

Attestation Sheet

By submission of this bid, the Food Service Management Company (FSMC) acknowledges that it has carefully examined all terms and conditions set forth in the Request for Proposal (RFP)/Fixed Price Food Service Management contract in the bid document/solicitation issued by **the Education Achievement Authority of Michigan** on **May 15, 2015**. The FSMC acknowledges that it has made examinations and verifications, and is fully conversant with all conditions under which services are to be performed for the **Education Achievement Authority of Michigan**. No claims for additional compensation will be considered, and no contractual amendments will be executed, due to the successful bidder's failure to be so informed.

The FSMC acknowledges that the School Food Authority (SFA) of Public School Districts reserve the right to reject any and all bids for a sound documented reason. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. [7CFR Part 3016.36 (d) (2) (ii) (D) and (3) (iv)]

The FSMC acknowledges that the School Food Authority (SFA) of Non-Public School Districts reserve the right to reject any and all bids when it is in the recipient's interest to do so. Awards will be made to the bidder whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. [7CFR 3019.43]

Negligence in the preparation or presentation of, errors in, or omissions from, bids shall not relieve the FSMC from fulfillment of any and all obligations and requirements of the proposed contract. Once a contract is executed, the FSMC shall not claim any modification thereof resulting from any representation or promise made at any time by an officer, agent, or employee of the **Education Achievement Authority of Michigan**, or any other person.

By submitting a bid, the FSMC agrees to execute a contract with the SFA, and to perform services in accordance with the finalized contract documents.

Signature of Food Service Management
Company Representative

Date

Name of Food Service Management Company

REQUEST FOR PROPOSAL/FIXED PRICE CONTRACT

GENERAL PROCEDURAL TERMS AND CONDITIONS

A. INTENT

This solicitation is for the purpose of entering into a contract for the operation of a food service program for **Education Achievement Authority of Michigan** herein after referred to as the School Food Authority (SFA). The bidder or Food Service Management Company will be referred to as the FSMC and the contract will be between the FSMC and the SFA.

B. PROCUREMENT METHOD

The contract awarded will be a fixed price contract.

The bid must be submitted in two parts: a fixed bid price per meal/meal equivalent and a written and/or oral presentation. The fixed bid price per meal/meal equivalent may be weighted more than 50% of the evaluation criteria while the presentation must be weighted less than 50%. This breakdown will be identified on the Bid Point Calculator and Evaluation Criteria Matrix. The bid price per meal/meal equivalent must be submitted as if no USDA Foods would be available. Bidders are required to provide a breakdown of the bid price per meal and meal equivalent, management fee per meal and meal equivalent, bid price per snack served, and bid price per one-half pint of milk served, as shown on the Bid Sheet. Bids that do not provide this information will be deemed non-responsive and rejected.

The bidder with the maximum number of points will be awarded the fixed price contract. This award may be made to other than the bidder with the lowest total fixed price bid.

C. BID SUBMISSION AND AWARD

1. Sealed bids/proposals are to be submitted to FoodServiceRFP@EAAofMichigan.org or Buy4Michigan.com. Bids/proposals will not be accepted after **1:00 PM** on **June 5, 2015**. The proposal is to be submitted in a sealed envelope marked "Food Service Management Proposal." Provide at least three (3) hard copies of the proposal and two (2) copies of the proposal on a CD so that one copy of the CD can be sent to MDE for its files. SFAs are required to submit copies of CDS from all responsive bidders to MDE during the contract approval process.

The bid sheet is to be submitted in a separate and sealed envelope marked, "Bid Sheet- Fixed Price Contract."

2. The SFA reserves the right to exercise its discretion to reject any and all bids.
3. To be considered, each bidder must submit a complete response to this solicitation using the forms provided.
4. Awards, if any, shall be made to a qualified and responsible bidder whose bid is responsive to this solicitation. A responsible bidder is one whose financial, technical, and other resources indicate an ability to perform the services required by this solicitation.
5. Bidders or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting bids; failure to do so will be at the bidder's own risk and he/she cannot secure relief on the plea of error.
6. If additional information is required, please contact:
FoodServiceRFP@EAAofMichigan.org.

D. INCURRED COSTS

The SFA is not liable for any cost incurred by the bidder prior to the signing of a contract by all parties.

E. CONTRACT TERMS

1. This contract shall be for an initial term of one year effective on **July 1, 2015**, or upon written approval of the contract by the Michigan Department of Education (MDE), whichever occurs last, and ending **June 30, 2016**, with up to four (4) one-year renewals, with mutual agreement between the SFA and the FSMC. [7CFR 210.16 (d)]

In no event shall the contract be effective without prior approval of MDE. Per 7 CFR 250.53 (a) (12), contract extensions or renewals are contingent upon the fulfillment of all contract provisions relating to USDA Foods.

2. The only rates and fees that may be adjusted in subsequent years of this contract are the fixed price per meal/meal equivalent, fixed management fee per meal/meal equivalent, fixed per unit rate for each snack served, and fixed per unit rate for one-half pint of milk contained within this contract. Before any fixed rate or fee increases can be implemented as part of a contract renewal agreement, the FSMC shall document to the SFA, through a written financial analysis, the need for such increases. Renegotiation of all fixed rates and fees in subsequent years of the contract must not exceed the *Consumer Price Index for Urban Consumers – Food Away from Home* annualized rate for December of the current school year, or a flat percentage rate (**2%**), whichever is less.

3. This solicitation/contract, the RFP proposal of the successful bidder, attachments, and mutually negotiated and MDE-approved amendments, modifications, and addenda constitute the entire agreement between the SFA and FSMC. Aside from the adjustments and amendments referenced in Section (E) (2), supra, additional documents and/or agreements, including non-negotiated provisions developed by the contractor, cannot become part of the executed contract. Any additional documents resulting in a substantial change to the contract awarded by the SFA will not be executed by the SFA without prior MDE approval. No other food service management contracts will be signed by the SFA.
4. All state agency-mandated changes to the terms of this contract or any amendment will be incorporated therein before the SFA executes any agreement between it and the FSMC.

F. PRE-BID MEETING

The bid packet will be available on **May 15, 2015**, at <https://www.buy4michigan.com> or <http://michigan.gov/eaa> (under the "Resources" tab). Interested bidders must meet to review the specifications, to clarify any questions, and to go on a walk-through of the facilities with school officials on **May 21, 2015 at 3:00 PM** at the following location: Mumford High School, 17525 Wyoming Street, Detroit, MI 48221. Attendance is required.

