

**CITY OF NEWTON
PURCHASING DEPARTMENT**

CONTRACT FOR THE NEWTON PUBLIC SCHOOLS

PROJECT MANUAL:

NEWTON PUBLIC SCHOOLS - FOOD SERVICE MANAGEMENT

REQUEST FOR PROPOSALS #24-52

Mandatory Pre-Bid: 100 Walnut Street Room 210 Newton, Ma

9:00am to 3:00pm Wednesday February 21, 2024

Bid Opening Date: March 14, 2024, at 10:30 a.m.

February 2024

Ruthanne Fuller, Mayor

**CITY OF NEWTON
PURCHASING DEPARTMENT
REQUEST FOR PROPOSALS #24-52**

The City of Newton (City) invites sealed proposals from Contractors for:

NEWTON PUBLIC SCHOOLS - FOOD SERVICE MANAGEMENT

A **mandatory** pre-proposal conference and site visit will be held at the Newton Education Center, 100 Walnut Street, Room 210, Newton, Massachusetts from **9:00 A.M. to 3:00 P.M. on Wednesday, February 21, 2024.**¹

Proposals will be received until: **10:30 a.m., Thursday, March 14, 2024** at the Purchasing Department, Room 108, Newton City Hall, 1000 Commonwealth Avenue, Newton, MA 02459. Immediately following the deadline for proposals a list will be created of all proposers' names received and will be posted to the City's website: www.newtonma.gov/bids. **Failure to attend the pre-proposal conference means you will be ineligible to submit a proposal.**

The attached Request For Proposals (RFP), including evaluative criteria and form of contract, are in a form mandated by the Commonwealth of Massachusetts Department of Elementary and Secondary Education (DESE). All RFP documents will be available on line at www.newtonma.gov/bids .or for pickup at Newton City Hall, Room 108, Purchasing Department, 1000 Commonwealth Avenue, Newton Centre, MA 02459 after **10:00 a.m., February 15, 2024.**

There will be no charge for contract documents. Bid surety is not required with this bid.

Each proposal shall include a **Bid Bond** equal to 5% of the proposer's total budgeted costs (expenses). The awarded Contractor must provide a **\$100,000 Performance Bond**.

The term of the awarded contract shall extend from July 1, 2024 to June 30, 2025 and may be renewed by the City at its discretion for four (4) additional terms of 12-months each, for a maximum possible term of five (5) years.

All proposals are subject to the provisions of M.G.L. c.30B, §6. F.O.B. Destination inside designated department, Newton, MA. This is a Request For Proposals. Accordingly, all proposals shall be submitted as follows: **(i) one (1) original, eight (8) paper copies, and one (1) CD/electronic copy of the Technical Proposal and (ii) one (1) ORIGINAL COPY of the Price Proposal.** All City bids are available on the City's web site at www.newtonma.gov/bids . It is the sole responsibility of the Contractor downloading these bids to ensure they have received any and all addenda prior to the bid opening.

Any questions with respect to the RFP should be in writing and addressed to purchasing@newtonma.gov. Responses will be provided in the form of addenda available online within the original bid document as well as a separate file. If you download bids from the internet site and would like to make it known that your company has done so, you may fax the Purchasing Department (617) 796-1227 or email to purchasing@newtonma.gov with your NAME, ADDRESS, PHONE, FAX AND INVITATION FOR BID NUMBER.

The City will reject any and all bids in accordance with the above referenced General Laws. In addition, the City reserves the right to waive minor informalities in any or all bids, or to reject any or all bids (in whole or in part) if it be in the public interest to do so.

In the event that any person wishes to attend a bid opening or pre-bid meeting, accessible and reasonable accommodations will be provided to persons requiring assistance. If you need reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. For Telecommunications Relay Service, please dial 711.

Nicholas Read



Chief Procurement Officer

February 15, 2024

¹ The pre-proposal conference will consist of a meeting at the Newton Education Center and visits to five (5) different Newton schools.



MASSACHUSETTS
Department of Elementary
and Secondary Education

Newton Public Schools

Request for Proposal (RFP) / Contract

Food Service Management Companies
SY 2023 - 2024

Massachusetts Department of Elementary and Secondary Education

135 Santilli Highway, Everett, MA 02149

Phone 781-338-3000 TTY: N.E.T. Relay 800-439-2370

www.doe.mass.edu



MASSACHUSETTS
Department of Elementary
and Secondary Education

This document was prepared by the
Massachusetts Department of Elementary and Secondary Education
Jeffrey C. Riley
Commissioner

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Inquiries regarding the Department's compliance with Title IX and other civil rights laws may be directed to the Human Resources Director, 135 Santilli Highway., Everett, MA 02149. Phone: 781-338-6105.

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Massachusetts Department of Elementary and Secondary Education
135 Santilli Highway, Everett, MA 02149
Phone 781-338-3000 TTY: N.E.T. Relay 800-439-2370

www.doe.mass.edu



Newton Public Schools

Request for Proposal (RFP) / Contract

Food Service Management Companies
SY 2023 – 2024

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at:

<https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-2817Fax2Mail.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

mail:

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

fax:

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

email:

program.intake@usda.gov

This institution is an equal opportunity provider.

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Request for Proposal

Section A: General Information

A.1. Purpose of this request for proposal (RFP):

The organization or individual responding to this request will be referred to as the Food Service Management Company (FSMC) and the contract will be between the FSMC and Newton Public Schools hereafter referred to as the School Food Authority (SFA).

This solicitation is for the purpose of entering into a contract for the operation of a food service program for the SFA. Currently the SFA's food service program includes the following programs and options:

- National School Lunch Program (NSLP)
- School Breakfast Program (SBP)
- A la Carte Food
- Vending Machine Items

Potential Future Programs

The SFA requires the FSMC proposal to include the following programs and options in their response:

- After School Snack Program (NSLP)

Proposals must be inclusive of all of the SFA's current programs. However, the SFA reserves the right to add and/or expand the federal CN program to provide the availability of food resources to children and students that can be served through these programs. Prior approval must be obtained by the State Agency before adding a CN program. The SFA also reserves the right to remove CN programs.

The FSMC will assume responsibility for the efficient management and consulting service of the food program including, but not limited to: menus, purchasing, receiving, storing, setting up cafeteria lines, counter service, cleanup, sanitation, training, hiring and supervising personnel, and presenting food in a way to create optimum student participation at the schools listed in **Exhibit A**.

A.2. Issuing Office

City of Newton Purchasing Department is the issuing office for this document and all subsequent addenda relating to it. The information provided herein is intended to assist the FSMC in the preparation of proposals necessary to properly respond to this RFP. The RFP is designed to provide interested FSMCs with sufficient information to submit proposals meeting minimum requirements but is not intended to limit a proposal's content or exclude any relevant or essential data there from. The FSMCs may expand upon the specification details to evidence service capability under any agreement within regulatory limits.

Questions related to any portion of this RFP must be directed in writing to the office noted above via mail, e-mail, or fax. **Responses will be provided only to written questions** submitted if provided in accordance with the timeline in Section A4.

A.3. Procurement Method

Procurement Method will be the Competitive Sealed Proposal (commonly known as a Request for Proposals or RFP). A Chief Procurement Officer (CPO) or other local official(s) with delegated authority is responsible for conducting/overseeing the procurement.

The RFP method differs from the traditional Invitation for Bid (IFB) method in the following ways:

- RFP requires a separate price and non-price proposal
- All comparative criteria used to evaluate proposals are included in the RFP

- Proposers are informed that the contract will be awarded to the proposal that is most advantageous to the SFA, taking into consideration all evaluation criteria including-price, with price as the primary factor.

The contract will be a Cost-Reimbursable contract where the FSMC will be paid on the basis of the direct costs (food, labor and supplies) incurred plus fixed fees (Administrative Fee – corporate overhead costs and Management Fee – negotiated profit). Administrative and Management Fees must be itemized to ensure there are no duplicate charges.

A.4. Timeline: Response Due Date and Pre-Bid Conference

Number of Copies: Eight(8) (outlined in Section D1) of the proposal must be received, time and date stamped by the time clock at Location: Purchasing Department, Newton City Hall, Room 108, 1000 Commonwealth Ave, Newton, MA, 02459 by Due Date: March 14, 2024 at Time: 10:30 AM. Any proposals en route, either in the mail or other locations in the SFA's offices will be ineligible for consideration. Emailed or faxed proposals WILL NOT be accepted.

Proposals will be made available for inspection onsite for a reasonable period of time after all proposals are opened and a determination made on the awarded vendor. RFP's will be opened privately and evaluated. Price Proposals are opened privately after proposal evaluations.

Unforeseeable Circumstances – If, at the time of the scheduled proposal submission date, The City of Newton is closed due to uncontrolled events such as fire, snow, ice, wind or building evacuation, the proposal due date will be postponed until 10:30 AM on the next normal business day.

The proposal must be received at the office of:

Name	Nick Read
Title	Chief Procurement Officer
Address (Street Name)	1000 Commonwealth Avenue
Address (City, State)	Newton, MA
Address (Zip Code)	02459
Email Address	purchasing@newtonma.gov
Telephone	617-796-2222
Fax	(617)796-1227

Date	Description
Date: February 15, 2024	Request for Proposals (RFP) Issued (RFP to be approved by MA DESE prior to issuing)

Date: February 21, 2024	Pre-Proposal Conference Time: 09:00 AM Attendance Required: Yes Address: 100 Walnut Street Floor/Room: Room 108 City, State: Newton, MA Zip Code: 02460 Tour of SFA facilities immediately following the Pre-Proposal Conference
Date: March 5, 2024	Questions from Bidders Due
Date: March 8, 2024	Responses from the SFA to the Bidders Questions Due (Written/Posted)
Date: March 14, 2024	Proposal Deadline Time: 10:30 AM
Date: March 14, 2024	Review and Evaluation of Proposals
Date: April 1, 2024	Award of Contract by School Committee
Date: April 5, 2024	Draft contract due to MA DESE
Date: April 19, 2024	Executed Contract due to MA DESE

A.5. Consideration and Rule for Award

1. The SFA may award a contract based upon the initial proposals received without discussion of such proposals with the proposer. Accordingly, each initial proposal should be submitted with the most favorable price (Guaranteed Return) and service standpoint.
2. In accordance with 2 CFR § 200.319 and MA 30B, this procurement transaction will be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective evaluation of contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or requests for proposals must be excluded from competing for this contract.
 - a. Prohibited restrictions to competition:
 - i. Placing unreasonable requirements on firms in order for them to qualify to do business;
 - ii. Requiring unnecessary experience and excessive bonding;
 - iii. Noncompetitive pricing practices between firms or between affiliated companies;
 - iv. Noncompetitive contracts to consultants that are on retainer contracts;
 - v. Organizational conflicts of interest;
 - vi. Specifying a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - vii. Any arbitrary action in the procurement process.
3. In accordance with 2 CFR § 200.319(c), the SFA will not conduct the procurement process in a manner that uses statutorily or administratively imposed state, local or tribal geographic preferences in the evaluation of proposals, except in those cases where applicable federal statutes expressly permit such preferences.
4. The SFA reserves the right to cancel the solicitation when deemed in the best interest of the SFA.

5. The SFA reserves the right to waive any informality in any proposal or in any provision in the RFP.
6. The SFA will award the contract, in writing, to the responsible FSMC whose proposal is most responsive and advantageous to the SFA taking into consideration all evaluation criteria, with price as the primary factor. A responsible FSMC is one in which contractor integrity, compliance with public policy, record of past performance, and financial, technical and other resources indicate an ability to perform successfully under the terms and conditions required by this solicitation. A responsive proposal is one that conforms to all the material terms and conditions of the solicitation. 2 CFR § 200.320(b)(2)(iii)
7. FSMCs or their authorized representatives are expected to fully inform themselves as to the conditions, requirements and specifications before submitting proposals. Failure to do so will be at the FSMC's own risk and cannot secure relief on a plea of error. This must include the contract terms and conditions as noted in Section 1.
8. Under no circumstances will the SFA be responsible for the cost of preparing any proposal.
9. Payments from the non-profit school food service account are prohibited prior to approval by MA DESE **and** contract execution (signed by both the SFA and the FSMC).
10. Submitted proposals must not include overly responsive items including but not limited to: funding scholarship programs, purchasing or gifting tickets, providing monetary gifts for unsolicited equipment, etc. The practice of including a requirement in solicitation documents or including contract clauses for the delivery of unsolicited funds, services, or items for anything that does not directly benefit the non-profit school food service account is unallowable. 2 CFR § 225 Appendix A(C)(1)(b).
11. Contract Award Protest: The SFA shall act in accordance with 2 CFR § 200.318(k). Any action, which diminishes full and open competition, seriously undermines the integrity of the procurement process and may subject the SFA to contract award protests. SFAs are responsible for properly responding to protests and concerns raised by potential FSMCs. Pursuant to 2 CFR § 200.318(k), SFAs must in all instances disclose all information regarding a protest to the MA DESE. SFA's are highly encouraged to attach their contract award protest procedures to their RFP.
12. SFA will conduct this procurement in accordance with its Code of Conduct that prohibit a real or apparent conflict of interest and disciplinary action to be applied for violations of such standards. 2 CFR §200.318(c) and Chapter 268A Conflict of Interest Law.
13. 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.
14. A cost plus a percentage of cost and/or "cost-plus-a-percentage-of-income" provision will not be used in the award of this contract [2 CFR §200.324(d)] [7 CFR 210.16(c)].
15. The SFA must make available upon request, for the USDA or state agency, pre-procurement review, procurement documents, such as RFPs or independent cost estimates.

	MINIMUM EVALUATION CRITERIA	YES	NO	Proposal Page # (FSMC must enter)
1	Does the FSMC have a minimum of two(2) year(s) experience in managing K-12 school food service programs with at least two districts of comparable enrollment to the Newton Public Schools?			
2	Has the FSMC conditioned or qualified the proposal beyond prescribed limits or instructions?			
3	Has the FSMC confirmed an on-site Food Service Director with at least two(2) year(s) of experience in K-12 food service and meets USDA Professional Standards ?			
4	The FSMC shall not have defaulted on any school food service contract within five years prior to the proposal date.			
5	Is the average lunch participation rate at the proposer's comparable district sites for the SY2023-2024 at minimum thirty(30)%?			
6	Are the following materials/documents included with the proposal?			
	• Bid Bond			
	• Performance bond (if required) or Consent of Surety			
	• Non-Collusion Statement			
	• Tax-Compliance Certification			
	• Certificate of Insurance			
	• Recommended School Staffing Schedules			
	• Company Organization Chart			
	• Description of Marketing and Merchandising Programs			
	• Description of Food Handling/Sanitation Program			
	• Description of Nutrition Education/Awareness Program			
	• Description of Employee Training Programs			
	• Description of Accounting Program			
	• Resume for Food Service Director			
	• Client List of similar sized districts over past 3 years (including all districts from New England and New York)			
	• 21 Day Cycle Menus (H.S., Middle, Elementary)			
	• Daily Menu Pattern (H.S., Middle, Elementary)			
	• Summary of Experience			
	• Plan of Services			
	• Proof of Visitation			

	<ul style="list-style-type: none"> • Last Audited Financial Statement 			
	<ul style="list-style-type: none"> • Complete Description of Employee Benefits with related employee costs 			
	<ul style="list-style-type: none"> • Support Staff Visitation Schedule 			
	<ul style="list-style-type: none"> • Certificate of Independent Price Determination 			
	<ul style="list-style-type: none"> • Certification of Clean Air and Water 			
	<ul style="list-style-type: none"> • Energy Policy and Conservation Act 			
	<ul style="list-style-type: none"> • Certification Regarding Debarment / Foreign Corporation Certificate of Registration 			
7	Please list Additional LEA-Defined Minimum Criteria below			
	There are no additional minimum criteria.			

