This document consolidates information about the food service management contract document established between a School Food Authority (SFA) and a Food Service Management Company (FSMC) pursuant to the Final Rule for Procurement in the National School Lunch Program and the Management of Donated Foods in Child Nutrition Programs published in the Federal Register on October 31, 2007 and August 8, 2008, respectively. Completion of this document affirms that the SFA and FSMC are in compliance with all program regulations, including the Healthy Hunger Free Kids Act of 2010 (P.L. 111-296) and the Codes of Conduct and Performance of Employees (2 CFR 200.318(c)(1)).

**Contract Document Review Requirements**

Though the list identifies certain unallowable SFA-FSMC contract document provisions and mandatory and advisable contract document provisions, it is in no way inclusive of all such provisions. The State agency (SA) must carefully examine the contract document(s) to ensure that it does not contain other unallowable contract document provisions as well as provisions that are not in the best interest of the SFA. Careful scrutiny of the contract document(s) is required to ensure that there are no provisions that have the effect of restricting competition.

Contracts and supporting documentation to the contract, including the Request For Proposal (RFP) or Invitation For Bid (IFB), must be reviewed by the SA. Contract renewals, including applicable attachments, are also reviewed. SFA-FSMC contract document(s) are also subject to review by the State Distributing Agency. Failure to obtain MA ESE approval prior to contract execution for contracts, new and extensions, shall result in all expenses deemed unallowable related to the SFA-FSMC contract until MA ESE approval is received.

**Instructions**

List the page number(s) and accompanying section(s) for each of the required provisions contained in this checklist. Complete the Contract Administrator box below. Submit the completed checklist, the unsigned contract/contract renewal and supporting contract documentation by the dates listed below. Forms will be returned if not accurately completed or if sections are blank.

**New Contract** - This list must be completed by the SFA and submitted with the reviewed document(s) to this Department no later than **April 10, 2015**.

**Contract Renewal** - if the option for the yearly renewal of a contract is exercised, the SFA must include a new contract language list when submitting the extension agreement to the Office of Nutrition, Health and Safety, Massachusetts Department of Elementary and Secondary Education. The list must include notation(s) where changes have occurred. The basis for renewing the contract, as well as the basis for any fee increases or decreases, if applicable, should be noted. Additionally, a new Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions and Certification Regarding Lobbying are required for each renewal period. This list must be completed by the SFA and submitted with the reviewed document(s) to this Department no later than **June 12, 2015**.

<table>
<thead>
<tr>
<th>Contract Administrator</th>
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<td>Name &amp; Title:</td>
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**Bid Procedures:**

- [ ] Delegated Authority to Contract Administrator
- [ ] CPO conducted procurement

Supporting Contract Documents (RFP/IFB/Other) Submitted [ ]
Section A - SFA Responsibilities

Indicate the page number(s) and accompanying section(s) of mandatory language.

Page No./Section No.

___  ___1. Provisions Under Program Agreement, §210.16(a)(2)—ensure that the food service operation is in conformance with the SFA's agreement under the program.

___  ___2. Signature Authority, §210.16(a)(5)—retain signature authority on the SA-SFA agreement and related document reports:

   ___  ___  a. free/reduced application process, including hearings and verifying free & reduced meal applications
   ___  ___  b. SFA’s free & reduced price policy statement & agreement
   ___  ___  c. Monthly claims for reimbursement
   ___  ___  d. Commodity Order Forms

___  ___3. Control of the School Food Service Account and Overall Financial Responsibility §210.16(a)(4)

   ___  ___ a. retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation; and

   ___  ___ b. retain control for the establishment of all prices, including price adjustments, for meals served under the nonprofit school food service account, e.g., pricing for reimbursable meals, a la carte service including vending machines, and adult meals.