G. LATE BIDS

Any bid received after the exact time specified for receipt will not be considered or opened publicly.

H. BONDING REQUIREMENT

Bid Guarantee: Bidder shall submit with his/her bid, a bid guarantee in the amount of five percent (5%) of the total bid price, which shall be in the form of a firm commitment such as a bid bond, postal money order, certified check, cashier's check or irrevocable letter of credit. Bid guarantees other than bid bonds will be returned (a) to unsuccessful bidders as soon as practicable after the opening of the bids; and (b) to the successful bidder upon execution of such further contractual documents (i.e., insurance coverage) and bonds as may be required by the bid. [7CFR 3016.36 (h) (1)]

I. GIFTS FROM FSMC

The SFA's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible under State or Federal law, rules, or regulations, such standards shall provide for appropriate penalties,

sanctions, or other disciplinary actions to be applied for violations of such standards. [7 CFR 3016.36 (b) (3) (iv)]

J. SELECTION OF MANAGER

The SFA reserves the right to interview and approve the on-site food service manager. The FSMC will provide a Certified Food Manager per regulations established by the Michigan Department of Agriculture (MDA) effective June 30, 2009.

K. EMPLOYEES

The EAA does not currently operate its own food service program and therefore does not currently employ food services staff.

The food service employees will be provided by the FSMC under this contract.

L. MEAL AND MEAL EQUIVALENTS

For the purpose of making the meal count computation, the number of lunches, breakfasts, suppers and snacks served to children shall be based on a projection of the number of meals and snacks to be served. The FSMC and SFA shall determine a la carte meal equivalents by dividing a projected net a la carte and catering revenue by the sum of the Federal free lunch reimbursement plus the value of USDA entitlement and bonus-donated foods. This equivalent factor will be adjusted annually by taking the sum of the Federal free lunch reimbursement plus the value of USDA entitlement and bonus-donated foods. The revenue shall include catering sales, adult meals, and a la carte sales to students and adults **less sales tax**. If applicable, include revenue from vending machine sales as part of the a la carte revenue.

M. CAPTIONS

Captions in all sections of this document are provided only as a convenience, and shall not affect the interpretation of this instrument, its attachments, and addenda.

N. GUARANTEED RETURN

The SFA requests a guaranteed return of at least **\$50,000** for the school food service.

Any guaranteed return promised by the FSMC **must remain in the nonprofit food service account**. The FSMC agrees to bear responsibility for failure to meet this goal. Returns cannot be contingent upon multi-year duration.

O. FRESH FRUIT AND VEGETABLE

The SFA requests the FSMC be responsible for the following aspects of the FFVP:

Purchase of fruits and vegetables including the cost of pre-cut produce and delivery charges;

Purchase of non-food items and supplies that are used in serving and cleaning of the fruits and vegetables;

Salaries and fringe benefits for employees engaged in preparing and distributing fresh fruits and vegetables and maintaining a sanitary environment.

- The SFA will provide assurance that the FSMC is completely apprised of all FFVP Policies and rules to guarantee the program is operated in compliance with FNS standards.
- The SFA will regularly monitor FSMC operations to ensure compliance with relevant FFVSP requirements and provisions of the contract.
- **If FSMC is going to charge costs other than the actual costs of fresh fruits and vegetables, they must clearly identify the flat rate fee (annual) charged to the SFA's FFVP on the bid sheet contained in the *Information Section* of the RFP.** Additionally, the FSMCs are required to submit a FFVP cycle menu based on FNS Guidance.
- FSMCs must document and track Fresh Fruit and Vegetable Program (FFVP) expenses separately and must make this documentation easily accessible for the SFA to review. This documentation must fully identify allowable costs and the allocation of costs charged to the FFVP. The SFA uses this information as the basis for its reimbursement claim under the FFVP.
- Costs reported by the SFA for reimbursement from the FFVP grant must be allowable, actual costs, and fully documented. Labor costs, which must be minimal in either the "operating or administrative" category, must be reported by the SFA in a manner that clearly identifies the actual time allocated to the FFVP. Administration costs must not exceed 10% of the overall grant.

P. PROCUREMENT AGENT DUTIES

The SFA requests that the Food Service Manager handle the procurement for the following items: major non-expendable items.

The manager will prepare bid documents for the purchase of major non-expendable items. The SFA will evaluate the bids, select the appropriate items to purchase and purchase the selected item(s).

Any company that is wholly owned or with a financial interest/stake in or financial relationship with the FSMC or SFA is barred from bidding on any proposals for major equipment purchases.

All SFA procurements using federal funds must be conducted using free and open competition. As the SFA's procurement agent, the FSMC must conduct the procurement process according to all federal, state, and local laws, rules, policies/procedures, and program regulations including those pertaining to conflicts of interest under 2 CFR 200.318 (formerly 7 CFR 3016.36 (3) and 7 CFR 3016.60).

STANDARD TERMS AND CONDITIONS

I. SCOPE AND PURPOSE

- A. The Food Service Management Company (FSMC) shall operate in conformance with the School Food Authority's (SFA) National School/Commodity Distribution, Special Milk, Summer Food Service, Afterschool Snack, Child and Adult Care Food Program, Fresh Fruit and Vegetable Program, and Breakfast Programs Permanent Agreement with the Michigan Department of Education (MDE) and attachments.
- B. The FSMC, as an independent contractor, shall have the exclusive right to operate the Child Nutrition Programs in which the SFA participates. Child Nutrition Programs include the National School Lunch Program (NSLP), and/or School Breakfast Program (SBP), and/or Special Milk (SMP), and/or Summer Food Service Program (SFSP), and/or the Child and Adult Care Food Program (CACFP), and/or Fresh Fruit and Vegetable Program (FFVP).
- C. The FSMC shall be an independent contractor and, except as otherwise expressly stated herein, not an SFA agent or representative. The employees of the FSMC are not employees of the SFA. All FSMC employees shall remain directly accountable to the FSMC for the duration of this contract. Except as otherwise expressly stated in this agreement, the FSMC has the sole responsibility and authority to hire, assign, supervise, evaluate, and discipline any personnel assigned by it in the performance of this contract.