A.6. Award Criteria

1. It is the intent of the SFA to select the proposal that will best meet its needs and is most advantageous to the nonprofit school food service program of the SFA, with the highest guaranteed return. All responsive proposals will be evaluated and ranked. The contract will then be awarded to the company submitting the top-ranked proposal with price (highest guaranteed return) as the primary determining factor.
2. Proposals will be scored by a committee using the evaluation criteria.
3. The committee must be comprised of three (3) or more qualified evaluators.
4. Each evaluator must score each proposal individually.
5. Evaluator ratings will be converted to a score to facilitate identifying the overall vendor rating by criteria. (**See Exhibit M - Scoring Committee Results Chart**).
6. The overall vendor criteria ratings shall then be converted to a score to facilitate identifying the overall vendor score (**See Exhibit M - Criteria Ratings Conversion Chart**).
7. Vendor proposals with an overall rating of Highly Advantageous (HA) will move to the price (Guaranteed Return) evaluation stage. If there are no vendors rated Highly Advantageous, the LEA reserves the right to move Advantageous vendors to the price (Guaranteed Return) evaluation stage.
8. The Highly Advantageous vendor with the highest Guaranteed Return will be awarded the contract (**See Contract Term and Conditions**).

Evaluation Criteria

All bidders will respond to this section by including, in your submittal, detailed evidence of the items below in the form of backup documentation. Each proposal will be evaluated using the following ratings, where applicable:

- Highly Advantageous (HA)
- Advantageous (A)
- Not Advantageous (NA)
- Unacceptable (U)

Criteria will be evaluated using the above 4 ratings in accordance with MA 30B.

The following comparative evaluation criteria will be those utilized in the selection process. They are presented as a guide in understanding the District’s requirements and expectations and are not presented in order of importance. Proposers are solely responsible for completely responding to all requests and requirements of this RFP.

1. General Experience – Demonstrated experience providing the services outlined in this RFP to other jurisdictions. (FSMC must add page number: _____).

Highly Advantageous: The proposer has at least ten(10) or more year(s) of K-12 school food service experience working with two or more districts providing the same services as outlined in this RFP.

Advantageous: The proposer has at least five(5) year(s) but less than ten(10) of experience working with two or more districts providing the same services as outlined in this RFP.

Not Advantageous: The proposer has at least two(2) year(s) but less than five(5) experience working with two or more districts providing the same services as outlined in this RFP.

Unacceptable: The proposer has less than two(2) year(s) of experience working with two or more districts providing the same services as outlined in this RFP.

2. Reference Satisfaction – Satisfaction of SFA selected proposer references with school food service operations performed by the proposer, including but not limited to guaranteed return, implementation, customer service, quality of meals, and reporting. (FSMC must add page number: _____).

Highly Advantageous: All seven(7) references stated that the FSMC met or exceeded expectations in all contract years and achieved all other contract requirements and delivery specifications.

Advantageous: At least four(4) but less than seven(7) references stated that the FSMC met or exceeded expectations in all contract years and achieved all other contract requirements and delivery specifications.

Not Advantageous: At least two(2) but less than four(4) references stated that the FSMC met or exceeded expectations in all contract years and achieved all other contract requirements and delivery specifications.

Unacceptable: Less than two(2) references stated that the FSMC met or exceeded expectations in all contract years and achieved all other contract requirements and delivery specifications.

3. Operations – Reasonableness and reliability of proposed management and operational programs. (FSMC must add page number: _____).

Highly Advantageous: The proposal contains a detailed, logical, and highly efficient scheme for management and operation of the school food service program, that addresses all of the required issues, with a clear and logically consistent relationship between costs and operational assumptions, with a sound and realistic implementation plan and schedule (reasonableness of staffing levels, startup and transition plan, and contingency plans).

Advantageous: The proposal contains a credible scheme for management and operation of the school food service program that addresses all of the required issues, with a somewhat clear and consistent relationship between costs and operational assumptions, with a reasonable implementation plan and schedule.

Not Advantageous: The proposal is not sufficiently detailed to fully evaluate, or the plan for management and operation of the school food service program and does not contain all the components necessary to produce satisfactory results that addresses all required issues, the relationship between costs and operational assumptions are unclear, the implementation plan and schedule is questionable.

4. Relevant Experience of the Food Service Director (FSMC must add page number: _____).

Highly Advantageous: The Food Service Director has five(5) year(s) of experience in the school food service industry in providing school food services to comparable districts of size and scope to the SFA and meets the new USDA Hiring Standards for School Nutrition Program Directors.

Advantageous: The Food Service Director has at least three(3) year(s) and less than five(5) year(s) of experience in the school food service industry in providing school food services to comparable districts of size and scope to the SFA and meets the new USDA Hiring Standards for School Nutrition Program Directors.

Not Advantageous: The Food Service Director has at least two(2) year(s) and less than three(3) year(s) of experience in the school food service industry in providing school food services to comparable districts of size and scope to the SFA and meets the new USDA Hiring Standards for School Nutrition Program Directors.

Unacceptable: The Food Service Director has less than two(2) year(s) in the school food service industry in providing school food services to comparable districts of size and scope to the SFA and meets the new USDA Hiring Standards for School Nutrition Program Directors.

5. Proposed Menus (*FSMC must add page number: _____*).

Highly Advantageous: The proposed menus exceed the requirements of CNP for nutrition content, provide contemporary, popular selections including an emphasis on fresh fruits and vegetables.

Advantageous: The proposed menus meet the requirements of CNP for nutrition content, provide contemporary, popular selections including an emphasis on fresh fruits and vegetables.

Not Advantageous: Nutrition content meets CNP requirements, however, the proposed menus are repetitive and do not include contemporary, popular selections.

Unacceptable: Nutrition content does not meet CNP requirements.

6. Marketing and Merchandising (*FSMC must add page number: _____*).

Highly Advantageous: The proposal provides for an aggressive, contemporary marketing and merchandising program with proven participation and financial results in at least three school districts of similar size and scope as the SFA's foodservice program.

Advantageous: The proposal provides for a marketing and merchandising program with proven participation and financial results in two or fewer school districts of similar size and scope as the SFA's foodservice program.

Not Advantageous: The proposal provides for a minimal marketing and merchandising program with limited or no proven track record.

7. Financial Stability – Evidence that the Proposer has sufficient financial strength and ability to provide services required in this RFP. (*FSMC must add page number: _____*).

Highly Advantageous: Audited financial statement indicates that Proposer has the financial capabilities to provide quality services to the district while adhering to the scope of work.

Advantageous: The audited financial statement indicates that the Proposer has some financial limitations to provide satisfactory services to the district and will only be able to partially adhere to the scope of work and provide quality services.

Not Advantageous: The audited financial statement indicates that the Proposer has significant financial limitations to provide satisfactory services to the district and will only be able to partially adhere to the scope of work and provide quality services.

Unacceptable: The audited financial statement indicates that the Proposer has significant financial limitations and will not be able to provide satisfactory services to the district and will be unable to adhere to the scope of work and provide quality services.

8. Employee Training (FSMC must add page number: _____).

Highly Advantageous: Training materials and programs are comprehensive, and the frequency of training is at least ten(10) times per school year and ensures staff is current on all school food service procedures and safety protocols.

Advantageous: Training materials and programs are comprehensive, and the frequency of training is six(6) to ten(10) times per school year and ensures staff is current on all school food service procedures and safety protocols.

Not Advantageous: Training materials and programs are basic, and the frequency of training is two(2) to six(6) times per school year and reflects only the minimum necessary to run a school food service program.

Unacceptable: Training materials and programs are basic, and the frequency of training is less than two(2) times per school year.

9. Student Participation (FSMC must add page number: _____).

Highly Advantageous: The average lunch participation rate at the proposer's comparable sites (based upon the seven(7) SFA selected references) for SY2022-2023 is fifty-five(55)% or higher.

Advantageous: The average lunch participation rate at the proposer's comparable sites (based upon the seven(7) SFA selected references) for SY2022-2023 school year is at least forty(40)% but less than fifty-five(55)%.

Not Advantageous: The average lunch participation rate at the proposer's comparable sites (based upon the seven(7) SFA selected references) for SY2022-2023 is thirty(30)% up to forty(40)%.

Unacceptable: The average lunch participation rate at the proposer's comparable sites (based upon the seven(7) SFA selected references) for the SY2022-2023 school year is less than thirty(30)%.

10. Additional Evaluation Criteria (FSMC must add page number: _____).

--- 10.1 The proposed Food Service Director has _____ years experience serving as a General Manager of a FSMC - in comparable districts of size and scope is preferable. ---

Highly Advantageous: 5 or more

Advantageous: At least 3 and less than 5

Not Advantageous: At least 1 and less than 3

Unacceptable: Less than 1

--- 10.2 The FSMC has a plan for how they will ensure optimal performance of the FSD and program operations. -
--

Highly Advantageous: The plan to ensure optimal performance of FSD and program/operations details clear and actionable metrics, articulates a meeting schedule with the SFA, and articulates consequences if metrics are not met.

Advantageous: The plan to ensure optimal performance of the FSD and program/operations describes clear metrics and describes a communication plan with the SFA

Not Advantageous: The plan to ensure optimal performance of the FSD and program/operations is unclear about deliverables, communication, and consequences for shortfalls in performance.

Unacceptable: The FSMC did not include a plan to ensure optimal performance of the FSD and program/operations nor address shortfalls.

--- 10.3 The Evaluation Committee will schedule interviews with all Proposers who have met the minimum criteria and are responsive to the RFP. The Evaluation Committee will prepare ten (10) questions, which will be asked of all Proposers. ---

Highly Advantageous: Proposed FSD, Regional Manager, and at least one representative from senior management of the FSMC were present and communicated a comprehensive plan of action. The FSD actively participated in the interview. The FSMC team was fully responsive to all ten (10) questions).

The FSMC confirmed that the Proposed FSD would be employed in Newton for at least one year if awarded the contract.

Advantageous: Proposed FSD and Regional Manager were present and communicated a comprehensive plan of action. The FSD was actively involved in the interview. The FSMC was fully responsive to at least seven (7) of the ten (10) questions.

The FSMC confirmed that the Proposed FSD would be employed in Newton for at least one year if awarded the contract.

Not Advantageous: The Proposed FSMC participated in the interview but did not communicate a comprehensive plan of action. A specific FSD candidate was not confirmed. The FSMC responded fully to fewer than seven (7) of the ten (10) questions.

Unacceptable: The FSMC did not participate in the interview process.

--- 10.4 The FSMC articulated their philosophy regarding menu selection, food quality, and portion quantities. ---

Highly Advantageous: The FSMC's philosophy is innovative: customer oriented; articulates an enthusiasm for nutritional content, flavor/taste, food presentation/appearance, value, and includes a variety of cultural preferences.

Advantageous: The FSMC's philosophy is clear and focused on nutritional content, flavor/taste, food presentation/appearance, and value.

Not Advantageous: The FSMC's philosophy is not clear and does not prioritize flavor/taste, food appearance, and value.

Unacceptable: The FSMC did not articulate a philosophy.

--- 10.5 The FSMC submitted examples of invoices, accounting forms, and regular reports. ---

Highly Advantageous: A list of financial reports and a commensurate deliverable schedule was provided. Examples of each financial report were provided. Reports were clear, detailed, easy to understand, and transparently provided all relevant financial information.

Advantageous: Examples of each financial report were provided. Reports were clear, understandable, and provided information transparently.

Not Advantageous: Examples of each financial report were provided. The reports were unclear and did not provide transparent information.

Unacceptable: No reports were provided.

--- 10.6 The FSMC submitted examples of service and merchandising programs. ---

Highly Advantageous: The service and merchandising plan is innovative, detailed, scalable for 23 sites, and a plan to train staff at the individual sites for how to implement the plan is actionable.

Advantageous: The service and merchandising plan is clear, scalable for 23 sites, and includes an implementation plan.

Not Advantageous: The service and merchandising plan is not clearly defined so not able to determine if scalable nor if able to be implemented.

Unacceptable: An innovation plan was not submitted.

--- 10.7 The FSMC has submitted a staffing plan that will meet the operational needs of the SFA's food service program. ---

Highly Advantageous: The staffing plan clearly articulates a detailed structure and the commensurate cost of appropriate staffing models that is operationally viable and financially sustainable.

Advantageous: The staffing plan describes a clear structure and cost of proposed staffing models that is incorporated in the program financial projections.

Not Advantageous: The staffing plan has little/no detail about the structure and cost of staffing models such that operational variability and financial sustainability are not quantified/clear.

Unacceptable: There is no specific staffing plan.

--- 10.8 The FSMC provided an explanation to improve employee morale and reduce turnover. ---

Highly Advantageous: The FSMC provided a clear, detailed, actionable plan to improve employee morale and reduce turnover.

Advantageous: The FSMC provided a clear plan to improve employee morale and reduce turnover.

Not Advantageous: The FSMC provided a plan to improve employee morale and reduce turnover that was unclear.

Unacceptable: The FSMC did not submit a plan to improve employee morale and reduce turnover.

--- 10.9 The FSMC addressed sustainability as part of its operational plan. ---

Highly Advantageous: The FSMC submitted a sustainability plan to address recycling, composting, and food waste that is clear and actionable and affirmed an interest to work collaboratively with the SFA to address sustainability as a key initiative.

Advantageous: The FSMC submitted a sustainability plan and expressed an interest to support the sustainability efforts of the SFA.

Not Advantageous: The FSMC did not submit a sustainability plan.

Unacceptable: The FSMC did not address sustainability.

A.7. Oral Presentations

1. An oral presentation by a FSMC may be required to supplement a proposal. These presentations, if required:
 - a. will be scheduled by the SFA subsequent to the receipt of proposals and prior to the award;
 - b. the FSMCs will not be allowed to alter or amend their proposals through the presentation process;
 - c. the oral presentation will only be used for clarification purposes and to allow for Q&A; and
 - d. Oral Presentations will not be scored.

A.8. Site Visits to similar FSMC sites shall be scheduled as required.

