ensuing fiscal year.

4. **Indemnification:** Except as otherwise expressly provided in this contract, the Contractor will defend, indemnify, and hold the SFA harmless from and against all claims, liability, loss and expense, including reasonable collection expenses, attorneys' fees and court costs that may rise because of the sole negligence, misconduct, or other fault of the Contractor, its agents or employees in the performance of its obligations under this contract, except to the extent any such claims or actions result from the negligence of the SFA, its employees or agents. This clause shall survive termination of the Awarded Contract.

5. The SFA and the Contractor shall work together to ensure a financially sound operation.

6. **Assumptions:** Financial terms of the Awarded Contract are based upon existing conditions and the following assumptions. If there is a material change in conditions, including, without limitations, changes to the following assumptions, the Awarded Contract (1) may be terminated at the end of the current term or (2) continue under the same terms as written, whichever is mutually agreed upon.

a. The SFA's policies, practices, and service requirements shall remain materially consistent throughout the contract term and any subsequent contract renewals.

b. Legislation, regulations, and reimbursement rates that create changes in the school lunch program shall remain materially consistent throughout the year.

c. Usable USDA Foods, of adequate quality and variety required for the menu cycle, valued at an amount as set forth by USDA per meal pattern for the Awarded Contract year, will continue to be available.

- d. The government reimbursement rates in effect shall remain materially consistent throughout the year.
- e. Meal components and quantities required by the National School Lunch Act (NSLA) or the NSLP remain consistent with prior years.
- f. Service hours, service requirements, and type or number of facilities selling food and/or beverages on SFA's premises shall remain materially consistent throughout the year.
- g. The state or federal minimum wage rate and taxes in effect shall remain materially consistent throughout the year.
- h. SFA revenue credited to the nonprofit food service program shall include all state and federal amounts received specifically for child nutrition operations.

The term materially consistent shall mean that a change does not (1) materially increase the Contractor's cost of providing management service or (2) materially decrease the net revenue derived from the food service operations.

#### **X. Trade Secrets and Proprietary Information**

- 1. As a result of federal, state, and local open records laws and regulations, during the term of the Awarded Contract, the Contractor must provide the SFA with access to certain proprietary materials as deemed by the Contractor. These records include menus, recipes, signage, food service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed by the Contractor), and similar compilations regularly used in Contractor's business operations resulting from the Awarded Contract.

So long as no conflict exists with federal, state, and local open records laws and regulations, the SFA shall not disclose any of the Contractor's trade secrets or other confidential information, directly or indirectly, during or after the term of the Awarded Contract. The SFA shall not photocopy or otherwise duplicate any such material without the prior written consent of the Contractor. All trade secrets and other confidential information shall remain the exclusive property of the Contractor and shall be returned to the Contractor immediately upon termination of the Awarded Contract. The SFA shall not use any confusingly similar names, marks, systems, insignia, symbols, procedures, and methods.

Without limiting the foregoing and except for software provided by the SFA, the SFA agrees that all

software associated with the operation of the food service, including without limitation, menu systems, food production systems, accounting systems, and other software, are owned by or licensed to the Contractor and not the SFA. Furthermore, the SFA's access or use of such software shall not create any right, title interest, or copyright in such software, and the SFA shall not retain such software beyond the termination of the Awarded Contract.

- 2. In the event of any breach of this provision, the Contractor shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. The SFA's obligations under this section are subject to, but not limited by, its obligations under the Wisconsin Open Records Law, Wisconsin Statute Sect. 19.31-19.39. This provision shall survive the termination of the Awarded Contract.
- 3. Any discovery, invention, software, or programs paid for by the SFA shall be the property of the SFA to which the state agency and USDA shall have unrestricted rights including copyrights.

#### **Y. Summer Food Service Program (SFSP)**

- Only required if this box is checked. The SFSP may be added to the Awarded Contract using the [Summer Food Service Program \(SFSP\) Amendment to FSMC RFP](#). The Amendment modifies the Awarded Contract to allow the FSMC and SFA to contract out for products and services related to this program. Reference this Amendment for contracting details and requirements.

#### **Z. Child and Adult Care Food Program (CACFP)**

- Only required if this box is checked. The CACFP may be added to the Awarded Contract using the [Child Adult Care Food Program \(CACFP\) Amendment to FSMC RFP](#). The Amendment modifies the Awarded Contract to allow the FSMC and SFA to contract out for products and services related to this program. Reference this Amendment for contracting details and requirements.