- D. The food service provided shall be operated and maintained as a benefit to the SFA's students, faculty, and staff.
- E. All income accruing as a result of payments by children and adults, federal and state reimbursements, and all other income from sources such as donations, special functions, grants, loans, etc., shall be deposited in the SFA's food service account. Any profit or guaranteed return shall remain in the SFA food service account. The SFA and the FSMC agree that this contract is neither a "cost-plus-a-percentage-of-income" nor a "cost-plus-a-percentage-of-cost" contract, as required under 7 CFR 210.16 (c), 7 CFR 3016.36 (f) (4), and 7 CFR 3019.44 (c).
- F. The SFA shall be legally responsible for the conduct of the food service program, and shall supervise the food service operations in such a manner as will ensure compliance with the rules and regulations of the MDE and the United States Department of Agriculture (USDA) regarding each of the Child Nutrition Programs covered by this contract. [7 CFR 210.16 (a) (2)]
- G. The SFA shall retain all control of the Child Nutrition Programs food service account and overall financial responsibility for the Child Nutrition Programs.
- H. The SFA shall establish all selling prices for reimbursable and non-reimbursable meals/milk and a la carte prices. [7 CFR 210.16 (a) (4)]
- I. The FSMC shall provide additional food service, such as banquets, parties, refreshments for meetings, etc., as requested by the SFA. The SFA or requesting organization will be billed for the actual cost of food, supplies, and labor; plus a mutually agreed upon **mark up (as documented on the FSMC signed and dated bid sheet)** and the FSMC overhead and administrative expenses if applicable, for providing such service. If FSMC overhead and administrative expenses apply, FSMC must provide SFA with a detailed breakdown of the charges. USDA Foods shall not be used for these special functions.
- J. The FSMC shall cooperate with the SFA in promoting nutrition education and coordinating the SFA's food service with classroom instruction in accordance with the school district's Wellness Plan.
- K. The FSMC shall conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 225, 226, 235, 245, and 250 and FNS instructions, final rules, and policies, as applicable.
- L. The FSMC shall make substitutions in the food components of the meal pattern for the students with disabilities when their disability restricts their diet, and those non-disabled students who are unable to consume regular lunch because of medical or other special dietary needs.

Substitutions shall be made on a case-by-case basis when supported by a statement of need for substitutes that includes recommended alternative foods, unless otherwise exempted by the Food and Nutrition Service, USDA. Such statement shall in the case of a student with a disability, be signed by a medical doctor or in the case of a non-disabled student, be signed by a recognized medical authority. There will be no additional charge to the student for such substitutions. [7CFR 210.10 (g)]

M. FMSC shall submit to the EAA monthly invoices for Services performed in the previous billing cycle electronically to finance@eaaofmichigan.org or via U.S. Mail to the address below:

**Education Achievement Authority of Michigan
Attention: Accounts Payable
300 River Place, Suite 3600
Detroit, Michigan 48207**

Invoices shall: 1) itemize all costs, including quantities; 2) reference a Purchase Order number; 3) identify any discounts offered to the EAA (e.g., discounts for early payment, etc.); 4) identify any credits as outlined in Section IV G and H of this Agreement; 5) outline all Services performed during the applicable billing cycle in detail. (Dates of Services must also be included, listing each date Services occurred.); and 6) provide any and all supporting documentation that verifies the delivery of such Services. Backup documentation must correspond with and be attached to each invoice submitted.

The EAA shall pay invoices for Services satisfactorily performed within forty-five (45) days after the EAA receives an invoice from FMSC that meets the criteria listed above. *The forty-five (45) day period shall not begin until the EAA receives an undisputed invoice, at the address provided, and that fully meets the listed criteria.*

No late charges will be applied per month for any unpaid balances in excess of thirty (45) days.

II. SIGNATURE AUTHORITY

- A. The SFA shall retain signature authority for the application/agreement to participate in the **NSLP, and/or SBP, and/or SMP, and/or SFSP, and/or CACFP, and/or FFVP** including, but not limited to the Application Renewal, the Verification of Application Form, and letters to the MDE to amend the application. [7 CFR 210.16 (a) (5)]
- B. The SFA shall retain signature authority for the Monthly Claim for Reimbursement. [7 CFR 210.16 (a) (5)]

- C. The SFA shall not delegate signature authority to the FSMC in any of the areas identified in paragraphs A and B above.

III. FREE AND REDUCED PRICE MEALS POLICY

- A. The SFA shall be responsible for or may delegate to the FSMC the establishment and maintenance of the free and reduced price meals eligibility roster. [Food Service, Administrative Policy #3, SY 2008-2009]
- B. The FSMC shall implement an accurate point of service meal/milk count using the meal counting system submitted by the SFA in its application to participate in the Child Nutrition Programs and approved by the MDE, as required under 7 CFR Part 210.8. Such meal/milk counting system must eliminate the potential for the overt identification of free and reduced price eligible students under 7 CFR Part 245.8. The SFA shall evaluate the monthly meal claim information submitted by the FSMC and verify that the information is accurate before submitting a claim for reimbursement. [Food Service, Administrative Policy #3, SY 2008-2009]
- C. The SFA shall be responsible for or may delegate to the FSMC the development, distribution, and collection of the parent letter and application for free and reduced price meals and/or free milk. [Food Service, Administrative Policy #3, SY 2008-2009]
- D. The SFA shall be responsible for or may delegate to the FSMC for accessing the direct certification report available from the Center for Educational Performance and Information (CEPI) each year of eligible students for free meals. Students on this report will not require an application from the parent/guardian. [Food Service, Administrative Policy #3, SY 2008-2009]
- E. The SFA shall be responsible for or may delegate to the FSMC the responsibility for the determination of eligibility for free and reduced price meals and free milk. Neither the SFA nor the FSMC will disclose confidential information that is not needed for meal counts from free and reduced price meal applications and/or the direct certification list, if used. The SFA will provide the FSMC with a list of children and their category eligibility. This list must be updated when changes occur in a student's eligibility status. [Food Service, Administrative Policy #3, SY 2008-2009]
- F. The SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free and reduced price meals and free milk. [Food Service, Administrative Policy #3, SY 2008-2009]
- G. The SFA shall be responsible for or may delegate to the FSMC the responsibility for verifying applications for free and reduced price meals,

as required by federal regulations. [Food Service, Administrative Policy #3, SY 2008-2009]

- H. The SFA shall be responsible for performing the annual on-site review. [Food Service, Administrative Policy #3, SY 2008-2009]
- I. The SFA shall retain responsibility for completing the tasks described in paragraphs B, F, and H and may delegate those tasks in paragraphs A, C, D, E, and G to the FSMC to complete on its behalf.