- A.9.** Mandatory tour of SFA facilities will be scheduled on date: February 21, 2024 and time: 09:30 AM.
- A.10.** The Contract will be for a one-year period (beginning July 1, 2024 and ending June 30, 2025) with the option for up to four(4) additional one-year renewals; for a maximum total of five(5) years. **Note: MA 30B requires the approval of the governing body for any contract beyond 3 years.**

SECTION B: Qualifications for consideration

The following qualifications and conditions must be met and/or addressed in the FSMC's proposal:

- B.1.** The FSMC must be of sufficient size and expertise to furnish the resources needed to manage and Continuously improve the food services operation. The qualification data shall be submitted by each FSMC along with the sealed proposal.
1. The FSMC must be licensed to do business in the state of Massachusetts.
 2. The FSMC or its principles must have been doing business for two consecutive years or more with school districts.
 3. If a performance bond is required (see section XIV Performance Bond), the FSMC must be able to provide a performance bond should the FSMC be awarded the contract. A surety letter from an acceptable bonding or surety company indicating ability to obtain the bond must be included with the proposal.
 4. Annual reports of financial statements certified by a licensed public accountant for the last year must be included with the proposal along with a three (3) year financial summary.
- B.2.** The FSMC must have extensive involvement and experience in the school food services field in the areas of: designing and planning serving and dining areas; selecting and procuring commodities and food service equipment; nutrition; menu planning; on-site production; quality control; employee supervision; staff and management training; employee motivation; marketing and public relations.
- B.3.** All proposals shall be valid and may not be withdrawn for sixty (60) days after submission.
- B.4. Bonding Requirement**
The FSMC shall submit with its proposal, a bid guarantee for 25% of the total budgeted costs (expenses) in the form of a firm commitment such as a bid bond, certified check, cashier's check or postal money order. Bid guarantees will be returned to:(a) unsuccessful FSMCs after award of the contract; and (b) the successful FSMC upon execution of such further contractual documents (e.g., insurance coverage) and bonds as required by the proposal.

SECTION C: Specifications

- C.1.** The SFA participates in the programs noted in Section A1. USDA Foods from the Federal Food Distribution Program are available for use in programs noted in Section A1 and it is the intent of the SFA that such items be included in the menus to the greatest extent possible.
- C.2.** The FSMC shall meet all requirements of the USDA programs noted in Section A1, and any other requirements promulgated by the state of Massachusetts. The FSMC shall provide all meals in accordance with all applicable meal patterns for age and grade groupings. This may include preschool meal patterns.
- C.3.** The FSMC costs shall include all expenses associated with the operation of the food service program as submitted in the financial budget of the RFP (e.g. on-site costs, food costs, labor costs, value of USDA Foods used, management fee and administrative fee).
- C.4.** The FSMC shall receive an Administrative Fee and Management Fee for its service.

- C.5. The FSMC shall submit a budget to the Business Manager or equivalent, upon request, to be used by the SFA in its budget process and to demonstrate its ability to meet the guaranteed financial agreement.
- C.6. Meal prices shall be approved by the SFA. The SFA shall retain ultimate control over meal prices and any other related or appropriate elements of the food service program.
- C.7. The FSMC shall supply with this proposal a full description of the proposed benefit package, including but not limited to, levels of coverage, co-pay features and any other options and limitations.
- C.8. The FSMC shall procure products based on the specifications established in Schedule B. FSMC must include, as part of the RFP response, a specifications sheet with grade, weight, nutritional qualities, and item labels for all products not included in the SFA's Schedule B.
- C.9. All proposals shall include a completed Schedule E.
- C.10. Tax-Exempt Municipality/School: Purchases of goods and services by the SFA are exempt from the payment of Federal Excise Tax and Massachusetts Sales Tax, and any such taxes must not be included in any price computations. A copy of the MA Tax Exemption Certificate will be provided upon award of contract.
- C.11. Terms of the contract are listed in Section 1 of Contract Terms and Conditions; however, the SFA may develop additional terms and or conditions with the successful FSMC, derived from the program objectives and or specifications listed in section D and E respectively, through negotiation and shall be consistent with the rights reserved by the SFA as described herein. Any additional terms or conditions must not conflict with any of the terms set forth in Section 1 and must be consistent with all applicable laws and regulations.

C.12. Equipment

The FSMC shall provide a proposal for any necessary equipment.

The SFA is not requesting any equipment purchases in this RFP.

****If the contract is terminated or not renewed the SFA can retain the property and continue to make payments in accordance with the amortization schedule.***

- C.13. Additional specifications requested by SFA. If there are no other specifications, indicate no additional specifications.

- All FSMC financial projections should utilize participation estimates no higher than 55%. FSMCs that model financial proposals with a participation factor higher than 55% will be deemed non-responsive.
- Provide a transition plan to include detailed identification of tasks, timelines, and resources required to ensure a seamless continuity of operations between 7/1/24 and 8/30/24, including operating the NSLP program during the Extended School Year summer program starting early July 2024, start date TBC.
- The FSMC will comply with all NPS food-related policies, specifically the NPS Wellness Policy and Guidelines, and City of Newton ordinances that are relevant to the Child Nutrition Program. The SFA shall provide copies of relevant policies to the FSMC.
- Sustainability is a major priority of the SFA and the City of Newton. The FSMC is expected to prioritize their operations to limit food waste, reduces packaging in general and specifically the use of plastic packaging, prioritize recycling and composting, and review procurement practices to eliminate PFAs in all purchased supplies.
- The FSMC shall have the sole responsibility to compensate its employees and new employees as they are hired, including all applicable taxes, insurance, and worker's compensation and security screenings as required by Massachusetts law. Personnel employed by the FSMC are the sole responsibility of the FSMC, and are not employees of the SFA.
- The FSMC shall adhere to state regulations in screening prospective employees by complying with criminal background check/finger printing regulations required by law for all new hires and shall provide copies to NPS. No FSMC employee may start work in an SFA site without explicit confirmation

provided by the SFA to the FSMC that the candidate has satisfactorily passed all criminal background screenings, as required.

- The FSMC will comply with all wage/hours employment requirements of federal and state law.
- The FSMC shall comply with all I9 federal and state regulations.
- It is the responsibility of the FSMC to ensure that all OSHA and Hazardous Communication Act regulations applying to this job are adhered to at all times.
- All food service personnel assigned to each school shall be instructed by the FSMC on the use of all emergency switches and fire and safety devices in the kitchen and cafeteria areas.
- The FSMC shall provide to the SFA an outline of the FSMC training program for food service workers and management personnel.
- As the SFA pays all FSMC expenses under a cost-reimbursable contract, the Director of Business Operations shall be actively engaged in all collective bargaining strategy and compensation decisions for the FSMC. Contracts shall not be finalized without SFA approval.
- The SFA requires that any changes to the FSD must be submitted in writing to the Director of Business Operations and must be preapproved by the SFA. If the FSD has to be replaced, the FSMC must provide a minimum of three candidates with General Manager experience of equal caliber for the SFA to interview and to confirm approval of the final hiring decision.
- NPS will have the right to require the removal or discharge of FSMC employees for unsatisfactory performance or those that conduct themselves in a manner that is detrimental to the physical, mental, or moral well being of students, staff, and faculty, as determined by NPS. The demand to do so will be submitted in writing to the FSMC.
- The FSMC shall provide the SFA a copy of the annual Worker's Compensation and Unemployment Insurance premiums each year of the contract prior to the contract/amendment being extended.
- FSMC's record keeping, reporting, and accounting system must satisfy federal and/or state requirements and articulate how daily meal count and cash records are maintained. Describe month-end reporting procedures, including internal inventory counts, edit check worksheets, and manager's reports.

SECTION D: Proposal Format and Contents

Proposals must be concise and in outline format. Pertinent supplemental information should be referenced and included as attachments. Limit responses to pertinent information; the SFA is not interested in receiving marketing material; reports or other extraneous information. All proposals must include/address the following:

D.1. Bid# 24-52 Proposal Submittal

Proposals consist of two parts: a Price Proposal and a Non-Price Proposal. In accordance with Massachusetts General Laws (M.G.L.) Chapter 30B and 2 CFR 200, respondents must submit separate Price and Non-Price proposals in separately sealed envelopes. Each envelope must be marked as follows:

“Price Proposals for RFP/CONTRACT FOOD SERVICE MANAGEMENT COMPANIES” #24-52

“Non-Price Proposal for RFP/CONTRACT FOOD SERVICE MANAGEMENT COMPANIES” #24-52

Required for Both Price and Non-Price Proposal Submissions: Total number of copies: Eight(8) (one original and remainder are photocopies) submitted separately in a sealed envelope and marked as stated above. A separate CD or thumb drive should be provided for the Price Proposal and the Non-Price Proposal.

Price and Non-Price Proposals must be signed as follows:

- If the FSMC is an individual, by her/him personally;
- If the FSMC is a partnership, by the name of the partnership, followed by the signature of each general partner; and

- If the FSMC is a corporation, by the name of the corporation, followed by the signature of an authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation with the corporate seal affixed.

[Non-Price] Proposal Contents (D2 – D11)

Newton Public Schools is requesting the Non-Price Proposal be submitted bound or in a binder with tabs indicating which exhibit letter the information being provided corresponds to in vendor’s proposal submission.

For example:

Tab 1: Exhibit A Schools/Enrollment/Attendance Factor/Free – Reduced Percentage/Serving Times/CNPs

Forms included in this RFP or separately attached by the SFA must be completed by the FSMC. FSMC must seek clarification of interpretation (as necessary) prior to submission of proposal.

D.2. Letter of Transmittal, which includes:

1. An introduction of the FSMC.
2. The name, address, and telephone number of the person to be contacted, along with others who are authorized to represent the company in dealing with the SFA and RFP.
3. An expression of the FSMC’s ability and desire to meet the requirements of the RFP, and a positive assertion of the FSMC’s intention to do so.
4. Any other responsive information not otherwise included in the proposal.

D.3. Executive Summary, which includes:

1. Briefly describes the FSMC’s approach to the proposal and clearly indicates any options or alternatives.
2. Indicates any major requirements that cannot be met by the FSMC.
3. Highlights the major features of the proposal and identifies any supporting information considered pertinent and responsive.

D.4. Experience, References and Service Capability

1. Describe the FSMC’s experience in managing food service operations in public schools or comparable experience.
2. Include a Client List of similar sized districts over past 3 years (including all districts from New England and New York). List contact names, titles, addresses and telephone numbers of SFA administrators. Poor references may be a basis for determination that the vendor is not a responsible bidder. The SFA will choose the seven(7) references from this list to contact relative to the evaluation criteria.
3. Provide documentation on any accounts lost or not renewed and the reasons for such during the last five years.
4. Include a resume or listing of the qualifications for the proposed Food Service Director for the SFA which must meet USDA Professional Standards.
5. Include the resume and background of person who will supervise the work of the Food Service Director and how the FSMC will ensure optimal performance.
6. Include a table of the FSMC organization and a plan for managing, supervising, and staffing.
7. Include a FSMC organization chart including all positions that are non-school based.
8. Include a transition plan, which shall indicate the activities, procedures, timetable, and support personnel involved in the implementation of services.

D.5. Financial Condition

1. Provide the most recent audited financial statement.

D.6. Accounting and Reporting Systems

1. Describe complete accounting procedures used to address:
 - a. Inventory control and management including purchasing.
 - b. Method of collecting, reconciling, and reporting sales.
 - c. Internal control of cash handling.
 - d. Internal audit procedures.
 - e. All regular accounting forms used, with detailed explanations.
 - f. All regular reports used, with detailed explanations.

2. Provide examples of the reports the FSMC will provide the SFA and the frequency of each. List other assistance the FSMC will provide the SFA (any costs, if applicable, should be detailed in the Price Proposal).
3. Provide a sample of a monthly invoice to the SFA.
4. Describe the FSMC's process for reporting rebates, discounts, and credits on monthly invoices. Provide a detailed sample.

D.7. Personnel Management and Training

1. Describe the FSMC's personnel management philosophy, particularly regarding food service directors and their relationship to existing staff.
2. Describe training and development programs provided for employees and management personnel to meet the USDA Professional Standards for School Nutrition Professions requirements.
3. Explain how the FSMC works to improve employee morale and reduce turnover.
4. Describe the FSMC's employee evaluation process (include forms) and disciplinary action process (include forms).
5. Describe the proposed benefits package for employees.

D.8. Innovation and Promotion of the School Lunch Program

1. Describe how the FSMC's proposed school food service program for the SFA differs from the SFA's current school food service program. Describe the benefits of the proposed program. Describe how the FSMC would implement changes with specific, relevant examples. The proposal must include a staffing model.
2. Describe how the FSMC proposes to expand the SFA's participation in purchasing local foods as defined in D10.
3. Describe how the FSMC would involve employees to use their expertise and experience in making future innovations.
4. Provide examples of service and merchandising programs.
5. Describe the FSMC's philosophy regarding promotion (increasing awareness and participation) of the school food service program. How would the FSMC implement this philosophy in our SFA? Provide specific, relevant examples.

D.9. Involvement of Students, Staff and Patrons

1. Describe the FSMC's philosophy and plans regarding involvement of students, teachers, building administrators and parents in program evaluation, menu development, menu item preference and acceptance and discussion of nutritional issues, etc.
2. Provide specific, relevant examples of involvement effort and results, by other SFA clients, where applicable.

D.10. Menu Selection, Use of USDA Foods, Food Quality and Portion Size

1. Describe the FSMC's philosophy regarding each of the following:
 - a. Menu selection.
 - b. Use of USDA foods.
 - c. Food Quality.
 - d. Portion Quantities.
 - e. Procurement and use of locally grown and produced foods as noted in Schedule B. Describe how the FSMC would increase the amount of locally grown and produced food, reduce the amount of processed food, provide understandable and easily accessible information on the nutritional value and ingredients of menus and increase the number of "green cafeterias".
 - i. Locally grown and produced foods are defined as:
Grown within 250 miles of SFA address at 100 Walnut Street, Newton, MA, 02460
2. Supply sample menus to be implemented including portion sizes. Prepare sample menus using FSMC-Developed Menus.

[Price] Proposal Contents (D11 – D12):

D.11. Bid Bond

1. The FSMC shall submit with its proposal, a bid guarantee for five percent (5%) of the total budgeted costs (expenses) in the form of a firm commitment such as a bid bond, certified check, cashier's check or postal money order. Bid guarantees will be returned to: (a) unsuccessful FSMCs after award of the contract; and (b) to the successful FSMC upon execution of such further contractual documents (e.g., insurance coverage) and bonds as required by the proposal.

D.12 Price/Cost Information

1. List and describe all costs to the SFA for any Management Fee (FSMC's profit) to be charged as a flat rate or on a per meal basis - Schedule F.
2. List and describe all costs to the SFA for the Administrative Fee (FSMC's overhead and other off-site costs not otherwise paid by the SFA) to be charged as a flat rate or on a per meal basis - Schedule F.
3. If consulting services are not covered in Administrative Fee, list those services along with the extra charges.
4. Guaranteed Return – Schedule G.
5. List payment terms and arrangements.
6. Complete budgeted financial forms provided in Schedule E and provide a summary of the following:
 - a. Financial Budget Projections;
 - b. Income Summary;
 - c. Labor Cost Summary: Management/Administrative/Clerical; and
 - d. Miscellaneous Expense Summary.

SECTION E: Program Objectives

The successful FSMC shall conduct the food service program in a manner which best fulfills the following program objectives. All FSMC's submitting proposals must first meet minimum requirements.