AA. **Fresh Fruit and Vegetable Program (FFVP)**

Only required if this box is checked. The FFVP may be added to the Awarded Contract using the [Fresh Fruit and Vegetable Program \(FFVP\) Amendment for Fixed Price Agreements](#). The Amendment modifies the Awarded Contract to allow the FSMC and SFA to contract out for products and services related to this program. Reference this Amendment for contracting details and requirements.

BB. **General Assurances and Contract Signatures**

1. **Amendments and Waivers.** Any term of this Contract may be amended or waived only with the written consent of the parties and approval by DPI.
2. **Sole Agreement.** This Contract constitutes the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof.
3. **Notices.** Any notice required or permitted by this Contract shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier, or overnight delivery service, 48 hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below, or as subsequently modified by written notice.
4. **Severability.** If one or more provisions of this Contract are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (1) such provision shall be excluded from this Contract, (2) the balance of the Contract shall be interpreted as if such provision were so excluded and (3) the balance of the Contract shall be enforceable in accordance with its terms.
5. **Advice of Counsel.** Each party acknowledges that, in executing this Contract, such party has had the opportunity to seek the advice of independent legal counsel and has read and understood all of the terms and provisions of this Contract. DPI is not a party to any contractual relationship between a SFA and a Contractor. DPI is not obligated, liable, or responsible for any action or inaction taken by a SFA or Contractor based on this Contract template. DPI's review of the Contract is limited to assuring compliance with federal and state procurement requirements. DPI does not review or judge the fairness, advisability, efficiency, or fiscal implications of the Contract.

**By signing below, the parties agree to the terms and conditions of this Contract.**

	<b>FSMC</b> Complete section below.	
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FSMC Name

FSMC Street Address	City	State	Zip
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Signature of Authorized Representative	Date Signed Mo./Day/Yr.
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➤

Printed Name <i>First and Last</i>	Title
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Email Address	Phone Area Code/No.	FAX Area Code/No.
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	<b>SFA</b> Complete section below.	
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SFA Name

The Lincoln Academy

SFA Street Address	City	State	Zip
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608 Henry Ave	Beloit	W	53511
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Signature of Authorized Representative	Date Signed Mo./Day/Yr.
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➤

Printed Name <i>First and Last</i>	Title
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Email Address	Phone Area Code/No.	FAX Area Code/No.
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# List of Contract Attachments

including Fixed Price Excel Workbook Attachments and RFP Appendixes

Contract Attachments and Appendixes—		Completed by	
		SFA	Contractor
<b>Fixed Price Excel Workbook Attachments</b>			
- Provided as a separate excel workbook for reference and inclusion in the Contract.			
	Projected Operations – Expenditures		
A	• Operations—Labor and Benefits Worksheet	X	
B	• Proposed Operations—Labor and Benefits Worksheet		X
C	Projected Operations – Revenue, Pages 1 - 3		
	• Projected Operations—Revenue, Page 1: In-School Revenue	X	
	• Projected Operations—Revenue, Page 2: Federal Reimbursement	X	
	• Projected Operations—Revenue, Page 3	X	
D	Proposed Operations—Expenditures		X
E	Proposed Operations—Profit or Loss		X
F	SFA Attachment(s), in any.	X	
G	SFA Specifications on Average Daily Participation for NSLP	X	
H	SFA Specifications on Average Daily Participation for SBP	X	
I	SFA Specifications on Average Daily Participation for ASP	X	
J	SFA Specifications on Average Daily Participation for the SMP	X	
K	SFA Specification on Average Daily Participation WSDMP	X	
L	SFA Site/Building Listing General Data	X	
M	SFA Site/Building Listing of Service to Be Provided	X	
N	Minimum Food Specifications	X	
<b>Attachments provided within Contract.</b>			
O	Sample 21-Day Cycle Lunch Menus	X	X
P	Sample __ Day Cycle Breakfast Menus	X	X
Q	Sample __ Day Cycle After School Care Snack Menus	X	X
R	Holiday Schedule	X	
S	Independent Price Determination Certificate	X	X
T	Suspension and Debarment Certification		X
U	Lobbying Certification		X
V	Disclosure of Lobbying Activities		X
W	Instructions for Completion of Disclosure of Lobby Activities Form		
<b>Appendices include procurement document that are incorporated into the Contract.</b>			
	Appendix I: FSMC Fixed Price Request for Proposal (RFP)		
	Appendix II: Proposal from the Contractor selected for awarded contract, all attachments, addenda, and documents accompanying the RFP, all attachments, addenda, and documents accompanying the proposal, any official amendments addenda issued during the RFP process.		
	Appendix III: All written clarifications provided by the SFA in response to inquiries from prospective Contractors.		