IV. USDA FOODS

- A. Any USDA Foods received by the SFA and made available to the FSMC or received by the FSMC on behalf of the SFA, must accrue solely to the benefit of the SFA's non-profit school food service program and shall be fully utilized therein. The FSMC must credit the SFA for the value of all USDA Foods received for use in the SFA's food service program, including the value of USDA Foods contained in processed end products, in accordance with 7 CFR 250.51 (a).
- B. The SFA shall retain title to all USDA Foods. [7 CFR 250.13 (c)]
- C. The FSMC is prohibited from entering into any processing contracts utilizing USDA Foods on behalf of the SFA. [7 CFR 250.50 (d)]
- D. The FSMC shall select, accept, and use the USDA Foods in as large quantities as may be efficiently utilized in the SFA's non-profit food service, subject to approval of the SFA.

The FSMC must utilize no less than 95% of the SFA's overall entitlement. If less than 95% is spent, the FSMC must submit justification of the underutilization of this federal program to the SFA as part of their mandatory annual reconciliation of USDA Foods.

Furthermore, the SFA will use all donated ground beef and ground pork products, and all processed end products in the SFA's food service, and all other USDA Foods or 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. [7 CFR 250.51 (d)]

- E. The FSMC shall collaborate with the SFA on the selection of USDA Foods and they will accept and use USDA Foods in as large quantities as may be efficiently utilized in the SFA's non-profit food service on a monthly basis to ensure they will not accumulate excess inventory.

If the current selection of USDA Foods cannot be utilized in the food service program, either the SFA or FSMC must work directly with the SFA's chosen consortium to trade or obtain a different selection of food

items prior to delivery to the FSMC or SFA. USDA Foods entitlement can be spent on a value-added (brown box), processed USDA Foods, or Department of Defense (DoD) fresh produce.

- F. The FSMC shall store and account for all USDA Foods separately from purchased food unless the SFA has chosen not to maintain a separate inventory. The FSMC is required to maintain accurate and complete records with respect to the receipt, use/disposition, storage, and inventory of all USDA Foods. The FSMC shall submit to the SFA monthly inventory reports showing all transactions for processed and non-processed USDA Foods. Quarterly physical inventories of all USDA Foods must be conducted by the FSMC and supervised by the SFA. Failure by the FSMC to maintain the required records under this contract shall be considered prima facie evidence of improper distribution or loss of the USDA Foods. [7 CFR 250.16 (a) (6) and 250.52 (b)]
- G. The FSMC shall maintain records to substantiate that the full value of all USDA Foods is used solely for the benefit of the SFA. The FSMC must provide all documents as necessary for the independent auditor, MDE Reviewers, or agents of USDA who may perform onsite reviews of the food service management company's food service operation to ensure compliance with the requirements for the management and use of USDA Foods. [7 CFR 250.54 (d) (1) and (2)]
- H. As a **fixed price contract**, the SFA must determine the existence of the proper pass through value of the USDA donated foods, e.g., credits or reductions on the invoice in the month the USDA Foods were received for use.
- I. The SFA must provide the FSMC with a copy of the quarterly Recipient Entitlement Balance Report from the Consortia.
- J. The value of all USDA Foods are to be based on the values at the time the SFA receives the USDA Foods from the Distributing Agency and are to be based on the USDA Commodity Value Listing pertinent to the time period. This listing is available from the following website:

<http://www.fns.usda.gov/fdd/processor-pricing-reports>

School Year (SY) 2015 Material Pricing Information
Average Price File for Processors for SY 2015

- K. A year-end reconciliation shall be conducted by the SFA to ensure and verify correct and proper credits has been received for the full value of all USDA Foods used by the FSMC during the school year. The SFA reserves the right to conduct commodity credit audits throughout the year to ensure compliance with federal regulations 7 CFR 210 and 7 CFR 250. [7 CFR 250.53 (a) (1)]

- L. The FSMC shall be liable for any negligence on its part that results in any loss of, improper use of, or damage to, USDA Foods and shall credit the SFA either monthly or through a year-end reconciliation. [7 CFR 250.25 (c)]
- M. The SFA and the FSMC shall consult and agree on end products to be produced from USDA Foods during the time of this agreement. If an agreement cannot be reached, the FSMC shall utilize the USDA Foods in the form furnished by the USDA.
- N. Upon termination of the contract, the FSMC must return all unused donated ground beef, ground pork, processed end products, and at the SFA's discretion, return other unused donated foods. The SFA must ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA's meal service in a school year. [7 CFR 210.16 (c) (2)]

V. HEALTH CERTIFICATIONS

- A. The SFA shall maintain all applicable health certifications on its facilities and shall ensure that all state and local regulations are being met by the FSMC preparing or serving meals at any SFA facility. [7 CFR 210.16 (a) (7)]
- B. The FSMC shall maintain for the duration of the contract 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 contract as required under 7 CFR 210.16 (c) (2).

VI. MEALS

- A. The FSMC shall serve meals on such days and at such times as requested by the SFA.
- B. The SFA shall retain control of the quality, extent, and general nature of the food service. [7 CFR 210.16 (a) (4)]
- C. The FSMC shall offer free, reduced price, and paid reimbursable meals to all eligible children participating in the **SBP** and/or **NSLP**, and/or **SFSP**, and/or **CACFP**.
- D. In order for the FSMC to offer a la carte food service, the FSMC must offer free, reduced price, and paid reimbursable meals to all eligible children. [7 CFR 210.16 (a)]

- E. The FSMC shall serve reimbursable **lunches, breakfasts, suppers, and snacks** pursuant to the **SBP, NSLP, and/or SFSP**, and/or **CACFP**, where indicated on the enclosed *School District Information* forms.
- F. The FSMC shall serve reimbursable milk pursuant to the SMP, where indicated on the enclosed *School District Information* forms.
- G. The FSMC shall promote maximum participation in the Child Nutrition Programs.
- H. The FSMC shall provide the specified types of service in the schools/sites listed in the School District Information forms, which is hereby in all respects made a part of this contract.
- I. The FSMC 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.
- J. No payment will be made to the FSMC 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 in accordance with 7 CFR 210.10 or that do not otherwise meet the requirements of the contract. [7 CFR 210.16 (c) (3)]