- E.1.** To provide appealing and nutritionally sound meals, compliant with all USDA regulations including all aspects of the Healthy, Hunger-Free Kids Act of 2010 and an a la carte program for students as economical as possible. In order to offer a la carte food service, the FSMC must also offer reimbursable meals per 7 CFR 210.16(a). The FSMC must also offer breakfast and lunch at no cost to all students regardless of eligibility per Massachusetts General Law Part 1, Title XII, Chapter 69, Section C as amended in FY 2023 per HD4572 Section 13.
- E.2.** To promote nutritional awareness and interface with the SFA's academic and instructional programs in health and nutrition.
- E.3.** To increase participation at all levels of the program by improving food quality; sourcing locally grown foods; effectively maintaining equipment and facilities; engaging students, parents, and the school community in the food service program; planning and implementing successful menus and menu variation; and implementing effective marketing techniques.
- E.4.** To provide a management staff and structure, with the necessary expertise to ensure that the school food program is consistently of the highest quality and held in positive regard by students, staff, and the public.
- E.5.** To utilize a formal structure and routinely and continuously gather input from students, staff, the public and food service employees to ensure the most effective and efficient operation possible.
- E.6.** To establish and conduct management and staff training programs, which will ensure staff development, proper supervision, adherence to health code requirements, and consistent quality control both in production and service that meets or exceeds the USDA Professional Standards for Food Service Professionals.
- E.7.** To provide a financial reporting system that meets federal and state requirements.
- E.8.** To provide SFA Administration with monthly operating statements and information regarding the food service program.

Contract Terms and Conditions

SECTION I: General

1.1 The FSMC shall comply with all laws, as amended, ordinances, rules, and regulations of all applicable federal, state, county, and city governments, bureaus, and agencies, regarding purchasing, sanitation, health, and safety of the food service operations including those requirements and regulations, instructions and policies, adopted by the Massachusetts Department of Elementary and Secondary Education and the United States Department of Agriculture and any conditions or amendments thereto. The FSMC shall procure and maintain all necessary licenses and permits. The SFA shall cooperate, as necessary, for the FSMC's compliance and procurement efforts. **The FSMC shall conduct program operations in accordance with 7 CFR Sections: (check all that apply)**

- 210 (National School Lunch Program)
- 210.10 (Afterschool Snack Program)
- 220 (School Breakfast Program)
- 245 (Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools)
- 250 (Donation of Foods for Use in the USDA Food Distribution Program)
- FNS instructions and policies

The SFA reserves the right to add and/or expand the federal CN program to provide the availability of food resources to children and students that can be served through these programs. Prior approval must be obtained by the State Agency before adding a CN program. The SFA also reserves the right to remove CN programs.

- 1.2** The SFA shall retain control of the quality, extent and general nature of the food service program and prices to be charged. 7 CFR§210.16(a)(4)
- 1.3** The SFA shall be entitled to all receipts of the food service program.
- 1.4** All net income accruing to the SFA from the food service program shall remain in the program and be deposited by the FSMC into the nonprofit school food service account.
- 1.5** The FSMC shall be an independent contractor and not an employee of the SFA; nor are the employees of the FSMC employees of the SFA.
- 1.6** The FSMC, as an independent contractor, shall have the exclusive right to operate the school food service program and/or special milk program on behalf of the SFA.

SECTION II: Relationship of the Parties

- 2.1** The FSMC shall be an independent contractor and shall retain control over its employees and agents. Nothing in this contract shall be deemed to create a partnership, agency, joint venture, or landlord-tenant relationship.
- 2.2** FSMC Responsibilities.
- A. The FSMC shall maintain such records as the SFA will need to support its Claim for Reimbursement; make all records available to the SFA upon request; and retain all records for a period of for a period of 6 years from the end of the contract for inspection and audit by representatives of the SFA, State Agency (SA), USDA and Office of Inspector General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the 6-year period until resolution of the issues raised by the audit. These records will be maintained at the school food service offices.
[Recordkeeping, 2CFR§200.334, §210.16(c)(1), 7CFR §250.53(11) and 7CFR §210.23(c)]

- B. The FSMC shall, to the maximum extent possible, utilize USDA Foods made available by the SFA solely for the purpose of providing benefits for the SFA's food service operation. [7 CFR § 210.16(a)(6)]
- C. The FSMC shall prepare and serve a variety of appetizing, high quality, wholesome, and nutritious meals and a la carte items for the SFA's students, employees, and visitors in accordance with the terms and conditions of this contract. The FSMC agrees that it will perform the work described in this contract in full compliance with all applicable laws, rules, and regulations adopted or promulgated by any federal or state regulatory body or governmental agency.
- D. The FSMC agrees to meet all requirements and performance standards that may be specified by rule or regulation by any administrative officials or bodies charged with enforcement of any state or federal laws on the subject matter of this contract.
- E. The FSMC agrees to assume full responsibility for the payment of all contributions, assessments, both state and federal, including, but not limited to, wages, pension benefits, federal, state and local employment taxes, unemployment taxes, social security, and worker's compensation costs, as to all employees engaged by it in the performance of the contract.
- F. The FSMC agrees to furnish the SFA, upon request, a certificate or other evidence of compliance with state or federal laws regarding contributions, taxes, and assessments on payrolls.

2.3 SFA Responsibilities.

- A. The SFA shall ensure that the food service operation is in conformance with the *Child Nutrition Programs Permanent Agreement* and any addenda. [7 CFR § 210.16(a)(2)]
- B. The SFA shall monitor the food service operation through periodic on-site visits to ensure the food service is in conformance with program regulations. [7 CFR § 210.16(a)(3)] SFA shall monitor each site a minimum of twice per school year.
- C. The SFA shall retain control of the quality, extent, and general nature of its food service and the prices to be charged for meals. [7 CFR § 210.16(a)(4)]
- D. The SFA shall retain signature authority on the *Child Nutrition Programs Permanent Agreement* and any addenda, free and reduced-price policy statement and Claims for Reimbursement. [7 CFR § 210.16(a)(5)]
- E. The SFA shall retain title to all USDA Foods and ensure that all USDA Foods: are made available to the FSMC, including processed USDA Foods; accrue only to the benefit of the SFA's nonprofit school food service account; are fully utilized therein; and that all refunds, discounts, rebates and credits received from processors are retained by the SFA. [7 CFR § 210.16(a)(6)]
- F. The SFA shall establish and maintain an advisory board composed of parents, teachers, and students to assist in menu planning. [7 CFR § 210.16(a)(8)]
- G. The SFA shall make reasonable modifications with regard to all matters under its supervision and control, and the FSMC shall comply with them as soon as reasonably possible after proper notification is given.
- H. The SFA shall retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation, including control for setting of all prices, including price adjustments, for meals served under the nonprofit school food service account, including but not limited to, pricing for reimbursable meals, a la carte service, vending machines, and adult meals. [7 CFR §210.16(a)(4)]
- I. The SFA shall retain signature authority and responsibility for all contractual agreements in connection with the school child nutrition programs. [7 CFR § 210.21]

- J. The SFA shall ensure prompt resolution of findings from program administrative reviews and audit findings. [7 CFR § 210.9(b)(17)]
- K. The SFA shall maintain responsibility for the implementation of the free and reduced-price policy. [7 CFR § 245]
- L. The SFA shall develop, distribute, and collect the parent letter and application for free and reduced-price meals (as appropriate). [7 CFR § 245.6]
- M. The SFA shall determine eligibility and verify applications for free and reduced-price meals benefits and conduct any hearings related to such determinations. [7 CFR § 245.6, 6a, 7, 10]
- N. The SFA shall assure that the maximum amount of USDA Foods are received and utilized by the FSMC. [7 CFR § 210.9(b)(15)]
- O. The SFA shall maintain responsibility for procuring processing agreements, private storage facilities, or any other aspect of financial management relating to USDA Foods. [7 CFR § 250.15]

SECTION III: Food Service Program

- 3.1** The FSMC shall prepare and serve meals for the schools listed on Exhibit A (Schools/Enrollment/Attendance Factor/Free – Reduced Percentage/Serving Times/Child Nutrition Programs). The SFA is allowed to add schools to this contract as required up to a 10% increase in the number of schools in Exhibit A
- 3.2** All meals will be provided in accordance with the approved calendar, attached as Exhibit F. For the first twenty-one (21) days of food service, the FSMC will adhere to the 21-day cycle menu agreed upon by FSMC and the SFA. Changes thereafter may only be made with approval of the SFA. [7 CFR § 210.16 (b)(1)]
 - A. The SFA shall administer the application process for all free and reduced-price meals and shall establish and notify parents and guardians of program criteria for eligible students. Both the SFA and the FSMC shall be responsible for protecting the anonymity of students receiving free or reduced-price meals. [7 CFR § 210.16 (a)(5)]
- 3.3** In cooperation with the SFA, the FSMC shall conduct on-going nutrition awareness programs for students, teachers, parents, and other interested parties.
- 3.4** The FSMC shall, in accordance with SFA policy, program and regulations, supply special diets, per 7 CFR 210.10(m) and 7 CFR 220.8(m), for students where medically necessary and/or when prescribed by a licensed physician.
- 3.5** The FSMC shall cooperate with the SFA's Advisory Board, consisting of students, parents, SFA staff, and a FSMC representative in developing menus and other food service program initiatives.
- 3.6** Upon request by the SFA, the FSMC shall provide catered food service at times and prices mutually agreed upon. The SFA may obtain outside catering services if a price cannot be agreed upon or the FSMC cannot provide the service. USDA Foods will not be used for catering. The FSMC shall provide the SFA with copies of invoices within ten (10) days after the end of each month. Catering invoices must be reflective of actual catering costs plus a reasonable profit. Catering services must be paid from an account other than the non-profit school food service account. All catering revenues are to be retained in the Non-Profit School Food Service Account.
- 3.7** If participating in the Fresh Fruit and Vegetable Program (FFVP)
 - A. FSMC will ensure it documents allowable costs to include but not limited to; actual labor costs, administrative costs and fresh fruit and vegetable costs.
 - B. FSMC and SFA will ensure no more than ten percent (10%) of each awarded school's grant will be claimed for administrative costs (planning and managing the program).

C. C. FSMC will ensure it expends all FFVP funds received per school.

- 3.8** Clean Air Act – Federal Water Pollution Control Act. In performance of this contract, the FSMC shall comply with Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and EPA Regulations 40 CFR § 15, et seq. Environmental violations shall be reported to the USDA and US EPA Assistant Administrator for Enforcement, and the FSMC agrees not to utilize a facility listed on the EPA’s “List of Violating Facilities.” [Appendix II to CFR § 200 (G)]
- 3.9** Energy Policy and Conservation Act. The SFA and the FSMC shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the state conservation plan issued in compliance with the Energy Policy and Conservation Act. [42 U.S.C. 6201]
- 3.10** Davis-Bacon Act. In performance of this contract, the FSMC shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148), Copeland “Anti-Kickback” Act (40 U.S.C. 3145) and MA Prevailing Wage Law Ch.149 Section 27.
- 3.11** Debarment and Suspension. The FSMC shall complete and submit to the SFA the Certification Regarding Debarment. The certification must accompany each amendment for all additional one-year renewals. Debarment, Suspension, Ineligibility and Voluntary Exclusion, 2 CFR § 180 as adopted and modified by USDA regulations at 2 CFR § 417 – The SFA must check the Excluded Parties List System (EPLS), collect a certification, or include a clause in the contract. [Appendix II to CFR § 200 (H), Executive Orders 12549 and 12689]
- 3.12** Byrd Anti-Lobbying Amendment. Pursuant to section 1352, Title 31, US Code, the FSMC shall complete and submit a Certificate Regarding Lobbying and a Disclosure of Lobbying Activities to the SFA. These certifications must accompany each amendment for all additional one-year renewals. [Appendix II to CFR § 200 (I)]
- 3.13** Rights to Inventions Made Under a Contract or Agreement. In performance of this contract, the FSMC shall comply with the requirements of 37 CFR Part 401.
- 3.14** If operating SFSP and CACFP a food service management company may not subcontract for the total meal, with or without milk, or for the assembly of the meal. 7 CFR 225.6(h)(2)(ii) and 7 CFR 226.21(e)
- 3.15** Summer Food Service (if applicable)
- A. Dates of participation: N/A
 - B. FSMC shall deliver meals to each of the annually selected and approved sites.

Section IV: USDA Foods

- 4.1** The FSMC will provide the following services in relation to USDA Foods (*Check only those duties below that the FSMC will provide*):
- Preparing and serving meals.
 - Ordering or selection of USDA Foods, in coordination with SFA in accordance with 7 CFR § 250.58(a).
 - Storage and inventory management of USDA Foods in accordance with 7 CFR § 250.52.
 - Payment of processing fees and/or submittal of refund requests to a processor on behalf of the SFA, or remittance of refunds for the value of USDA Foods in processed end products to the SFA, in accordance with subpart C of 7 CFR § 250.
- 4.2** The FSMC must credit the SFA for the value of all USDA Foods received for use in the SFA’s meals service in a school year (including both entitlement and bonus foods) and including the value of USDA Foods contained in processed end products if the FSMC procures processed end products on behalf of the SFA or acts as an intermediary in passing the USDA Foods value in processed end products on to the SFA.

- 4.3** The FSMC shall credit for USDA Foods by disclosure, i.e., the FSMC shall credit the SFA for the value of USDA Foods by disclosing, in its billing for food costs submitted to the SFA, the savings resulting from the receipt of USDA Foods for the billing period. Crediting by disclosure does not affect the requirement that the FSMC shall only bill the SFA for net allowable costs. The FSMC shall use either the USDA's cost-per-pound donated food prices posted annually by the USDA (generated on or about November 15th), or the most recently published cost per-pound price in the USDA donated foods catalog to report the value of USDA Foods in its disclosure of the value of USDA Foods to the SFA in its invoices.
- 4.4** Any activities relating to donated foods that the food service management company will be responsible for, in accordance with §250.50(d), and assurance that such activities will be performed in accordance with the applicable requirements in 7 CFR 250.
- 4.5** The food service management company will use all donated ground beef and ground pork products, and all processed end products, in the recipient agency's food service.
- 4.6** The food service management company will use all other donated foods or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the recipient agency's food service.
- 4.7** The FSMC must meet the general requirements in 7 CFR § 250.14(a) for the storage and inventory management of USDA Foods. In accordance with 7CFR §250.52(b), 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 7CFR §250.51(d). Additionally, the FSMC must ensure that its system of inventory management does not result in the SFA being charged for USDA Foods.
- 4.8** The FSMC must return all unused USDA Foods, including but not limited to ground beef, ground pork, and processed end products to the SFA when the contract terminates, is not extended, or renewed.
- 4.9** The SFA must ensure that the FSMC has credited it for the value of all USDA Foods received for use in the SFA's meal service in the school year. The FSMC agrees to cooperate and provide information reasonably requested by the SFA.
- 4.10** The FSMC must ensure compliance with the requirements of subpart C of 7 CFR § 250 and with the provisions of the distributing and/or the SFA's processing agreements in the procurement of processed end products on behalf of the SFA and will ensure crediting of the SFA for the value of USDA Foods contained in such end products at the processing agreement value.
- 4.11** The FSMC shall not enter into the processing agreement with the processor required in subpart C of 7 CFR § 250.
- 4.12** The distributing agency, sub-distributing agency, or SFA, the Comptroller General, the USDA, or their duly authorized representatives, may perform on-site reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of USDA Foods.
- 4.13** The FSMC shall maintain records to document its compliance with 7 CFR § 250.54(b).
- 4.14** Any extension or renewal of the contract is contingent upon fulfillment of all provisions in this contract relating to USDA Foods.
- 4.15** The FSMC must maintain the following records relating to the use of USDA Foods:
- A. The USDA Foods and processed end products received from, or on behalf of, the SFA, for use in the SFA's food service operations;

- B. Documentation that it has credited the SFA for the value of all USDA Foods received for use in the SFA's food service operations in the school year, including, in accordance with the requirements in 7 CFR §250.51(a), the value of USDA Foods contained in processed end products; and
- C. Documentation of its procurement of processed end products on behalf of the SFA, as applicable.