   ___  ___ c. USDA, FNS Guidance for School Food Authorities Contracting with FSMC – If FSMC promises a guarantee to meet fiscal goals specified by the SFA, the SFA must ensure that all conditions and assumptions of a break even be clarified and defined and any guaranteed return promised by the FSMC is defined (using actual numbers) and remains in the non-profit food service account. If the contract contains such guarantees, the contract should also contain language that ensures that the FSMC bears responsibility for failure to meet those goals. “Returns” cannot be contingent upon multi-year contract duration.

___  ___4. USDA Donated Foods §210.16(a)(6)

   ___  ___ a. retain title to USDA donated foods; and

   ___  ___ b. ensure that all USDA donated foods made available to the FSMC, including processed USDA donated foods, accrue only to the benefit of the SFA's nonprofit school food service and are fully utilized therein. All refunds received from processors must be retained by the SFA.
c. method delineating how the FSMC will pass along the full value of USDA donated foods to the SFA.

5. Quality, Extent and General Nature of Food Service §210.16
   a. provide detailed specifications for each food component or menu item as specified in 7 CFR Part 210, and include these specifications in the IFBs or RFPs. Specifications must cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.
   b. retain control of the quality, extent, and general nature of its food service.
   c. make no payment for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications or do not otherwise meet the requirements of the contract.

6. Health Regulations, §210.16 (a)(7)—maintain all applicable health certifications and assure that all State and local regulations are being met by a FSMC preparing or serving meals at a SFA facility.

7. Monitoring Responsibilities, §210.16(a)(3)—monitor the food service operation through periodic on-site visits to ensure the food service is in conformance with program regulations.

8. Use of Advisory Board, §210.16(a)(8)—establish and maintain an advisory board composed of parents, teachers, and students to assist in menu planning.

9. 21-Day Cycle Menu, §210.16(b)(1)—include a 21-day cycle menu developed in accordance with the meal pattern requirements specified in 7 CFR Part 210.

Section B - FSMC Responsibilities

Indicate the page number(s) and accompanying section(s) of mandatory language.

Page No./Section No.

1. Health Certification, §210.16(c)(2)—maintain all applicable State and/or local health certification(s) for the duration of the contract for any facility outside the school in which it proposes to prepare meals. The FSMC must meet all applicable State and local health regulations in preparing and serving meals at the SFA facility.

2. 21-Day Cycle Menu, §210.16(b)(1)—adhere to the 21-day cycle menu which was included in the IFB or RFP for the first 21 days of meal service. Changes thereafter may only be made with the approval of the SFA.

3. Provision of Free and Reduced Price Meals, §210.16(a)—in order to offer a la carte food service, the FSMC must also offer free, reduced price and full price reimbursable meals to all eligible children.

4. USDA Donated Foods, §210.16(a)(6) (per OIG, 7/03)—to the maximum extent possible, utilize USDA donated foods made available by the SFA. This means the FSMC does not
purchase foods that are available as commodities. FSMC will use USDA donated foods solely for the purpose of providing benefits for the SFA’s food service operation.

__ 5. **Recordkeeping**, 7CFR Parts 3016.42; 3019.53 and §210.1616(c)(1)—maintain records to support the SFA’s Claim for Reimbursement; make all records available to the SFA upon request; and retain all records for a period of three (3) years after the SFA submits the final Claim for Reimbursement for the fiscal year for inspection and audit by representatives of the SFA, SA, USDA and Comptroller General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the 3-year period until resolution of the issues raised by the audit.

__ 6. **Reporting**, §210.16(c)(1)—report the claim information to the SFA promptly at the end of each month or more frequently as specified by the SFA.

__ 7. **Purchasing**, per Federal Register Vol. 72 and OIG 7/03 —All payment discounts, rebates and allowances obtained from vendors must go to the SFA’s food services account.

__ 8. **Purchasing**, per Federal Register Vol. 72 and OIG 7/03 —Charges to the SFA for goods and services should be reasonable and necessary for the operation of the non-profit school foodservice.

**Section C - General Terms - All SFA-FSMC Contracts**

Indicate the page number(s) and accompanying section(s) of mandatory language.