VII. BOOKS AND RECORDS

- A. The FSMC shall maintain such records (supported by invoices, receipts, or other evidence) as the SFA will need to meet monthly reporting responsibilities and shall submit monthly bills/invoices in a format approved by the SFA no later than **15** calendar days of the succeeding month in which services were rendered. Participation records shall be submitted in a timely manner to facilitate claims submission no later than the tenth (10th) day of the succeeding month in which services were rendered. The SFA shall perform edit checks on the participation records provided by the FSMC prior to the preparation and submission of the claim of reimbursement.
- B. The SFA and the FSMC must provide all documents as necessary for the independent auditor, MDE Reviewers, or agents of USDA to conduct the SFA's single audit. [7 CFR 210.22]
- C. Books and records of the FSMC pertaining to the Child Nutrition Program operations shall be made available, upon demand, in an easily accessible manner for a period of three (3) years from the end of the contract term (including renewals) to which they pertain, for audit, examination, excerpts, and transcriptions by the SFA and/or any state or federal representatives and auditors, or longer should any audit for that time still be open. [7 CFR 210.23 (c) and 250.16 (b)]

- D. If audit findings regarding the FSMC's records have not been resolved within the three (3) year record retention period, the records must be retained beyond the three (3) year period, for as long as required for the resolution of the issues raised by the audit. [7 CFR 210.23 (c) and 250.16 (b)]
- E. The FSMC shall not remove state or federal required records from SFA premises upon contract termination.
- F. The SFA shall conduct a quarterly internal review of all records and documentation associated with the procurement of food and non-food items to ensure that the FSMC is complying with all applicable competitive procurement procedures according to 7 CFR Parts 3016 and 3019.
- G. The FSMC shall surrender to the SFA upon termination of the contract all records pertaining to the operation of the food service, to include all food and non-food inventory records, menus, production records, claim documentation, financial reports, and procurement documentation. The records shall be in appropriate order and complete to the extent necessary to reconstruct individual cost of prior FSMC billings.
- H. FSMC shall purchase all food and other supplies required under this contract on the SFA's behalf. Title thereto shall remain with the SFA at all times. Such food and supplies shall be kept separate and apart from other SFA property unless the SFA has chosen not to maintain a separate inventory. FSMC and SFA shall jointly inventory all purchased food and supplies at both the beginning and the end of this contract's term. The SFA shall have access to the records of the food and supplies purchased to review and audit as it deems necessary.
- I. FSMC shall purchase all food and supplies for the SFA at the lowest prices possible consistent with maintenance of quality standards prescribed by the SFA, including taking advantage of all local trade discounts. All such transaction shall meet USDA procurement standards.

VIII. EMPLOYEES

- A. The SFA shall have final approval authority regarding the FSMC's hiring of a site manager.
- B. The FSMC shall comply with all wage and hours of employment requirements of federal and state laws. The FSMC 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 FSMC management staff. The FSMC shall also be responsible for the hiring and termination of non-management staff who are employees of the FSMC. The FSMC shall

maintain its own personnel and fringe benefits policies for its employees. All such policies shall be subject to the SFA review upon demand.

- C. The FSMC shall provide Workers' Compensation coverage for its employees.
- D. The FSMC shall instruct its employees to abide by the policies, rules, and regulations, with respect to use of the SFA's premises as established by the SFA and which are furnished in writing to the FSMC.
- E. The FSMC shall maintain its own personnel and fringe benefits policies for its employees, subject to review by the SFA.
- F. Staffing patterns shall be mutually agreed upon by the SFA and the FSMC.
- G. The use of student workers or students enrolled in vocational classes in the food service shall be mutually agreed upon.
- H. The FSMC shall not hire employees in excess of the number required for efficient operation.
- I. The FSMC shall provide the SFA with a schedule of employees, positions, assigned locations, salaries, and hours to be worked, two (2) full calendar weeks prior to the commencement of operation.
- J. The SFA shall provide sanitary toilet and hand washing facilities for the employees of the FSMC.
- K. Pursuant to the requirements of Section 1230 and 1230a of the Michigan Revised School Code, the SFA shall request a criminal history check through the Michigan State Police, as well as a criminal records check through the Federal Bureau of Investigation, with regard to all persons assigned by FSMC to regularly and continuously work in any of the SFA facilities. FSMC agrees that it shall not assign any of its employees, agents, or other individuals to perform any services under this Agreement where such individuals would regularly and continuously work in the SFA facilities if such person has been convicted of any of the following offenses:
 - a. Any "listed offense" as defined under Section 2 of the Michigan Sex Offenders Registration Act, MCL 28.722; or
 - b. Any offense enumerated in Sections MCL 380.1535a or 380.1539b or the Revised School Code, MCL 380.1535a; 380.1539b (for positions requiring State Board of Education approval); or
 - c. Any offense of a substantially similar enactment of the United States or another State; or

- d. Any felony. Provided that with prior written approval of the SFA's Superintendent and its Board of Education an individual regularly and continuously providing services under this Agreement at the SFA may be permitted to perform such services when, in the judgment of the Superintendent and Board of Education of the SFA, such individual's presence will not pose a danger to the safety or security of the SFA students or employees; or
- e. Any offense that would, in the judgment of the SFA create a potential risk to the safety and security of the students served by the SFA or employees of the SFA.

The SFA reserves the right to refuse FSMC's assignment of any individual, agent, or employee of FSMC to render services under this Agreement where the criminal record history of the individual (including any pending criminal charges) indicate, in the SFA's judgment, unfitness to perform services under this Agreement.

FSMC agrees that it shall pay the costs associated with criminal history checks and criminal records checks required under this contract and which are accomplished in order to comply with Section 1230 and 1230a of the Revised School Code with respect to FSMC's employees and agents.