- 4.16 The SFA shall ensure that the FSMC is in compliance with the requirements of this section through its monitoring of the food service operation, as required in 7 CFR §§ 210, 225, or 226, as applicable.
- 4.17 The SFA shall 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 USDA Foods received for use in the SFA's food service in the school year, including, in accordance with the requirements in 7 CFR §250.51(a), the value of USDA Foods contained in processed end products.
- 4.18 All USDA Foods received by the SFA and made available to the FSMC shall accrue only to the benefit of the SFA's non-profit school food service program and shall be used therein.
- 4.19 The FSMC shall have records available to substantiate the use of USDA Foods in reimbursable meal pattern meals.
- 4.20 The FSMC shall select, accept and use in as large quantities as may be used in SFA's non-profit school food service program, the type and quantities of available federally donated commodities, subject to the approval of the SFA.
- 4.21 Title of products purchased or processed using USDA Foods must remain within the SFA. Any charges incurred by the FSMC when processing or purchasing products containing government commodities shall be processed for payment by the FSMC and charged back to the SFA as a food cost.

SECTION V: Equipment

- 5.1 The SFA is not requesting any equipment purchases in this RFP.
- 5.2 The FSMC may only charge the SFA for reasonable, necessary and allocable purchases.
- 5.3 The FSMC may recommend to the SFA the purchase of new or replacement equipment as needed. The FSMC shall account for all equipment and protect it from pilferage or destruction, and will coordinate the repair or replacement of any equipment not functioning properly with the designated SFA personnel that has repair responsibility.
- 5.4 The FSMC shall operate and care for all equipment and food service areas (walls, windows, lights, etc.) in a clean, safe and healthy condition in accordance with standards acceptable to the SFA and comply with all applicable laws, ordinances, rules and regulations of federal, state and local authorities, normal wear and tear excepted.
- 5.5 The FSMC shall notify the SFA of any equipment belonging to the FSMC on SFA premises within ten (10) days of its placement on the SFA premises.
- 5.6 The FSMC, upon termination of the contract, shall surrender all equipment and furnishings belonging to the SFA and/or purchased through this agreement in good repair and condition, normal wear and tear excepted.
- 5.7 The SFA shall be responsible for repairs to all permanent fixtures such as faucets, lights, sewers, air conditioning, heating and all other electrical work not considered as being food equipment.
- 5.8 The SFA shall be responsible for any losses which may arise due to equipment malfunction or loss of electrical power not within the control of the FSMC.

- 5.10 The SFA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the SFA premises except for loss or damage caused by SFA beyond normal wear and tear.
- 5.11 The SFA will provide the initial physical inventory of supplies and equipment available for use by the FSMC.
- 5.12 The SFA shall furnish and install any equipment or make any structural changes needed to comply with federal, state, and local laws.
- 5.13 Each party shall, at no cost to the other, make all repairs, alterations, modifications, or replacements which may be necessary to correct any conditions of premises or equipment owned, leased or controlled by such Party which violate applicable building, sanitation, health, or safety law, ordinance, rule or regulation.
- 5.14 All food preparation and serving equipment owned by the SFA shall remain on the premises of the SFA unless otherwise stated in writing by the SFA.
- 5.15 If required, the SFA shall provide transportation vehicles and transportation equipment to be used in the food service programs. Maintenance, fuel, insurance, and equipment for transportation shall be the responsibility of the SFA.

SECTION VI: Facilities

- 6.1 The SFA shall furnish at its expense, space, light, heat, power, hot and cold water and other utilities as are necessary for the operation of the food services to be furnished hereunder.
- 6.2 The SFA shall make available without cost to the FSMC, areas of the premises agreeable to both parties in which the FSMC shall render its services; such areas as are reasonably necessary for providing efficient food service. The SFA is responsible for maintaining the facilities in a good state of repair and free from vermin.
- 6.3 The SFA retains the right to rent food service facilities during non-school hours or weekends, provided that such rental does not interfere with the normal food service operation. When such activities take place, the SFA may require that a member(s) of the food service staff designated by the resident manager be on duty and be reimbursed. If the SFA approves the use of the facilities for extracurricular activities before or after the SFA's regularly scheduled meal periods, the SFA shall return facilities and equipment to the FSMC in the same condition as received, normal wear and tear excepted.
- 6.4 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.
- 6.5 The SFA shall have unlimited access to all areas used by the FSMC for purposes of inspections and audits.
- 6.6 The SFA shall provide suitable office facilities to the FSMC, including furniture and equipment, for use by the FSMC in performance of this contract. The FSMC shall take reasonable care of the office facilities and equipment and shall return them to the SFA in good condition upon termination of this contract, normal wear and tear excepted.

SECTION VII: Sanitation and Safety

- 7.1 The FSMC shall be responsible for usual and customary cleaning and sanitation of the SFA's food service facilities to include - housekeeping, preparation, storage, and equipment. The FSMC will also adjust practices and operation of equipment as required.

- 7.2 The FSMC shall be responsible for housekeeping and sanitation in areas used for food preparation, storage, and service, and shall clean and sanitize dishes, pots, pans, utensils, equipment, and similar items.
- 7.3 The FSMC shall comply with all local and state sanitation requirements in the preparation and service of food.
- 7.4 The FSMC shall maintain safety programs for employees as required by federal, state, and local authorities, including the FSMC's corporate policies.
- 7.5 The FSMC shall place garbage and trash in appropriate containers in the designated areas.
- 7.6 The FSMC shall cooperate in the SFA recycling program.
- 7.7 The FSMC shall clean the kitchen area, equipment, including but not limited to sinks, counters, tables, chairs, silverware, and utensils.
- 7.8 The SFA shall designate a refuse collection area and the FSMC shall be responsible for transporting refuse to the designated refuse collection area. The SFA shall remove all garbage and trash from the designated areas.
- 7.9 The SFA shall be responsible for cleaning of floors in the dining, serving and kitchen areas, walls, ceilings, tables and chairs in the cafeteria/dining area.
- 7.10 The SFA shall be responsible for painting and miscellaneous repairs within the kitchen and dining areas.
- 7.11 The SFA shall be responsible for the required cleaning and maintenance of dining areas, as well as periodic cleaning of all ceiling and light fixtures, air ducts, and hood vent systems (as per local ordinance). The SFA shall also provide and maintain adequate fire extinguishing equipment for food service areas and provide necessary pest control. If the SFA is unable to perform any of its responsibilities described in this paragraph, the FSMC may, with the written approval of the SFA, temporarily assume those responsibilities and shall bill the SFA for any costs incurred.
- 7.12 The SFA shall provide, at the SFA's expense, maintenance personnel and outside maintenance services, parts, and supplies as is necessary to properly maintain the food service facilities and equipment.
- 7.13 The SFA shall obtain necessary health permits and certification for its facilities. The premises and equipment provided by each party in performance of this contract shall comply with all applicable building, safety, sanitation, and health laws; and shall satisfy all permit requirements, ordinances, rules, and regulations, including the federal Occupational Health and Safety Act of 1970 or applicable state act and standards promulgated thereunder. The FSMC shall take reasonable and proper care of all premises and equipment in its custody and control and shall use them in a manner that will not cause violation of applicable laws, ordinances, rules, and regulations, including any reporting and record-keeping requirements. If at any time the FSMC is notified by an authorized government agency that the SFA's premises or equipment are not in compliance with any law, ordinance, rule, or regulation, the FSMC shall immediately inform the SFA of such notification.

SECTION VIII: Employees

- 8.1 The FSMC shall provide sufficient and qualified management and professional employees to manage the food service operations and supervise all employees employed therein who meet the USDA Professional Standards for Food Service Professionals.
- 8.2 It is expressly understood that all presently employed (SFA and/or FSMC) food service employees will be given the opportunity to interview for positions within the SFA as employees of the FSMC.

All non-management food service employees shall be employees of the FSMC.

- 8.3** The SFA has a policy of providing work experience for its students as part of the educational curriculum and as such, the SFA may assign students for work in the food service operation in such numbers as are agreed upon between the SFA and the FSMC.
- 8.4** The FSMC shall prepare and process the payroll for and shall pay its employees directly. The FSMC further warrants that it shall withhold or pay as appropriate all applicable federal and state employment taxes and payroll insurance with respect to its employees, specifically including, but not limited to, any income, social security, and unemployment taxes and workers' compensation payments.
- 8.5** Contract Work Hours and Safety Standards Act: The FSMC and its employees shall comply with all wage and hours of employment requirements of federal and state laws and regulations, including the Contract Work Hours and Safety Standards Act, Appendix II to § 200 (E) 40 U.S.C. 3701-3708. All employees of the FSMC shall be paid in accordance with the Fair Labor Standards Act, as amended and any other applicable statutes. In addition, the FSMC will comply with all applicable federal and state employment statutes, including those statutes pertaining to labor relations.
- 8.6** The FSMC shall establish schedules, wage rates, and benefit programs for all employees.
- 8.7** The FSMC shall have the sole responsibility to compensate its employees, including all applicable taxes, insurances and worker's compensation and shall be solely responsible for any losses incurred by the SFA, resulting from dishonest, fraudulent or negligent acts on the part of its employees or agents. The FSMC is required to provide a fidelity bond for all FSMC employees.
- 8.8** The FSMC shall procure Workers' Compensation Insurance or shall maintain a system of self-insurance in conformance with applicable state law covering its employees and shall provide proof of such coverage or system to the SFA.
- 8.9** The FSMC shall maintain its own personnel policies and fringe benefits for its employees. The FSMC shall supply with this proposal a full description of the proposed benefit package, including but not limited to, levels of coverage, co-pay features and any other limitations.
- 8.10** The FSMC must provide a resident Food Service Director who will be approved by the SFA and will be responsible for directing the food services program and implementing cooperatively agreed upon strategies for maximizing participation in the Child Nutrition Programs. The Director shall be available to meet with principals, students, and staff to determine ways to improve the program. The Director must also be available to participate in town or state meetings when food service matters are to be discussed with appropriate notice given.
- 8.11** The FSMC shall instruct its employees to abide by the policies, rules and regulations, with respect to its use of District premises as established by SFA from time to time and which are furnished in writing to the FSMC.
- 8.12** Civil Rights: The FMSC here by agrees that it will comply with:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 et seq.);
 - ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
 - iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
 - iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
 - v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
 - vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (August 11,2000);
 - vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
 - viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);
 - ix. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex (including gender identity and sexual orientation), age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to

discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.

- x. The USDA non-discrimination statement that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

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

- 8.13 The FSMC shall be responsible for obtaining any necessary fingerprint clearances for its employees as required by law. The FSMC shall provide all necessary forms and/or documentation for such employees to the SFA.
- 8.14 The FSMC shall ensure that all food service employees comply with the rules of the MA DESE regarding fingerprinting and criminal background checks. (MGL Ch 71 sec.38R)
- 8.15 The FSMC shall comply with all rules policies, processes and guidance pertaining to all MA DESE Civil Rights Complaint Procedures.

SECTION IX: Free and Reduced Price Policy Statement and Written Charge Policy

- 9.1 The written policy of the SFA requiring feeding of students who qualify for free, reduced, or full price meals, shall apply to the FSMC's food service operation. The policy is on file in the SFA office. The SFA shall be responsible for the implementation of this policy.
- 9.2 The FSMC will be responsible for implementing policies covering free, reduced price, and full price meals and milk programs for those students designated by the SFA as meeting federal and state agency requirements for those programs. All such meals shall be served and accounted for in a manner approved by the SFA so as to protect the anonymity of the recipients. Meals shall be served, and proper, accurate pupil participation records shall be maintained by the FSMC.
- 9.3 Per USDA Policy SP46-2016, the SFA shall have a written student meal charge policy, that ensures a "transparent approach to the issue", on file in the SFA office. The SFA shall be responsible for the implementation of this policy and supply the FSMC with a written copy. The FSMC will work with the SFA to administer policy.

SECTION X: Meals – Planning and Procurement

- 10.1** The FSMC may recommend meal prices for approval by the SFA. The FSMC shall not alter the prices once approved without prior notice and approval by the SFA. [7 CFR §210.16(a)(4)] The SFA shall retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals.
- 10.2** The FSMC shall submit with the proposal a twenty-one (21) day cycle menu and a Daily Menu Pattern for the SFA's schools. The FSMC must adhere to this cycle for the first twenty-one (21) days of meal service; thereafter, changes may be made with the mutual agreement of the SFA and the FSMC. However, the menu standard as presented in the first twenty-one (21) day menu and the Daily Menu Pattern, must be maintained as to type and quality of meal service. The Daily Menu Pattern should clearly indicate the number and type of choices and offerings that will be offered at all grade levels.
- 10.3** The FSMC shall be responsible for purchasing standards and specifications to bring about the best quality and price for the food service program. The FSMC shall comply with the grade, purchase unit, style, weight, ingredients, formulations, etc., for foods served as agreed upon with the SFA. The minimum procurement specifications are listed on **Schedule B**.
- 10.4** The FSMC shall serve reimbursable meal pattern lunches pursuant to the NSLP. For purposes of this proposal, lunch prices as per attached listing shall be used as a guide for calculations (**reference Schedule C**).
- 10.5** The FSMC may offer a choice of reimbursable meal pattern lunches and shall provide specified types of service as listed in **Exhibit A**.
- 10.6** The FSMC shall provide condiments and utensils as needed.
- 10.7** The FSMC shall use the SFA's facilities for the preparation of food to be served in the designated serving areas. This may include cafeterias, classrooms, hallways etc.
- 10.8** The FSMC shall promote maximum participation in the Child Nutrition Programs.
- 10.9** BUY AMERICAN PROVISION: The SFA and FSMC shall purchase, to the maximum extent practicable, domestic commodities or products which are either an agricultural commodity produced in the United States (U.S.) or a food product processed in the U.S. substantially using agricultural commodities produced in the U.S. for use in meals served in the SFA's Child Nutrition Programs in compliance with the Buy American Provision under 7 CFR § 210.21(d)(2) and 7 CFR § 250. FNS Policy Memo SP 38-2017 Exceptions to the Buy American Provision should be used as a last resort; however, an alternative or exception may be approved upon request. To be considered for the alternative or exception, the request must be submitted in writing to a designated official, a minimum of 10 day(s) in advance of delivery. The request must include:
- A. Alternative substitute (s) that are domestic and meet the required specifications:
 - i. Price of the domestic food alternative substitution (s); and
 - ii. Availability of the domestic alternative substitute (s) in relation to the quantity ordered.
 - B. Reason for exception: limited/lack of availability or price (include price);
 - i. Price of the domestic food product; and
 - ii. Price of non-domestic product that meets the required specification of the domestic product
- 10.10** The FSMC is prohibited from directly or indirectly restricting the sale or marketing of fluid milk at any time or in any place on school premises or at any school-sponsored event. [7 CFR 210.21(e)]

SECTION XI: Food Inventory and Storage

- 11.1** The FSMC shall purchase all food and non-food commodities at the lowest price possible, consistent with maintaining quality standards. The SFA retains the right to verify these standards.