## Attachment N: Minimum Food Specifications

To be completed by SFA

DPI does not approve, evaluate or endorse specifications. Examples may include the following listed below.

Meat/Seafood—All meats, meat products, poultry products, and fish must be government-inspected.

- Beef, lamb and veal shall be USDA Grade Choice or better
- Pork shall be U.S. No.1 or U.S. No. 2
- Poultry shall be U.S. Government Grade A
- Seafood to be top grade, frozen fish—must be a nationally distributed brand, packed under continuous inspection of the USDA

Dairy Products—All dairy products must be government-inspected.

- Fresh eggs, USDA Grade A or equivalent, 100 percent candled
- Frozen eggs, USDA—inspected
- Milk, pasteurized Grade A

Fruits and Vegetables

- Fresh fruits and vegetables selected according to written specifications for freshness, quality, and color—U.S. Grade A Fancy
- Canned fruits and vegetables selected to requirements—U.S. Grade A Choice or Fancy (fruit to be packed in light syrup or natural juices)
- Frozen fruits and vegetables shall be U.S. Grade A Choice or better

Baked Products

- Bread, rolls, cookies, pies, cakes, and puddings either prepared or baked on premises or purchased on a quality level commensurate with meeting USDA breakfast and lunch requirements, as applicable

Staple Groceries

- Staple groceries to be a quality level commensurate with previously listed standards

At a minimum, any proposed menu plans must comply with the Final Rule Nutrition Standards in the National School Lunch and School Breakfast Programs (see exhibit A for meal pattern requirements).

## **Attachment O: Sample 21-Day Cycle Lunch Menu**

Attach a sample 21-day cycle lunch menu prepared by the SFA. This menu must be used for the first 21-day cycle of the new school year.

## **Attachment P: Sample      -Day Cycle Breakfast Menu**

Attach a sample \_\_\_\_-day cycle breakfast menu prepared by the SFA. This menu must be used for the first \_\_\_\_-day cycle of the new school year.

## **Attachment Q: Sample      -Day Cycle Snack Menu**

Attach a sample \_\_\_-day cycle snack menu prepared by the SFA. This menu must be used for the first \_\_\_-day cycle of the new school year.

## **Attachment R: Holiday Schedule**

Holiday Schedule to be inserted here by SFA.

## Attachment S: Independent Price Determination Certificate

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

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Name of Food Service Management Company

Name of School Food Authority

**A.** By submission of this offer, the Contractor 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 Contractor with any competitor.

2. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed to the Contractor and will not knowingly be disclosed by the Contractor 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 Contractor for the purpose of restricting competition.

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

Each person signing this offer on behalf of the Contractor certifies that:

1. He or she is the person in the Contractor'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 Contractor'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 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 Contractor, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any government agency and have not in the last three years been convicted of 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:

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Signature of Food Service Management Company's Authorized Representative  ➤	Title	Date Signed Mo./Day/Yr.
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**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 above.

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Signature of Food School Food Authority  ➤	Title	Date Signed Mo./Day/Yr.
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**NOTE: Accepting a Contractor's offer does not constitute award of the contract.**

## Attachment T: Suspension and Debarment Certification

### Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, Title 7 CFR Part 3017, §3017.510, Participants responsibilities. The regulations were published as Part IV of the January 30, 1989, *Federal Register* (pages 4722-4733). Copies of the regulations may be obtained by contacting the USDA agency with which this transaction originated.

1. The prospective lower-tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the prospective lower-tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Vendor —	Project Title <b>Awarding of FSCM contract</b>
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Name and Title of Authorized Representative(s)

Signature of Authorized Representative ➤	Date Signed Mo./Day/Yr.
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### INSTRUCTIONS FOR SUSPENSION DEBARMENT CERTIFICATION

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 C.F.R. §180.360.
2. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 C.F.R. §180.265
3. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 C.F.R. §180.305
4. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. 2 C.F.R. §180.300.
5. A participant in a covered transaction is responsible for determining whether a prospective participant in a lower tier covered transaction is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List (202-786-0688). 2 C.F.R. §180.320.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and coverage sections of rules implementing Executive Order 12549. These definitions can be found in Subparts B and I of §180. 2 C.F.R. §180.110.