- L. Notwithstanding the provisions of Section VIII and its subparts, the SFA may request in writing the removal of any employee of the FSMC who violates health requirements or conducts himself/herself in a manner, which is detrimental to the physical, mental or moral well-being of students.
- M. In the event of the removal or suspension of any such employee, the FSMC shall immediately restructure the food service staff without disruption of service.
- N. All SFA and/or FSMC personnel assigned to each school shall be instructed in the use of all emergency valves, switches, fire, and safety devices in the kitchen and cafeteria areas.
- O. Neither party shall during the term of the contract or one year thereafter solicit to hire, hire, or contract with the other party's supervisory employees. If this provision is breached, the breaching party shall pay and the injured party shall accept as liquidated damages an amount equal to six (6) months of the annual wages of the relevant employee.

IX. DESIGNATION OF PROGRAM EXPENSE

- A. The FSMC guarantees to the SFA that the bid price per meal and meal equivalent shall include the expenses as designated under the FSMC

column of the *Cost Responsibility Detail Sheet*. The FSMC shall be responsible for negotiating/paying all employees' fringe benefits, employee expenses, and accrued vacation and sick pay for staff on their payroll.

- B. The SFA shall pay those expenses as designated under the SFA column on the *Cost Responsibility Detail Sheet*.

X. PAYMENT AND FEES

- A. All bids shall be calculated based on the information provided by the SFA in the *Information Section* of this solicitation. All bids shall be submitted using the Bid Sheet – Fixed Price Contract form.
- B. The FSMC shall receive a fixed price per meal (breakfast and lunch) and per meal equivalent (a la carte).
- C. The FSMC shall receive a fixed management fee per meal (breakfast and lunch) and per meal equivalent (a la carte). The bid price(s) must be calculated net of applicable discounts, rebates, and credits received by the FSMC and must not include the use of USDA Foods or any alternate pricing structure.
- D. The FSMC shall receive a fixed per unit rate for each reimbursable after school snack served in the Afterschool Care Program.
- E. The FSMC shall receive a fixed per unit rate for each one-half pint of milk served in the Special Milk Program.
- F. The FSMC and SFA shall determine a la carte meal equivalents by dividing the net a la carte and catering revenue by the sum of the Federal free lunch reimbursement plus the value of USDA entitlement and bonus-donated foods. This equivalent factor will be adjusted annually by taking the sum of the Federal free lunch reimbursement plus the value of USDA entitlement and bonus-donated foods. The revenue shall include catering sales, adult meals, and a la carte sales to students and adults **less sales tax**. If applicable, revenue from vending machine sales will be included as part of the a la carte revenue.
- G. The FSMC must subtract from the SFA's monthly bill/invoice, the value of 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 including the value of USDA Foods contained in processed end products. Credit issued by the FSMC to the SFA for USDA Foods received shall be recorded on **each** monthly bill/invoice as a separate line item and shall be clearly identified and labeled. [7 CFR 250.51 (a)]

- H. The FSMC shall submit separate billing for special functions as outlined under the Standard Terms and Conditions section of this contract.

XI. MONITORING

- A. The SFA shall monitor the food service operation of the FSMC through periodic on-site visits to ensure that the food service is in conformance with all USDA program regulations. [7 CFR 210.16 (a) (3)]
- B. The records necessary for the SFA to complete the required monitoring activities must be maintained by the FSMC under this contract, and must be made available to the Auditor General, the USDA, the MDE, and the SFA upon request for the purpose of auditing, examination, and review. [7 CFR 210.15]
- C. On a monthly and at least quarterly basis, the SFA shall conduct an internal reconciliation of invoices and supporting documentation to verify per meal charges, management fees, and USDA Food usage credits in accordance with 7 CFR 210.21 (f)(iv) and (vi); 250.51 (b); and MDE Food Service SY 2014-2015 Administrative Policy Memo #12.

XII. USE OF ADVISORY GROUP/MENUS

- A. The FSMC shall participate in the formation and establishment and periodic meetings of the SFA advisory board, comprised of students, teachers, and parents, to assist in menu planning.
- B. The FSMC must comply with the twenty-one (21) day menu developed by the SFA for: **NSLP**, and/or **SBP**, and/or **SFSP**, and/or **CACFP**, included in the request for bid/proposal. Any changes made by the FSMC after the first twenty-one (21) day menu for the NSLP, and/or SBP and/or SFSP, and/or CACFP may be made only with the approval of the SFA. The SFA shall approve the menus no later than two (2) weeks prior to service.

XIII. USE OF FACILITIES, INVENTORY, EQUIPMENT, AND STORAGE

- A. The SFA will make available without any cost or charge to the FSMC, area(s) of the premises agreeable to both parties in which the FSMC shall render its services.
- B. The SFA may request of the FSMC additional food service programs. If the addition is a Child Nutrition Program not identified in the original RFP, prior to implementation the SFA must notify MDE and discuss whether the addition constitutes a material change to the contract. [Food Service, Administrative Policy # 11, SY 2014-15]

This does **not** include the expansion of food service operations outside the confines of the school/school district, such as expansion to non-affiliated

charter schools, non-public, or neighboring public schools, which were not part of the original bid (see Information Section of the original bid packet). The SFA may refer these entities to MDE for proper procurement procedures.

- A. Per 7 CFR 210.11 competitive foods means all food and beverages sold to students on the school campus during the school day, other than those meals reimbursable under the Child Nutrition Programs.

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 Child Nutrition Programs.

The FSMC and the SFA shall adhere to USDA requirements of final rules relating to competitive foods, including the Smart Snacks rule that became effective July 1, 2014.

- C. The FSMC and the SFA shall inventory the equipment and USDA Foods owned by the SFA, including but not limited to, silverware, trays, chinaware, glassware, and kitchen utensils. This will be performed at the beginning of the contract and at the beginning of each successive school year if the renewal option is utilized.
- D. The FSMC 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.
- E. The SFA will replace expendable equipment and replace, repair, and maintain non-expendable equipment except when damages result from the use of less than reasonable care by the employees of the FSMC.
- F. The SFA will have final, prior approval authority for the purchase of all equipment to be used in the storage, preparation, and delivery of school meals. Title to the property must be vested with the SFA when the equipment is placed in service by the FSMC. Upon written agreement of the parties, the purchase amount shall be amortized on a straight line depreciation basis beginning on the date upon which the equipment is placed in service, for a length of time upon which the parties shall mutually agree. If the agreement is terminated or non-renewed for any reason prior to full amortization, the SFA may: (1) retain the property and continue to make payments in accordance with the amortization schedule; or (2) return the property to the FSMC in full release of the unpaid balance.
- G. Equipment purchases must be submitted to the MDE School Nutrition Programs Unit for review and approval in accordance with the stipulations set forth in MDE Food Service Administrative Policy #13 for School Year 2014-2015.