- 11.2** Ownership of beginning and ending inventory of food and supplies, including USDA Foods, shall remain with the SFA.
- 11.3** The FSMC shall maintain adequate storage practices, inventory, and control of USDA Foods in conformance with SFA's agreement with the MA DESE.
- 11.4** The SFA and FSMC shall conduct a joint inventory of existing food and operational supplies at both the beginning and the end of this contract. If the ending inventory is less than the value of the beginning inventory the FSMC will credit the SFA for the difference. The cost of food and operational supplies ordered by the FSMC on behalf of the SFA in performance of this contract shall be paid for by the FSMC and the FSMC shall then be reimbursed for those costs incurred. The inventory of food and operational supplies shall remain the SFA's property.
- 11.5** The SFA and the FSMC shall inventory the equipment and USDA Foods owned by the SFA at the beginning of the contract year, including, but not limited to, consumable and non-consumable flatware, trays, china, glassware and food. The FSMC shall be responsible for reimbursing the SFA for all shortages noted on the year-end inventory.

SECTION XII: Financial: Accounting, Reporting Systems, Records, and Payment Terms

- 12.1** The FSMC shall assume accountability and responsibility for daily bookkeeping and recording functions, including state and federal reimbursements at a minimum:
- A. Monthly Profit and Loss Statements
 - B. Annual Budgeting
 - C. Perpetual Inventory – Costs and Controls
 - D. Preparation of records for annual audit by SFA
 - E. USDA Foods Entitlement Summary Reports
 - F. Department of Defense (DoD Fresh) Program Reports
 - G. Usage Reports from K-12 Services and Processor Link demonstrating actual usage of pounds sent to processors
 - H. State reporting of Quarterly YTD Profit and Loss Statements and
 - I. State reporting of an Annual Balance Sheet.
- 12.2** The FSMC shall prepare information necessary for CNP claims for reimbursement from state and federal agencies and maintain such records, as the SFA will need to support its claims for reimbursement under the Child Nutrition Programs. The SFA shall retain signature authority on the MA DESE-SFA Agreement for Child Nutrition Programs (ED-099), including all addenda, free and reduced price policy statement and claims for reimbursement. The FSMC shall report the claim information to the SFA promptly at the end of each month or more frequently as specified by the SFA. [7 CFR § 210.16(c)(1)]
- 12.3** 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 operating statements, and particular records, in a format and timeline approved by the SFA. Reimbursement for direct expenses will only be allowed if previously included in the original or amended budget submitted to the SFA.
- A. The FSMC shall maintain records to support all allowable expenses appearing on the monthly operating statement in an orderly fashion according to expense categories.
 - B. The FSMC shall provide monthly and other reports to the SFA, which describes operating costs, meals per labor hour, meals served, etc.
 - C. The FSMC shall provide the SFA with a year-end financial statement.
- 12.4** The FSMC shall bill the SFA for the actual direct costs of operation incurred at the close of each month of program operation.
- 12.5** The SFA shall designate by name and title the employee whose responsibility it shall be to manage the SFA/FSMC contract and to ensure the SFA meets all its responsibilities hereunder.

Name and Title: Amy Mistrot, Director of Business Operations

- 12.6** Books and records of the FSMC pertaining to the foodservice operations shall be available at the SFA for a minimum of six (6) years, plus the current year, from the date of the final payment to which they pertain, for inspection and audit by either state, or federal representatives and auditors. In instances where audit findings have not been resolved, the records must be retained beyond the 6-year period until resolution of the issues raised by the audit.
- 12.7** Allowable Costs.
- A. Allowable costs will be paid from the nonprofit school food service account to the FSMC net of all discounts, rebates and other applicable credits accruing to or received by the FSMC or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA.
 - B. The contractor must separately identify for each cost submitted for payment to the school food authority 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).
 - C. The contractor must 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.
 - D. The FSMC's determination of its allowable costs must be made in compliance with the applicable USDA and Program regulations and Office of Management and Budget cost circulars as detailed in 2 CFR§200.
 - E. The FSMC must identify the amount of each discount, rebate and other applicable credit, with the exception of the FSMC's prompt payment discounts for payments made to vendors, 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. All payment discounts, rebates and allowances obtained from vendors must be credited to the SFA's food services account.
 - F. The frequency of reporting this information must be monthly.
 - G. The FSMC must identify in their proposal the method by which it will report discounts, rebates, and other applicable credits allocable to the contract that are not reported prior to the conclusion of the contract.
- FSMC Response:
- H. The FSMC must maintain documentation of cost and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, MA DESE, or the USDA. The FSMC shall return the value of all discounts, rebates and all other applicable credits allocable to the contract to the SFA.
- 12.8** The FSMC shall submit monthly operating statements to the SFA. This statement shall reflect all activity for the previous calendar month.
- 12.9** Invoice Due Date. Invoices submitted to the SFA by the FSMC will be paid within thirty (30) days of receipt.
- 12.10** The FSMC shall submit supporting documents and invoice to the SFA monthly for the following direct, actual costs, Administrative Fee and Management Fee:
- A. The actual and direct costs for the wages, taxes, and benefits of the FSMC employees at each site, food service director and other management employees on the FSMC's payroll.

Number of employees that are employed by the SFA and paid directly by the SFA: 0

- B. Direct operating costs paid by the FSMC arising from performance of this contract. Direct operating costs are defined as:
- food and supply purchases by the FSMC necessary to perform this contract
 - food service program travel and mileage costs incurred
 - advertising and promotions within the SFA
 - the FSMC's insurance necessary for performance of this contract;
 - service business and occupation tax
 - employee training and development costs
 - laundry, linen, and uniforms
 - licenses and permits for performance of this contract; and
 - USDA Foods delivery and storage fees.

- C. The FSMC's Management Fee (FSMC's profit) is:

TBD

- D. The FSMC's Administrative Fee is:

TBD

The following functions are the FSMC's responsibility, and will be included in such fees:

- Corporate supervision;
- Financial reporting and analysis;
- Field auditing;
- Marketing Assistance; and
- Purchasing administration.

- E. Per Meal Defined:

TBD

- F. Fee Adjustments: Upon mutual written agreement of the SFA and the FSMC, the Management Fee and Administrative Fee may be adjusted annually. Such adjustment shall be by no more than the percentage of change in the Consumer Price Index ("CPI") for all Urban Consumers (CPI-U U.S. city average), Northeast Region, Food Away from Home for the preceding year (April – March). Upon acceptance by the SFA, such increase in fees shall be incorporated into any renewal of this contract.

- G. The SFA will not participate in FFVP.

- H. No payment shall be made for meals or snacks that are spoiled or unwholesome at the time of service, or do not meet specifications developed by the SFA, or do not otherwise meet the requirements of this contract. [7 CFR § 210.16 (c)(3).]

- I. Every payment obligation of the SFA under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the SFA at the end of the period for which funds are available. No liability shall accrue to the SFA in the event this provision is exercised, and the SFA shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph. Notwithstanding the forgoing, the SFA shall be liable for the payment of services rendered up through and including the date of termination.

- J. Guaranteed Return: The SFA and the FSMC shall work together to ensure a financially sound and well run food service operation. For the term of the contract, including renewal years the FSMC shall guarantee that the food service program will achieve financial:

TBD

If the annual financial return for the Food Service Program falls short of the FSMC's guaranteed minimum amount, the FSMC shall pay the difference to the SFA.

- K. Force Majeure: Neither Party shall be responsible to the other for any losses or failure to perform its respective obligations under the Agreement (other than a payment obligation) when such failure is caused by conditions beyond the Party's control, and not due to the fault or negligence of such party, including, but not limited to, fire, explosion, water, Acts of God, civil disorder or disturbances, labor disputes, vandalism, war, riot, sabotage, weather and energy-related closings, pandemic, epidemic, governmental rules and regulations or like causes or the damage or destruction of real or personal property from such causes. In the event that either party ceases to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event, the party shall; (a) as soon as practicable notify the other party in writing of the Force Majeure Event and its expected duration; and (b) take all reasonable steps to recommence performance of its obligations under this Agreement as soon as possible. The party shall not be relieved of its responsibility to fully perform as to all other commitments in the Agreement.

The party will not be liable for any failure of or delay in the performance of this agreement for the period that such failure or delay:

1. is beyond the reasonable control of a party,
 2. materially affects the performance of any of its obligations under this agreement, and
 3. could not reasonably have been foreseen or provided against, but
 4. will not be excused for failure or delay resulting from only general economic conditions or other general market effects.
- L. Unless otherwise expressly provided, the SFA and the FSMC shall remain responsible for all claims, liability, loss, and expense, including reasonable costs, collection expenses, and attorney's fees incurred, which arise by reasons of negligent or wrongful act or omission of the party, its agents, or its employees in the performance of its obligations under this agreement.
- M. 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.
- N. 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.
- O. Nonperformance. The FSMC shall pay the SFA any over claims due to FSMC negligence or noncompliance with regulations, including those over claims based on review or audit findings. This provision shall be based on the 6-year record retention period as established in MA 30B regulations or the SFA's established record retention timeframe, whichever is greater.

SECTION XIII: Licenses, Fees and Taxes

- 13.1** The SFA shall obtain and post all applicable health permits for its facilities and assure that all state and local regulations are being met by the FSMC preparing or serving meals at a SFA facility. [7 CFR § 210.16(a)(7)]
- 13.2** The FSMC shall comply with all health and safety regulations required by federal, state or local law and shall have state or local health certification for any facility outside the SFA in which it proposes to prepare meals or meal components and the FSMC shall maintain this health certification for the duration of the contract. The FSMC must meet all applicable state and local health regulations in preparing and serving meals at the SFA facility. [7 CFR § 210.16(c)(2)]
- 13.3** The FSMC shall comply with all building rules and regulations. SFA shall supply FSMC with copy of any written aforementioned documents.

SECTION XIV: Performance Bond

- 14.1** If operating SFSP for contracts over \$100,000 as a condition to entry into this contract, the successful vendor shall provide to the SFA a performance bond equaling ten percent (10%) of the contract's value (total budgeted costs/expenses) associated with the Summer Food Service Program. This performance bond will guarantee the vendor's faithful performance. For the successful FSMC, the performance bond is required annually, in each year of the contract, to be submitted to the SFA Business Office within ten days of the awarding of the contract. 7 CFR Part 225.15(m) (5-7)

SECTION XV: Insurance

The FSMC shall maintain for the life of the contract, the insurance coverage set forth below for each accident provided by insurance companies authorized to do business in the state of Massachusetts with a rating by AM Best of "A" or better. A certificate of insurance indicating these amounts must be submitted at the time of award.

- 15.1** Comprehensive General Liability -\$1,000,000 Combined Single Limit includes coverage for:
- A. Premises-Operations,
 - B. Products/Completed Operations,
 - C. Contractual Insurance,
 - D. Broad Form Property Damage,
 - E. Independent Contractors,
 - F. Personal Injury, and G. Employee Dishonesty.
- 15.2** Automobile Liability
\$1,000,000 combined Single Limit
- 15.3** Worker's Compensation and Employer's Liability
- A. Worker's compensation - Statutory; and
 - B. Employer's Liability - \$500,000.
- 15.4** The Newton Public Schools and Food Service Management Company with City of Newton as an additional insured shall be additional named insured's on Comprehensive General Liability, Auto, and Workers' Compensation (Employer's Liability Only) policies.
- 15.5** The contract of insurance shall provide for notice to the SFA of cancellation of insurance policies thirty (30) days before such cancellation is to take effect.
- 15.6** The FSMC agrees to indemnify and hold harmless the Newton Public Schools and Food Service Management Company with City of Newton as an additional insured and each of their respective members, employees, officers and agents from and against any claims, demands, losses, costs or liabilities for personal injury or property damage or any other loss which may result from the FSMC's performance or lack of performance of the Contract. Such "losses" shall include all reasonable attorney's fees and costs incurred in the representation of the Board, the Town, or any of their respective members, officers, employees or agents in any suit or claim arising from the FSMC's performance or lack of performance of the Contract or arising from the enforcement of this provision.
- 15.7** The FSMC shall obtain and keep in force during this contract, for the protection of the SFA and the FSMC, Comprehensive General Bodily Injury and Property Damage Liability Insurance in the combined single limit of \$3,000,000.00 (no less than \$1,000,000). That insurance shall include, but not be limited to, Personal Injury Liability, Broad Form Property Damage Liability, Blanket Contractual Liability, and Products Liability, covering only the operations of the FSMC under this contract, and shall deliver to the SFA a certificate evidencing such policies and coverage within thirty (30) days after the execution of this agreement by the parties. The insurance policies shall contain a covenant by the issuing company that the policies will not be canceled unless a thirty (30) day prior written notice of cancellation is given to the SFA. The policies for \$3,000,000.00 coverage shall also name the SFA as an Additional Insured, but only with respect to operations of the FSMC under this agreement.

SECTION XVI: Contract Term, Renewal and Termination

- 16.1** This contract, dated **TBD**, is between **TBD**, the FSMC and Newton Public Schools, the SFA.
- A. This contract sets forth the terms and conditions upon which the SFA retains the FSMC to manage and operate the SFA's food service for the SFA's students, employees, and visitors.
 - B. The life of the contract shall be for a period of one year with the school year beginning on or about July 1, 2024, and ending June 30, 2025 with up to four(4), not to exceed four, one-year renewal(s), with mutual agreement between the SFA and the FSMC. [7 CFR § 210.16 (d)]
 - C. Contract documents are due to the State Agency for approval by April 5, 2024. Contract renewals are due to the State Agency by the first Friday in June in each subsequent term of the contract.
- 16.2** The contract cannot be assigned or otherwise transferred or conveyed by either party without the written consent of the other. Consideration for the contract renewal by the SFA and the FSMC will be made in compliance with the rules and regulations prescribed by the USDA.
- 16.3** Neither the FSMC nor the SFA shall be responsible for any losses if the fulfillment of the terms of the contract should be delayed by wars, acts of public enemies, strikes, fires, floods, act of God, or any acts not within the control of either the FSMC or the SFA, and which by the exercise of due diligence it is unable to prevent.
- 16.4** If both parties agree to a contract renewal, the parties will work together to gather and complete all required documents for submission. The SFA will be responsible for submitting all contract renewal documents to the MA DESE.
- 16.5** Recovery of prior year FSMC losses from current year food service program surpluses is unallowable.