**Page No./Section No.**

__ 1. **Contract Duration**
   __ a. §210.16(d)—contracts must be of a duration no longer than one (1) year.
   __ b. §210.16(d)—options for the yearly renewal of a contract may not exceed four (4) additional one-year extensions.


__ 3. **Termination Clause, §210.16(d)**—either party may cancel for cause with 60-day notification.

__ 4. **Breach of Contract, §210.16(b)(2)**—Any invitation to bid or request for proposal indicate that nonperformance subjects the food service management company to specified sanctions in instances where the food service management company violates or breaches contract terms. The school food authority shall indicate these sanctions in the invitation to bid or request for proposal.

__ 5. **Nonperformance Sanctions**—7 CFR Part 3016.36(i)—provisions allowing for administrative, contractual, or legal remedies in instances where the FSMC violates or breaches contract terms, and providing for such sanctions and penalties as may be appropriate.

__ 6. **Prohibited Contracts**—§210.16(c)—contracts that permit all income and expenses to accrue to the food service management company and “cost-plus-a-percentage-of-income” contracts are prohibited. Contracts that provide for fixed fees such as those that provide for management fees established on a per meal basis are allowed.
Section D - SFA-FSMC Contracts in Excess of $2,500 Involving Food

Service Workers Whose Duties are Manual or Physical in Nature

☐ Check (✓) this block if the following provision is not applicable.

Page No./Section No.

___ ___  Contract Work Hours and Safety Standards Act, 7 CFR Part 3016.36(i)

Section E - SFA-FSMC Contracts in Excess of $10,000

☐ Check (✓) this block if the following provisions are not applicable.

Page No./Section No.

___ ___1. Termination Clause - OMB Circular No. A-102, 7 CFR Part 3016.36(i)

___ ___2. Equal Employment Opportunity - 7 CFR Part 3016.36(i)

Section F - SFA-FSMC Contracts - $25,000 or More

☐ Check (✓) this block if the following provision is not applicable.

Page No./Section No.

___ ___ Debarment, Suspension, Ineligibility and Voluntary Exclusion, 7 CFR 3017.510—certification regarding debarment/suspension from participating in Federal contracts/grants/awards. A new certification is also required for each renewal period.

Section G - SFA-FSMC Contracts in Excess of $100,000

☐ Check (✓) this block if the following provision is not applicable.

Page No./Section No.

___ ___ Certification Regarding Lobbying, 7 CFR Part 3018—a new certification is also required for each renewal period.

☐ Check (✓) this block if the following provision is not applicable.

Page No./Section No.

___ ___ Disclosure of Lobbying Activities, 7 CFR Part 3018—lobbying activities in connection with school nutrition programs must be disclosed. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis.
Check (√) this block if the following provision is not applicable.

Page No./ Section No.

___ ___ Clean Air Act, Clean Water Act, and Environmental Protection Agency Regulations, 7 CFR Part 3016.36(i)

Section H - SFA-FSMC Contracts Involving Research, Developmental, Experimental and Demonstration Work

Check (√) this block if the following provision is not applicable.

Page No./Section No.

___ ___ USDA Rights to Copyrights, Patent Rights and Rights in Data and Reporting of Discoveries and Inventions, 7 CFR Part 3016.36(i)

Section I - Required SFA-FSMC Contract Inclusions

All language must be included and identified in the Contract. Exclusions may be subject to State Agency Approval.

Page No./Section No.

___ ___1. Compliance with Program Regulations—requirement that the FSMC conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 225, 226, 245 and 250, and FNS instructions and policy.

___ ___2. Special Functions—method which delineates the cost allocation for special functions conducted outside the nonprofit school food service. The method should demonstrate that labor costs are not being double billed for program meals and special function meals.

___ ___3. Fee Structure

  ___ ___ a. In a cost-reimbursable contract, requirement for breakdown of administrative and management fees in order to prevent double billing.