- H. The FSMC shall maintain adequate storage practices, inventory and control of USDA Foods in conformance with the SFA's agreement with the Michigan Department of Education.
- I. The SFA shall provide the FSMC with local telephone service.
- J. 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.
- K. 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 FSMC.
- L. All food preparation and serving equipment owned by the SFA shall remain on the premises of the SFA.
- M. The SFA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the SFA premises.
- N. The FSMC shall notify the SFA of any equipment belonging to the FSMC on SFA premises within ten (10) days of its placement on SFA premises.
- O. The SFA shall have access, with or without notice, to all of the SFA's facilities used by the FSMC for purposes of inspection and audit.
- P. The FSMC shall not use the SFA's facilities to produce food, meals, or services for other organizations without the approval of the SFA. If such usage is mutually agreeable, there shall be a signed agreement, which stipulates the fees to be paid by the FSMC to the SFA for such facility usage.
- Q. The SFA, on termination or expiration of the contract, shall conduct a physical inventory of all equipment and commodities owned by the SFA.
- R. The FSMC shall surrender to the SFA upon termination of the contract, all SFA equipment and furnishings in good repair and condition.

XIV. PURCHASES

- A. The FSMC shall purchase all food and supplies at the lowest price possible consistent with maintaining quality standards and in full compliance with Office of Management and Budget (OMB) Super-Circular (formerly Circulars A-21, A-87, A-110, A-122, and A-133), 7 CFR Parts 210, 215, 220, 225, 245, 250, 3016 and 3019.

- B. This contract shall not prevent the SFA from participating in food consortia. If the SFA does purchasing, the FSMC's may not limit SFA selection of vendors to only FSMC-approved vendors.

XV. SANITATION

- A. The FSMC shall place garbage and trash in containers in designated areas as specified by the SFA.
- B. The SFA shall remove all garbage and trash from the designated areas.
- C. The FSMC shall clean the kitchen and dining room areas as indicated on the *Cost Responsibility Detail Sheet*.
- D. The FSMC 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 cycling.
- E. The SFA shall clean ducts and hoods above the filter line.
- F. The SFA shall provide extermination services as needed.
- G. The FSMC shall comply with all local and state sanitation requirements in the preparation of food.

XVI. LICENSES, FEES, AND TAXES

- A. The FSMC shall be responsible for paying all applicable taxes and fees, including but not limited to, excise tax, state and local income tax, and payroll and withholding taxes for FSMC employees. The FSMC shall hold the SFA harmless for all claims arising from payment of such taxes and fees. The extent of responsibility is designated in the cost responsibility attachment of this document.
- B. The FSMC shall obtain and post all licenses and permits as required by federal, state, and/or local law.
- C. The FSMC shall comply with all SFA building rules and regulations.

XVII. INSURANCE AND INDEMNIFICATION

- A. The FSMC shall obtain and keep in force during the term of this Agreement, for the protection of the SFA and FSMC, and naming the SFA as an additional insured, Comprehensive General Liability Insurance to include but not limited to Personal Injury Liability, Property Damage Liability, Contractual Liability, and Products Liability, covering only the

operations and activities of the FSMC under this agreement. Minimum coverage shall be \$1,000,000 per incident/per person.

- B. A Certificate of Insurance of the FSMC's insurance coverage, indicating the specified amounts, must be submitted at the time of award. The FSMC shall provide the SFA copies of all applicable insurance policies at the time of award. All insurance required as a result of a response to this RFP shall provide that the insurer will provide notice of cancellation directly to the SFA thirty (30) days before such cancellation occurs.
- C. The SFA shall keep its buildings, including the premises, and all property contained therein insured against loss or damage by fire, explosion, and similar casualties.
- D. The FSMC shall provide worker's compensation and unemployment insurance for its employees as specified in the *Cost Responsibility Detail Sheet*.
- E. The FSMC shall indemnify and hold harmless the SFA, or any employee, director, or agent of the SFA from and against all claims, damages, losses, and expenses (including attorney's fees and court costs incurred to defend litigation), decrees or judgments whatsoever arising from any and all injuries, including death or damages to or destruction of property, resulting from the FSMC's acts, or omissions, willful misconduct, or breach of the FSMC's obligations under the Agreement by the FSMC and its agents, servants, or employees, or other persons under its supervision or direction.
- F. The FSMC shall not be required to indemnify or hold harmless the SFA from any liability or damages arising from the SFA's sole acts or omissions.

XVIII. PROPRIETARY INFORMATION

- A. During the term of the Agreement, the FSMC may grant to the SFA a nonexclusive right to access certain proprietary materials of the FSMC, including, but not limited to signage, operating or other manuals, recipes, menus and meal plans, and computer programs relative to or utilized in the FSMC's business or the business of any affiliate of the FSMC.
- B. To the extent permitted by law, the SFA shall not disclose any of the FSMC's proprietary information or other confidential information, directly or indirectly, during or after the term of the Agreement. The SFA shall not photocopy or otherwise duplicate any such material without the prior written consent of the FSMC. All trade secrets and other confidential information shall remain the exclusive property of the FSMC and shall be returned to the FSMC immediately upon termination of the agreement.

- C. The SFA agrees that all proprietary computer software programs, marketing, and promotional literature and materials used by the FSMC and the SFA's premises in connection with the food services provided by the FSMC under this Agreement shall remain the property of the FSMC.
- D. Upon termination of the contract, all use of trademarks, service marks, and logos owned by the FSMC or licensed to the FSMC by third parties shall be discontinued by the SFA, and the SFA shall immediately return to the FSMC all proprietary materials.
- E. The FSMC acknowledges that during the course of this contract, the FSMC shall have access to business systems, techniques, and methods of operation developed at great expense by the SFA. The FSMC recognizes these to be unique assets of the SFA's business. The FSMC agrees to keep such information confidential and shall not disclose such information directly or indirectly during or subsequent to the term of this Agreement.

XIX. NON-DISCRIMINATION

The parties to this contract agree not to discriminate against any employee, applicant for employment, student, or other recipient of services under this contract due to race, color, religion, sex, national origin, age, height, weight, disability, marital status or veteran status, or other legally protected classification. Breach of this section shall be regarded as material breach of this contract.