TERMINATION

- 16.6** With the exception of payment obligations for prior performance under this contract, neither party shall be liable for the failure to perform their respective obligations under this contract when such failure is caused by fire, explosion, water, act of God, civil disorder, strikes, vandalism, war, riot, sabotage, weather and energy related closings, governmental rules or regulations, or other like causes beyond the reasonable control of such party, nor for any real or personal property destroyed or damaged due to such causes. The FSMC shall resume food service operations as soon as possible.
- 16.7** Either party may terminate the contract for cause by giving sixty (60) days' notice in writing to the other party of its intention to do so. [7 CFR § 210.16 (d)]
- 16.8** If a cure or remedy is found for the termination request by mutual agreement of the contracting parties, the termination or non-renewal letter must be withdrawn in writing by the terminating party within the sixty (60) day period as described in paragraph 16.7 above. This letter should be counter-signed by the receiving party and the letter should become an amendment to this contract. [Appendix II to § 200]
- 16.9** The SFA may terminate the contract without cause. The SFA shall give no less than sixty (60) days written notice to the FSMC of its intention to terminate the contract without cause.
- 16.10** The right of termination referred to in this contract is not intended to be exclusive, and is in addition to any other rights available to either party at law or in equity. If the FSMC breaches a material provision of the contract and fails to cure such breach within sixty (60) days after receiving written notice of such breach the SFA may elect to pursue any available legal, contractual or administrative remedy or the following sanctions: (i) for a first violation, a written reprimand; (ii) for a second violation, a \$10,000.00 penalty; and (iii) for a third violation, a \$25,000.00 penalty. For the purposes of the foregoing, a single violation means an event of the same or similar

kind, without regard for the duration or number of personnel, equipment, students or meals involved. [Appendix II to § 200 (A)] 7 CFR Part 210.16(b)(2)

- 16.11** The FSMC shall ensure, upon termination or completion of contract, the SFA is provided with the following documents in accordance with 7 CFR 210.23(c) or the SFA's established record retention timeframe, whichever is greater: production records, menus, all documents to support monthly claims, all documents to support the use of USDA Foods, professional development training records, CEP data, PLE Tool data, all documents related to free/reduced meal application process including certification and verification (if applicable), and access to any documents and or recipes requested for an administrative review.
- 16.12** A waiver of any failure under this contract shall neither be construed as, nor constitute a waiver of, any subsequent failure. This contract supersedes all prior negotiations, representations, or agreements. The Article and Paragraph headings are used solely for convenience and shall not be deemed to limit the subject of the Articles and Paragraphs or be considered in their interpretation. The appendices referred to herein are made part of this contract by the respective references to them. This contract may be executed in several counterparts, each of which shall be deemed an original.
- 16.13** The parties cannot alter any provision in this agreement that is required by any law, rule or regulation. The parties cannot otherwise amend or alter this agreement, except as to minor, non-substantive provisions or issues that do not materially affect the scope of work or the cost of the contract.
- 16.14** Notification of Termination. The MA DESE shall be notified immediately of termination action and reason for termination.
- 16.15** The parties agree that the terms of this contract shall be in accordance with the RFP published by the SFA and any amendments to the RFP, and the proposal submitted by the FSMC are incorporated into this contract. In the event the contradictory statements are contained in the RFP, the FSMC proposal, and this contract, the following order of precedence shall apply: Amendments to contract, contract, Amendments to RFP, RFP, FSMC proposal.

SECTION XVII: Special and General Conditions

17.1 Confidential/Proprietary Information

- A. The FSMC and SFA shall designate any information they consider confidential or proprietary, including recipes, surveys and studies, management guidelines, operating manuals, and similar documents which it regularly uses in the operation of their business or which they develop independently during the course of this contract. Information so designated and identified shall be treated as confidential by the FSMC and SFA, and the FSMC and SFA shall exercise the same level of care in maintaining the confidences of the other party as they would employ in maintaining their own confidences. All such materials shall remain the exclusive property of the party that developed them and shall be returned to that party immediately upon termination of this contract. Notwithstanding, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.[2 CFR § 200.315]
- B. The FSMCs shall identify any specific information which the FSMC is claiming should not be disclosed to the public, along with a citation to the applicable provision of the Massachusetts Freedom of Information Act or other applicable statute on which the FSMC is basing its claim of confidentiality or non-disclosure. Information marked as "not to be disclosed to the public" must meet the standards set forth in the Freedom of Information Act. Provided that nothing herein shall be construed to relieve any SFA or the MA DESE from its obligations under any applicable freedom of information laws or other legal obligations concerning document disclosure, including, but not limited to, civil discovery demands. In the event a request for information/documentation is made pursuant to the Massachusetts Freedom of

Information Act (or other applicable statute or regulation), and the FSMC objects to the release of the requested information, the FSMC shall bear all reasonable costs and fees incurred in asserting such objection.

- 17.2 The FSMC shall adhere to all applicable laws, especially all Pure Food laws, and all related regulations prescribed by the Federal Government, the state of Massachusetts, and the local department of health. The FSMC will comply with the rules and regulations as set up by the SFA and with state and/or own laws, etc., covering and controlling food services at the facilities.
- 17.3 No alterations, changes or improvements shall be made to the areas granted to the FSMC without obtaining prior written permission of the SFA with the final decision as to the alterations, changes or improvements reserved solely for the SFA.
- 17.4 Any silence, absence or omission from these specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only material (food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.
- 17.5 Notice/Communication: Any notice or communication required or permitted under this contract shall be in writing and shall be delivered personally or sent by United States registered or certified mail, postage prepaid and return receipt requested, addressed to the other party as follows:

A. Notices to the SFA:

Name	Newton Public Schools
Attn	Amy Mistrot, Director of Business Operations
Address	TBD
	TBD

B. Notices to the FSMC:

Name	TBD
Attn	TBD
Address	TBD
	TBD

AND

Name	TBD
Attn	TBD
Address	TBD
	TBD

E-mail communication may also be allowable under the terms of this contract. Other persons or places may also be designated, in writing, by either of the parties, during the term of this contract. Notices shall be effective when

received. Sent notices will be considered received forty-eight (48) hours after they are deposited in the United States mail.

SO AGREED:

Signature of Food Service Management Company's Authorized Representative

Title

Date

TBD

Printed Name of Food Service Management Company's Authorized Representative

Signature of School Food Authority's Authorized Representative

Title

Date

TBD

Printed Name of School Food Authority's Authorized Representative

Schedule A – Division of Costs for the Food Service Program

Schedule A to be completed as part of the RFP by the SFA

FOOD	FSMC	SFA
Food Purchasing	X	
Processing of Invoices	X	
Payment of Invoices	X	
USDA Administrative Charges	X	
USDA Processing Charges	X	
USDA Delivery Charges	X	

LABOR	FSMC	SFA
Payment of Hourly Full-Time Wages	X	
Payroll Taxes of Hourly Employees	X	
Fringe Benefits and Insurance of Hourly Employees	X	
Preparation of Hourly Employees' Payroll	X	
Processing of Hourly Employees' Payroll	X	
Workers' Compensation for Hourly Employees	X	

ADDITIONAL ITEMS	FSMC	SFA
China/Silver/Glassware – Original Purchase to Inventory Level Required for Operation	X	
China/Silver/Glassware – Replacement During Operation	X	
Telephone		X
Removal of Trash and Garbage from Kitchen		X
Removal of Trash and Garbage from Premises		X
Replacement of Expendable Equipment (Pots, Pans, etc.)	X	
Replacement of Non-Expendable Equipment		X
Products and Public Liability Insurance	X	
Cost of Repairing Equipment		X
Uniforms	X	
Local Travel (Intra-District and Banking Reimbursement)	X	
Vehicle		X

Schedule A (continued)

Schedule A to be completed as part of the RFP by the SFA

SUPPLIES	FSMC	SFA
Detergent and Cleaning Supplies	X	
Paper Supplies	X	
Menu Paper and Printing	X	
Postage	X	
Taxes/Licenses	X	
Pest Control		X
Utilities		X

CLEANING	FSMC	SFA
Ceiling, Light Fixtures and Fans		X
Dishwashing	X	
Equipment		X
Hoods		X
Floors		X
Rest Rooms		X
Vent from Hoods to Outside		X
Walls		X
Kitchen/Serving Area Equipment	X	
Cafeteria/Serving Area Equipment		X
Dining Area/Tables and Chairs		X

Schedule B – Procurement Specifications

Schedule B to be completed as part of the RFP by the SFA

*The minimum requirement as specified below are USDA foods minimum specifications

<u>PRODUCT</u>	<u>MINIMUM REQUIREMENTS</u>
Dairy Products	Grade A
Meat	USDA Grade Choice
Fish	U.S. Government Inspected
Poultry	USDA Grade A
Canned Fruits & Vegetables	U.S. Grade A Choice
Fresh Fruits & Vegetables	U.S. No. 1 Grade
Frozen Fruit & Vegetables	USDA Grade A
Bread	Packaged bread and buns to be manufacturer dated for freshness
Milk	Grade A
Ice Cream	Grade A
SFA Defined Products:	SFA Defined Minimum Requirement:
Meat and Poultry	All meat and poultry products shall be processed under continuous inspection of the USDA. Only meet and poultry with the following grade standards shall be used: <input type="checkbox"/> Item Minimum Grade <input type="checkbox"/> Beef USDA Choice or better <input type="checkbox"/> Pork USDA Grade 1 <input type="checkbox"/> Veal USDA Choice <input type="checkbox"/> Poultry Chicken (fryers) USDA Grade A <input type="checkbox"/> Fowl USDA Grade A or B <input type="checkbox"/> Turkey USDA Grade A or B
Cured Processed Meats	Bologna, frankfurters, luncheon meats, salami, and others shall be made from beef and/or poultry and meet all requirements for that product. No variety meats, fillers, extenders, non-fat milk solids, or cereal will be allowed.
Non-cured Meal Products	Fillers not approved as a protein source by the USDA and Food Nutrition Service may not be included as cooked meat weight.
Fish and Seafood	Frozen fish and seafood ingredients shall be manufactured under continuous inspection of the US Department of Commerce: Grade A.
Dairy Products	USDA Grade A. Cheese food and cheese spread are not permitted. Cheese alternates may be used.
Vegetables	All frozen vegetables shall be USDA, Grade A. All fresh vegetables must be ready for consumption per USDA Food Buying Guide.
Fruits	Canned or frozen: USDA Grade A Fancy <input type="checkbox"/> Must comply to standards to identity for the product and provisions of the Food, Drug, and Cosmetic Act and must be packed in water or their natural juices. <input type="checkbox"/> Fresh fruit: USDA Fancy or Grade 1 <input type="checkbox"/> Size must provide at least one-half cup fruit equivalency. <input type="checkbox"/> Fruit juice: USDA Grade A

Bread	Packaged bread and buns shall be dated for freshness by the manufacturer.
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Schedule C – Price List (2023– 2024)

Schedule C to be completed as part of the RFP by the SFA and must be used in conjunction with Schedule E.

SCHEDULE C - PRICE LIST				
<i>SCHOOL</i>	<i>STUDENTS</i>	<i>ADULTS</i>		
	<i>MILK</i>	<i>BREAKFAST</i>	<i>LUNCH</i>	<i>MILK</i>
ELEMENTARY SCHOOLS	Price: 0.40	Price: 4.00	Price: 6.00	Price: 0.40
MIDDLE SCHOOLS	Price: 0.40	Price: 4.00	Price: 6.00	Price: 0.40
HIGH SCHOOLS	Price: 0.40	Price: 4.00	Price: 6.00	Price: 0.40

Schedule D – Reimbursement Rates**Rates as of 7/1/2023**

The rates provided are inclusive of the additional state supplemental funding provided for all NSLP schools in Massachusetts as part of the legislative action requiring National School Lunch Program lunches and School Breakfast Program breakfasts be offered at no cost. Schedule D is included as part of the RFP and must be used in conjunction with Schedule E.

1.	<u>National School Lunch Program</u>	<u>Regular Rates</u>	<u>Severe Need Rates*</u>
	Free	4.30	4.32

*In districts participating in the National School Lunch Program with 60 percent or greater free and reduced participation during the second prior year.

2.	<u>School Breakfast Program</u>	<u>Regular Rates</u>	<u>Severe Need Rates*</u>
	Free	2.28	2.73

*Severe Need Rates are available to schools where, in the second prior year, 40 percent or more of the students received lunches free or at a reduced price.

3.	<u>After-School Snack Program</u>	
	<u>Rates</u>	
	Paid	.10
	Reduced	.58
	Free	1.17

4. Eight Cents Certification: \$0.08

This district is eight-cent certified

5. Effective USDA Foods Rate: \$.3650

Schedule E – Financial Schedule

***Please note: This form must be completed by the FSMC and submitted separately in the sealed Price Proposal Envelope.**

Projected Revenue

Cafeteria Sales: (Lunch)

Student Paid Meals:				
	____ Elementary Schools	@\$ ____	=	\$ ____
	____ Middle Schools	@\$ ____	=	\$ ____
	____ High Schools	@\$ ____	=	\$ ____
Student Reduced Price:	____ District-wide	@\$ ____	=	\$ ____
Student a la Carte:		@\$ ____	=	\$ ____
Adult Lunches:		@\$ ____	=	\$ ____
Adult a la Carte:		@\$ ____	=	\$ ____

Cafeteria Sales: (Breakfast)

Student Paid Meals:				
	____ Elementary Schools	@\$ ____	=	\$ ____
	____ Middle Schools	@\$ ____	=	\$ ____
	____ High Schools	@\$ ____	=	\$ ____
Student Reduced Price:	____ District-wide	@\$ ____	=	\$ ____

Special Functions:

Bank Interest		\$ ____
Other Income		\$ ____
Other Income		\$ ____
Subtotal Sales		\$ ____ (A)

Anticipated Reimbursement Federal & State (Lunch)

	____ District-wide Paid Meals	@\$ ____	=	\$ ____
	____ Reduced Price	@\$ ____	=	\$ ____
	____ Free	@\$ ____	=	\$ ____
Subtotal Lunch Reimbursement				\$ ____ (B)

Anticipated Reimbursement Federal & State (Breakfast)

	____ District-wide Paid Meals	@\$ ____	=	\$ ____
	____ Reduced Price	@\$ ____	=	\$ ____
	____ Free	@\$ ____	=	\$ ____
Subtotal Breakfast Reimbursement				\$ ____ (C)

Anticipated Reimbursement Federal (SFSP)

	____ Breakfast	@\$ ____	=	\$ ____
	____ Lunch and Supper	@\$ ____	=	\$ ____
	____ Snack	@\$ ____	=	\$ ____
Subtotal SFSP				\$ ____ (D)
Total Income (A+B+C+D)				\$ ____

Projected Expenses				
Food				
Student Lunches	_____ Meals	@\$ _____	=	\$ _____
Student Breakfasts	_____ Meals	@\$ _____	=	\$ _____
Adult Lunches	_____ Meals	@\$ _____	=	\$ _____
Employee Lunches	_____ Meals	@\$ _____	=	\$ _____
Districtwide a la Carte				\$ _____
Special Functions				\$ _____
USDA Processing Charges				\$ _____
USDA Donated Foods Value				\$ _____
			Net Food Cost	\$ _____ (E)

Labor	
Hourly Wages: (Employee schedules, work hours and rates of pay must be attached)	
Administration/Clerical	\$ _____
Food Service Workers	\$ _____
Other: _____	\$ _____
Other: _____	\$ _____
Salaries: (Employee schedules, work hours and rates of pay must be attached)	
Management	\$ _____
Other: _____	\$ _____
Other Payroll Costs	
Employee Fringe Benefits	\$ _____
Other Expenditures	
Auto Allowance	\$ _____
Cafeteria Supplies (paper, cleaning, etc.)	\$ _____
Commodity Delivery	\$ _____
General Support and Administrative Expense	\$ _____
Depreciation	\$ _____
Equipment Rental	\$ _____
Insurance	\$ _____
Menu/Ticket Printing	\$ _____
Office Supplies	\$ _____
Performance Bond	\$ _____
Promotions	\$ _____
Replacements	\$ _____
Stationary/Postage	\$ _____
Telephone	\$ _____
Uniforms/Laundry	\$ _____
Manuals	\$ _____
Miscellaneous	\$ _____
Other	\$ _____
Total Labor and Other Expenses	\$ _____ (F)

*Management Fee				
Monthly Flat Rate				\$ _____
OR				
Cents per Meal (Complete Calculation Below)				
*Student Annualized Meals		@ \$ _____	=	\$ _____
Total Management Fee				\$ _____ (G)

Total Number of Reimbursable Meals	
Expense Total	\$ _____ (E+F+G)
Profit/Loss (SUBSIDY)	\$ _____
<p>*Student Annualized Meals = the number of reimbursable meals + (the \$ amount of adult and a la carte sales) divided by (the current free lunch reimbursement rate + the per meal commodity [USDA Foods] reimbursement).</p>	
<p>**In accordance with Section 12.10 E of this RFP the Meal Equivalency Rate used in the Contract shall be adjusted annually and must be set no lower than the current free lunch reimbursement rate plus the commodity (USDA Foods) reimbursement rate.</p>	
<p>**Annualized a la Carte</p>	
<p>Meal Equivalent = The total \$ value of a la carte and adult meals divided by the current free lunch reimbursement rate + per meal commodity foods reimbursement = \$ _____</p>	

Schedule F – Food Service Management Company (FSMC) Fee

***Please note: This form must be completed by the FSMC and submitted separately in the sealed Price Proposal Envelope.**

Fee Components

The FSMC’s fees must be inclusive of all general and administrative fees, as well as profit, and in compliance with USDA rules and regulations.