  ___ ___ b. Basis for fee adjustments.

___ ___4. Purchasing

  ___ ___ a. In a cost-reimbursable contract, if the FSMC makes purchases, the prices charged to the SFA must be reasonable and necessary.

  ___ ___ b. A provision stating that any silence, absence or omission from the contract document specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.

___ ___5. Certification of Independent Price Determination—certification regarding non-collusion. This certification may be met through the use of the Certification of Independent Price Determination form (Appendix D).
6. Civil Rights Compliance—assurance that the FSMC will conform with all civil rights requirements applicable to the SFA.

7. Buy American Provision—compliance with the Buy American provision under 7CFR §210.21(d) and 7CFR §250.23.

8. Claim Liability
   a. The FSMC accepts liability caused by FSMC negligence for claims assessed as a result of Federal/State reviews/audits, corresponding with the SFA's period of liability.
   b. The FSMC accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA donated foods.

9. Location of Records—all FSMC records pertaining to the SFA should be maintained at the SFA while the contract is in effect, and preferably for the required retention period.

10. Cost Reimbursement—If Contract requires SFA to reimburse Company for costs (cost-reimbursable contract), SFA and Company must meet the following requirements from 7CFR §210.21:
   a. 7CFR §210.21(i) SFA will pay allowable costs from the nonprofit food service account to Company net of all discounts, rebates and other applicable credits accruing to or received by Company or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to SFA.
   b. Company must either:
      i. 7CFR §210.21(f)(ii)(A) Separately identify and provide sufficient information to permit the SFA to identify for each cost submitted for payment to SFA the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account), or
      ii. 7CFR §210.21(f)(ii)(B) Exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification.
   c. 7CFR §210.21(f)(iii) Company’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.
   d. 7CFR §210.21(iv) Company has identified 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 the case of other applicable credits, the nature of the credit. If approved by the State agency the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually.
e. 7 CFR §210.21(v) Company has identified 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. Describe the method here:

________________________________________________________________________
________________________________________________________________________

f. 7 CFR §210.21(vi) Company must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the SFA, the Massachusetts Department of Elementary & Secondary Education (MDESE), or the U.S. Department of Agriculture.

11. Nutrition Education—FSMC responsibility for nutrition education activities, as applicable.

12. Donation of Foods for Use in the United States §250

a. Crediting for the Value of Donated Foods  In accordance with 7 CFR 250.51(a) and (b), contracts must ensure that the FSMC credits the SFA for the value of all donated foods received for use in the SFA’s meal service in the school year, on at least an annual basis, through invoice reductions, refunds, discounts, or other means. Such requirement includes crediting for the value of donated foods contained in processed end products if the FSMC, in accordance with its contract, procures such end products on behalf of the SFA, or acts as an intermediary in passing the donated food value in such end products on to the SFA. All forms of crediting must include clear documentation of the value received from the donated foods. In cost-reimbursable contracts, crediting may be performed by disclosure. The SFA must ensure that the FSMC procurement of processed end products is restricted to those processors that have signed processing agreements with the State distributing agency or the SFA in accordance with 7 CFR Part 250.

b. Donated Food Values Required in Crediting  In accordance with 7 CFR 250.51(c), the SFA must ensure that the FSMC uses the donated food values determined by the distributing agency, in accordance with 7 CFR 250.58(e), or, if approved by the distributing agency, donated food values determined by an alternate means of the SFA’s choosing. The method of determining the donated food values must be included in procurement documents and in the contract, and must result in the determination of actual values. Negotiation of such values is not permitted.

c. Use of Donated Foods  In accordance with 7 CFR 250.51(d), the FSMC must use all donated ground beef, donated ground pork, and all processed end products, in the SFA’s food service, and must use all other donated foods, or commercially purchased foods of the same generic identity, or U.S. origin, and of equal or better quality than the donated foods, in the SFA’s food service.

d. Storage and Inventory Management  The FSMC must meet the general requirements for the storage and inventory management of donated foods in 7 CFR 250.14(b). In accordance with 7 CFR 250.52(a), the FSMC may store and inventory donated foods together with foods it has purchased commercially for the SFA’s use, unless this is specifically prohibited in its contract. It may store and inventory such foods together with other commercially purchased foods only
to the extent that such a system ensures compliance with the requirements for the use of donated foods in 7CFR250.51(d). Additionally, under cost-reimbursable contracts, the FSMC must ensure that its system of inventory management does not result in the SFA being charged for donated foods.