## Attachment U: Lobbying Certification

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts exceeding \$100,000 in federal funds

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

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

1. No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of a federal contract, the making of a Federal grant, the making of a federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative agreement.
1. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of the undersigned shall complete and submit Standard Form LLL, *Disclosure of Lobbying Activities*, in accordance with its instructions.
2. The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Name of Submitting Official	Title of Submitting Official
Name of Organization	Address of Organization
Signature of Submitting Official ➤	Date Signed Mo./Day/Yr.

## Attachment V: Disclosure of Lobbying Activities

Approved by OMB STANDARD FORM -LLL

Complete This Form to Disclose Lobbying Activities Pursuant to 31 U.S.C. 1352  
(See Next Page for Public Disclosure)

<b>1. Type of Federal Action</b> <input type="checkbox"/> A. Contract <input type="checkbox"/> B. Grant <input type="checkbox"/> C. Cooperative Agreement <input type="checkbox"/> D. Loan <input type="checkbox"/> E. Loan Guarantee <input type="checkbox"/> F. Loan Insurance	<b>2. Status of Federal Action</b> <input type="checkbox"/> A. Bid/Offer/Application <input type="checkbox"/> B. Initial Award <input type="checkbox"/> C. Post Award	<b>3. Report Type</b> <input type="checkbox"/> A. Initial Filing <input type="checkbox"/> B. Material Change For Material Change Only: Year: _____ Quarter: _____ Date of Last Report: _____
<b>4. Name and Address of Reporting Entity</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier, if known: _____ Congressional District, if known: _____	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime</b> Name of Prime Address of Prime Congressional District, if known: _____	
<b>6. Federal Department/Agency</b>	<b>7. Federal Program Name/Description</b> CFDA Number, if applicable: _____	
<b>8. Federal Action Number If known</b>	<b>9. Award Amount If known</b>	
<b>10 a. Name and Address of Lobbying Entity If individual, last name, first name, MI</b>	<b>10 b. Individual Performing Services (Including address if different from No. 10 a) Last name, first name, MI</b>	
<b>11. Amount of Payment: Check all that apply.</b>  <input type="checkbox"/> Actual <input type="checkbox"/> Planned	<b>13. Type of Payment: Check all that apply.</b>  <input type="checkbox"/> A. Retainer <input type="checkbox"/> B. One-Time Fee <input type="checkbox"/> C. Commission <input type="checkbox"/> D. Contingency Fee <input type="checkbox"/> E. Deferred <input type="checkbox"/> F. Other Specify: _____	
<b>12. Form of Payment Check all that apply.</b>  <input type="checkbox"/> A. Cash Nature: _____ <input type="checkbox"/> B. In-kind Specify Value: _____		
<b>14. Brief Description</b> of services performed or to be performed and date(s) of service, including officer(s), employees, or members contracted for payment indicated in Item 11. Attach Continuation Sheets if necessary.		
<b>15. Continuation Sheets Attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. The disclosure of lobbying activities is a material representation of fact upon which evidence was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. The information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosures shall be subject to a civil penalty of no less than \$10,000 and no more than \$100,000 for each such failure.</b>	Signature: _____ Print Name: _____ Title: _____ Telephone Number Area Code/No.: _____ Date: Mo./Day/Yr.	
Federal Use Only	Authorized for Local Reproduction	

## Attachment W: Instructions for Completion of Disclosure of Lobbying Activities Form

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action or a material change in a previous filing, pursuant to Title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a covered federal action. Use a Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementation of guidance published by the Office of Management and Budget (OMB) for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include, but are not limited to, subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks *Subawardee*, then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example: Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in Item 1; e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the federal agency. Include prefixes; e.g., RFP-DE-90-001.
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in Item 4 or Item 5.
  - a. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
  - b. Enter the full name of the individual performing services and include full address if different from 10a. Enter last name, first name, and middle initial (MI).
10. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
11. Check the appropriate item. Check all items that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
12. Check the appropriate box. Check all boxes that apply. If other, specify nature.
13. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the dates of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal officials or employees contacted or the officers, employees, or Members of Congress that were contacted.
14. Check whether Continuation Sheets are enclosed.
15. The certifying official shall sign and date the form; print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.