XX. EMERGENCY CLOSING

- A. The SFA shall notify the FSMC of any interruption in utility service of which it has knowledge.
- B. The SFA shall notify the FSMC of any delay in the beginning of the school day or the closing of school(s) due to snow or other emergency situations.

XXI. TERM AND TERMINATION

- A. This contract shall become effective on **July 1, 2015**, or upon written acceptance of the contract by the Michigan Department of Education, whichever occurs last, and terminate on **June 30, 2016**, with up to four (4) one-year renewals with mutual agreement between the SFA and the FSMC. [7 CFR 210.16 (d)]

Per 7 CFR 250.53 (a) (12), contract extensions or renewals are contingent upon the fulfillment of all contract provisions relating to USDA Foods.

- B. The SFA may terminate the contract with or without cause by giving sixty (60) days written notice. The FSMC may terminate the contract with or

without cause by giving the greater written notice of six (6) months or the minimum legal required timeframe.

- C. Neither the FSMC nor the SFA shall be responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any acts not within the control of the FSMC or the SFA, respectively, and which by the exercise of due diligence they were unable to prevent.

XXII. NON-PERFORMANCE BY FSMC

- A. In the event of the FSMC's non-performance under this contract and/or the violation or breach of the contract terms, the SFA shall have the right to pursue all administrative, contractual, and legal remedies against the FSMC and shall have the right to seek all sanctions and penalties as may be appropriate.
- B. The FSMC shall pay to the SFA the full amount of any meal overclaims and fees associated with those overclaims, which are attributable to the FSMC's negligence, including those overclaims and associated fees based on review or audit findings, which occurred during the effective dates of the original and renewal years of the contract.

XXIII. CERTIFICATIONS

- A. The FSMC shall comply with the mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).
- B. The FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (the "Act"), 40 U.S.C. §§ 327-330, as supplemented by the Department of Labor regulations, 29 CFR, Part 5. Under Section 103 of the Act, the FSMC shall be required to compute the wages of every laborer on the basis of a standard workday of eight (8) hours and a standard workweek of forty (40) hours. Work in excess of the standard workday or standard workweek is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or forty (40) hours in any workweek.
- C. The FSMC shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations, 41 CFR Part 60.
- D. The FSMC shall comply with all applicable civil rights laws, as amended which include but are not limited to: Title VI and the Title VII 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; 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities; the Michigan Elliott-Larsen Civil Rights Act; and the Michigan Persons with Disabilities Civil Rights Act.

- E. The FSMC shall comply with the Buy American provision for contracts that involve the purchase of food products with Federal funds, 7 CFR Part 250.23.
- F. Where applicable, the SFA or FSMC shall take affirmative steps to ensure small and minority businesses are solicited whenever they are potential sources and to use the services and assistance of the Small Business Administration and Minority Business Enterprise of the Department of Commerce as required (7 CFR 226.22(f)).
- G. Where applicable to contracts in excess of \$2,500 that involve the employment of mechanics or laborers, the Sponsor and Contractor shall comply with section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 330).
- H. The FSMC **has signed** the Certification of Independent Price Determination, which was attached as an addendum to the FSMC's bid and which is incorporated herein by reference and made a part of this contract.
- I. The FSMC **has signed** the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, which was attached as an addendum to the FSMC's bid and which is incorporated herein by reference and made a part of this contract.
- J. The FSMC **has signed** the Certification Regarding Clean Water and Air, which was attached as an addendum to the FSMC's bid and which is incorporated herein by reference and made a part of this contract.
- K. The FSMC **has signed** the Certification Regarding Disclosure of Lobbying Activities, which was attached as an addendum to the FSMC's bid and which is incorporated herein by reference and made a part of this contract.
- L. The FSMC **has signed** the Certificate of Compliance with Michigan Public Act 517, which was attached as an addendum to the Vendor's bid and which is incorporated by reference and made a part of this contract.

XXIV. MISCELLANEOUS

- A. Except as otherwise expressly stated, this contract shall be construed under the laws of the State of Michigan. Any action or proceeding arising

out of this contract shall be heard in the appropriate courts within the State of Michigan.

- B. The FSMC shall comply with the provisions of the bid specifications, which are hereby **in all respects made a part of this contract**.
- C. No provision of this contract shall be assigned or subcontracted without prior written consent of the SFA and notification to MDE prior to implementation.
- D. No waiver of any default shall be construed to be or constitute a waiver of any subsequent claim.
- E. 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.
- F. 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 this contract and bid specifications.
- G. The SFA shall be responsible for ensuring the resolution of program review and audit findings.
- H. This contract is subject to review and approval by the Michigan Department of Education.

AGREEMENT PAGE – New Contract

Original Contract SY 2015-2016

This bidder certified that he/she shall operate in accordance with all applicable State and Federal laws and regulations.

This solicitation/contract, attachments, and the RFP proposal of the Successful bidder, with addenda, if any, constitute the entire agreement between the SFA and FSMC. The parties shall not execute any additional contractual documents pertaining to this RFP, except as permitted by applicable law.

This Agreement shall be in effect for one year and may be renewed by mutual agreement for four (4) additional one-year periods.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representative on this day and year.

Bid Sheet Selected by SFA for Award: _____
Insert Plan type and/or Advance Payment option

ATTEST:

SCHOOL FOOD AUTHORITY:

Signature of Witness for SFA

Signature of SFA Representative

Name

Title

Date

ATTEST:

FOOD SERVICE MANAGEMENT COMPANY:

Signature of Witness for FSMC

Signature of FSMC Representative

Name

Title

Date

SUCCESSFUL BIDDER CERTIFICATIONS

These forms have been completed by each food service management company and posted to the following website:

http://www.michigan.gov/mde/0,4615,7-140-43092_61446-289948--,00.html

Certificate of Independent Price Determination

Suspension and Debarment Certification

Clean Air and Water Certificate

Disclosure of Lobbying Activities

Certificate of Compliance with Public Act 517

They are listed by name of the management company. When the SFA determines the recommended successful bidder, it will need to download the management company's signed certificates. The Certificate of Independent Price Determination will need to be signed by the SFA and submitted with the final contract for MDE approval.

A copy of each certificate will be retained by the school district for its file.