___ ___ e. **Recordkeeping and Review Requirements** The SFA and FSMC must maintain records of receipt of donated foods and processed end products, or crediting for the value of donated foods, and other records relating to donated foods, in accordance with 7CFR 250.54. The SFA must conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA’s food service in the school year including, in accordance with requirements in 7CFR 250.51(a), the value of donated foods contained in processed end products. The FSMC must return all unused donated ground beef, donated ground pork, processed end products and (at the SFA’s discretion) return all unused donated foods in accordance with 7CFR 250.52(c) when a contract terminates, is not extended or renewed.

**Please complete**

National School Lunch Program (NSLP) sponsors vending meals to sponsors in either the Child And Adult Care Food Program (CACFP) and/or Summer Food Service Program (SFSP) must annually complete a Food Service Agreement (FSA). The FSA must be signed by the Superintendent of Schools and by an authorized representative of the CACFP or SFSP program.

NSLP sponsors may not claim these vended meals. The CACFP or SFSP sponsor may claim these vended meals and reimburse the NSLP sponsor.

The FSA may be found in the Document and Reference Library of the Security Portal.

Please check one

- Meals are or may be vended
- Meals will NOT be vended

The following indicate problem areas that have been identified in SFA-FSMC contract documents. The contract documents must be thoroughly checked, regardless of the procurement method used, to ensure that these areas have not been included, in any form. Indicate with a check mark (√) in each block that the review of the document(s) indicates that there are no such provisions in the reviewed document(s), unless specified below.

Check (√) as described above.

☐ 1. **Cost Plus a Percentage of Cost/Income**—cost plus a percentage of cost/income to the FSMC, however represented.

☐ 2. **Duplicate Fees**—fee structures that permit a FSMC to bill management fees and charge the same costs as cost-reimbursable expenses.

☐ 3. **Purchasing**—if the SFA does the purchasing, clauses that limit the selection of vendors to only FSMC-approved vendors.

☐ 4. **Acceleration Clause**—provisions (multi-year) that require full payment (e.g., program equipment purchases) if the contract is not renegotiated.

☐ 5. **Guaranteed Return**—any "guaranteed return" must remain in the nonprofit food service account. "Returns" cannot be contingent upon multi-year contract duration. “Returns” must be defined using actual numbers.

☐ 6. **Delegation of SFA Responsibilities**—FSMC responsibility for any of the functions that must be retained by the SFA.

☐ 7. **Automatic Renewal**—provisions which automatically renew the contract.

☐ 8. **Processing Contracts**—contract document language that permits the FSMC to subcontract USDA donated foods for further processing.

For the item(s) above not checked (√), indicate item number(s) with corresponding page number(s) of document(s) where provision(s) appears.

Item Number(s) Page Number(s)

_________________ _____________  __________________  __________________

_________________ _____________  __________________  __________________

_________________ _____________  __________________  __________________

Prepared By: __________________________________    _________________________________________

(Print Name)     (Print Agency, Title and Date)
Instruction: The following statement must be signed by a duly authorized representative of the school food authority operating any or all of the following: National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program and Summer Food Service Program.

I, ______________________________________________, as the duly authorized representative of

______________________________, do hereby attest that the aforementioned SFA is in compliance

school food authority

with the Codes of Conduct and Performance of Employees as set forth in 2 CFR 200.318(c)(1).