In addition to the above requirements and any other requirements included in the Agreement, the following costs MAY NOT be included in any other expense charged to the SFA other than as indicated in the chart under paragraph 2 herein.

1. Menu development specific to the operation
2. Management meetings, and/or management development program specific to the operation
3. Nutrition education materials and program expense
4. Facilities layout and design services specific to the operation
5. Cost of developing training or procedures manuals
6. Food service control forms and supplies
7. Materials for food service promotions
8. All purchasing services
9. Education provided through classroom programs, parent/teacher meetings and school food service advisory committee meetings
10. All accounting and bookkeeping
11. All payroll reporting, recording and documentation including the issuance of weekly payroll checks for food service management company employees
12. Supply of all administrative, dietetic, nutritional, sanitation and personnel advice
13. Visitation/coverage by corporate chef during school food service promotions
14. Visitation/coverage by a principal or other executive of the food service management company
15. Other Fees not outlined by this RFP that are included in the fee must be delineated and listed below:

Fee Structure: Please mark the table below with an X for the components that make up the Administrative Fee/Management Fee or are to be directly billed to the SFA from the items listed above. Labor and food production costs are covered later in this section.

Administrative Fee: The FSMC shall charge the SFA [CHECK ONE AND INSERT \$]

a fee of \$ _____ per month for _____ months during each year of the contract. The fee represents the FSMC overhead expenses listed below

OR

a fee of \$ _____ per meal/meal equivalent. Meal equivalents shall be determined by _____ . The fee represents the FSMC overhead expenses listed below

AND/OR

Management Fee: The FSMC shall charge the SFA [CHECK ONE AND INSERT \$]

a fee of \$ _____ per month for _____ months during each year of the contract. The fee represents the FSMC Profit

OR

a fee of \$ _____ per meal/meal equivalent. Meal equivalent’s shall be determined by _____ . The fee represents the FSMC Profit.

Management and/or Administrative Fee Proposal: _____, food service management company (hereinafter referred to as the FSMC), agrees to operate the school food service program of the SFA Newton Public Schools, a federal Child Nutrition Program School Food Authority (hereinafter referred to as the SFA) as described in the SFA’s Request for Proposal (RFP) specifications for the 2023 - 2024 school year and for renewal years.

Renewal Year 1: 07/01/2025 to 06/30/2026

Renewal Year 2: 07/01/2026 to 06/30/2027

Renewal Year 3: 07/01/2027 to 06/30/2028

Renewal Year 4: 07/01/2028 to 06/30/2029

This is subject to subsequent negotiated one-year extensions of the agreement. Notwithstanding any contrary understanding or interpretation, the term of this agreement shall be one year, as required by USDA. This agreement may be renewed for one-year terms for up to four(4) additional years.

Fee Adjustments: Upon mutual written agreement of the SFA and the FSMC, the Management Fee and Administrative Fee may be adjusted annually. Such adjustment shall be by no more than the percentage of change in the Consumer Price Index (“CPI”) for all Urban Consumers (CPI-U U.S. city average), Northeast Region, Food Away from Home for the preceding year (April – March). Upon acceptance by the SFA, such increase in fees shall be incorporated into any renewal of this contract.

Schedule G – Guaranteed Return

***Please note: This form must be completed by the FSMC and submitted separately in the sealed Price Proposal Envelope.**

Guaranteed Return: The SFA and the FSMC shall work together to ensure a financially sound and well run food service operation. For the term of the contract, including renewal years the FSMC shall guarantee that the food service program will achieve financial: *(select one option)*

- Breakeven: defined as “generated program revenues will be sufficient to cover all actual and direct operating costs incurred.
- Surplus: defined as “generated program revenues will exceed all actual and direct operating costs incurred. Dollar Value: _____
- Deficit: defined as “generated program revenues will not be sufficient to cover all actual and direct operating costs incurred. Dollar Value: _____

Actual and direct operating costs are as described in paragraphs 12.10A - E above.

If the annual financial return for the Food Service Program falls short of the FSMC’s guaranteed minimum amount, the FSMC shall pay the difference to the SFA.

Exhibit M – Scoring Committee Results Chart and Criteria Ratings Conversion Charts Example

***Please Note: This example is based upon a Scoring Committee with three members. If your scoring committee has a different number of members, Individual Criteria Rating/Values and Overall Rating Ranges must be adjusted.**

Committee Results Chart - Vendor Name:

Criteria	Committee Member 1	Committee Member 2	Committee Member 3	Committee Member	Total	Overall Rating*
General Experience						
Reference Satisfaction						
Operations						
Relative Experience (FSD)						
Menus						
Marketing/Merchandising						
Financial Stability						
Employee Training						
Student Participation						
Total Overall Rating						
Criteria						
Highly Advantageous - HA						
Advantageous - A						
Not Advantageous - NA						
Unacceptable - U						

**See Criteria Ratings Conversions Chart to determine Overall Rating*

Criteria Ratings Conversion Chart

Criteria Rating	Value	Individual Criteria Rating/Value
Highly Advantageous	4	12 – 10 points
Advantageous	3	9 – 7 points
Not Advantageous	2	6 – 4 points
Unacceptable	1	3 points

**Each committee member criteria score will be converted into a point value*

**Point values for all committee members will be combined to identify an overall score for a particular criterion for a given vendor*

Exhibit M – Scoring Committee Results Chart and Criteria Ratings Conversion Charts

Overall Ratings Ranges Chart

Criteria Rating	Overall Rating Ranges	Vendor Names
Highly Advantageous*	36 - 28	
Advantageous	27 – 19	
Not Advantageous	18 - 10	
Unacceptable	9 – 0	

**Only Overall Ratings of Highly Advantageous move forward to the Price Evaluation Stage. If there are no vendors rated Highly Advantageous, the LEA reserves the right to move Advantageous vendors to the price (Guaranteed Return) evaluation stage.*

Overall Ratings Ranges Chart

Vendor Names	Criteria Points*	Guaranteed Return - Highest* (1st) to Lowest (4th)

**Ties on the Guaranteed Return are broken by the highest Criteria Points*

**Ties on both Guaranteed Return and Criteria Points are broken by lowest Management Fee*

**If the Guaranteed Return is Unacceptable for these vendors, the LEA reserves the right to go to the Advantageous vendor(s)*

EXHIBIT N

Non-Collusion Statement, Tax Compliance Certification, Certificate of Independent Price Determination, Certification of Clean Air and Water, Energy Policy and Conservation Act, Certification Regarding Debarment, Foreign Corporation Certificate of Registration, Certification Regarding Lobbying, Disclosure of Lobbying

Non-Collusion Affidavit
Food Service Program

By submission of this proposal, the FSMC certifies that:

- a. This proposal has been independently arrived at without collusion with any other proposer, competitor, potential proposer or potential competitor.
- b. This proposal has not been knowingly disclosed and will not be knowingly disclosed prior to the opening of the proposals for the work to be performed or the goods to be sold, to any other proposer, competitor, potential proposer or potential competitor.
- c. No attempt has been made, or will be made, to induce any other person to submit or not to submit a proposal. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
- d. The person signing this proposal certifies that he/she has fully informed himself/herself regarding the accuracy of the statements contained in this certification, and under penalties of perjury, affirms the truth thereof, such penalties being applicable to the bidder, as well as the person signing in his/her behalf.
- e. That below is a certified copy of the resolution authorizing the execution of the certificate by the signatory of this proposal on behalf of the corporate proposer.

Signature of the person authorized to submit this proposal

Typed or printed name of signatory and title

Date

Resolve that _____ be authorized to sign and submit the proposal of this corporation _____ for the Food Service Management Program at the Newton Public Schools.

Tax Compliance Certification

Pursuant to M.G.L. c. 62C §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

State tax paid to _____ using Federal ID or SS# _____

Company or Corporation

Dated: _____

Authorized Official's Signature

Certificate of Independent Price Determination

Both the school food authority and the Food Service Management Company (FSMC)(offeror) shall execute this Certificate of Independent Price Determination.

	Newton Public Schools
Name of FSMC	Name of School Food Authority

(A) By submission of this offer, the offeror certifies that in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

- (1) The prices in this offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening in the case of an advertised procurement, or prior to award in the case of a negotiated procurement, directly to any other offeror or to any competitor; and
- (3) No attempt has been made or will be made by the offeror to induce any person or firm to submit or not to submit an offer for the purpose of restricting competition.

(B) Each person signing this offer on behalf of the Food Service Management FSMC certifies that:

- (1) He or she is the person in the offeror’s organization responsible within the organization for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to A.1. through A.3. above; or
- (2) He or she is not the person in the offeror’s organization responsible with the organization for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate, in any action contrary to A.1.through A.3. above, and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to A.1. through A.3. above.

To the best of my knowledge, this food service management company (FSMC), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as described on the attached sheet (if applicable).

Name of FSMC	Title and Signature of FSMC Authorized Representative	Date

In accepting this offer, the sponsor certifies that no representative of the sponsor has taken any action which may have jeopardized the independence of the offer referred to above.

Name of SFA	Title and Signature of SFA Authorized Representative	Date

Clean Air and Water Certificate

Applicable if the contract exceeds \$100,000 or the Contracting Officer has determined that the orders under an indefinite quantity contract in any one year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (41 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act 33 1319(d) and is listed by EPA or the contract is not otherwise exempt. Both the School Food Authority (SFA) and Food Service Management Company (FSMC)(offeror) shall execute this Certificate.

NAME OF FOOD SERVICE MANAGEMENT COMPANY:

NAME OF SCHOOL FOOD AUTHORITY: Newton Public Schools

THE FOOD SERVICE MANAGEMENT COMPANY AGREES AS FOLLOWS:

- A. To comply with all the requirements of Section 114 of the Clean Air Act, as amended (41 U.S.C. 1857, et seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq. as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports and information as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.
- B. That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.
- C. To use his/her best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed.
- D. To insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph.
- E. THE TERMS IN THIS CLAUSE HAVE THE FOLLOWING MEANINGS:
 - a. The term "Air Act" means the Clean Air Act, as amended (41 U.S.C. 1957 et seq., as amended by Public Law 91-604)
 - b. The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).
 - c. The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1957c-5(d), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d), or approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).
 - d. The term "Clean Air Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342) or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).
 - e. The term "Compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an Air or Water Pollution Control Agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.
 - f. The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location or sites of operations, owned, leased or supervised by the FSMC.

Signature of Food Service Management
Company's Authorized Representative

Title

Date

Signature of School Food Authority's
Authorized Representative

Title

Date

Energy Policy and Conservation Act

The Food Service Management Company (FSMC) and the School Food Authority (SFA) agree to comply with the Energy Policy and Conservation Act (P.L 94-163) as amended through P.L. 114-255 (enacted December 13, 2016) for the duration of the contract year. An addendum agreeing to comply with this policy and act must be renewed with each renewal amendment.

FSMC

Newton Public Schools
SFA

Authorized Signature

Authorized Signature

Title

Title

Date

Date

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

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

SFAs are required to ensure that all sub-contractors and sub-grantees are neither excluded nor disqualified under the suspension and debarment rules found at 2CFR 200.214 by doing any one of the following:

- Checking the Excluded Parties List found at the System for Award Management www.SAM.gov;
- Collecting a certification that the entity is neither excluded nor disqualified. Since a Federal certification form is no longer available, the grantee or sub-grantee electing this method must devise its own;
- Including a clause to this effect in the sub-grant agreement and in any procurement contract expected to equal or exceed \$25,000, awarded by the grantee or a sub-grantee under its grant or sub-grant;
- Sub-grantee and contractors must obtain a DUNS Number. All Federal Government awards are required to have a DUNS number. To obtain a DUNS number, contact Dun and Bradstreet at 1-866-705-5711 or visit their website at <https://eupdate.dnb.com/requestoptions.asp>. There is no charge for a DUNS number. The DUNS number serves as a means of tracking and identifying applications for Federal assistance and is required on all applications for Federal assistance.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension. 2CFR 200.214 Suspension and Debarment. The regulations were published as Part III of the December 26, 2013, Federal Register (pages 78590-78691). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON NEXT PAGE)

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is 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.

Organization Name

PR/Award Number or Project Name

Name and Title(s) of Authorized Representative(s)

Signature(s)

Date

Foreign Corporation Certificate of Registration
(M.G.L. chapter 156D, Section 15.03; 950 CMR 113.48)

[Foreign Corporation Certificate of Registration](#)

Certification Regarding Lobbying

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 the 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.
- (2) 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 Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) 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.

Organization Name

Address

Name of Submitting Official

Title of Submitting Official

Signature

Date

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 (see reverse for public burden disclosure) Approved by OMB 0348-0046

<p>1. Type of Federal Action:</p> <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	<p>2. Status of Federal Action:</p> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<p>3. Report Type:</p> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change
<p>For material change only: Year _____ quarter _____ Date of last report: _____</p>		
<p>4. Name and Address of Reporting Entity: _____ Prime _____ Sub-awardee Tier _____, if known: Name: _____ Street 1: _____ Street 2: _____ City: _____ State: _____ Zip Code: _____ Congressional District, if known: _____</p>		
<p>5. If Reporting Entity in No. 4 is Sub-awardee, Enter Name and Address of Prime: Name: _____ Street 1: _____ Street 2: _____ City: _____ State: _____ Zip Code: _____ Congressional District, if known: _____</p>		
<p>6. Federal Department/Agency: _____</p>	<p>7. Federal Program Name/Description: CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known: _____</p>	<p>9. Award Amount, if known: \$ _____</p>	
<p>10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI); Prefix: _____ Last Name: _____ First Name: _____ MI: _____ Company Name: _____ Street 1: _____ Street 2: _____ City: _____ State: _____ Zip code: _____</p>		
<p>10. b. Individuals Performing Services (including address if different from No. 10a) last name, first name, MI): Prefix: _____ Last Name: _____ First Name: _____ MI: _____ Company Name: _____ Street 1: _____ Street 2: _____ City: _____ State: _____ Zip code: _____</p>		
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p>	
<p>Federal Use Only</p>	<p>Authorized for Local Reproduction Standard Form – LLL (Rev. 7-97)</p>	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to 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. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget 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 Federal 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 sub awardee, e.g., the first subaward of the prime is the 1st 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 "Sub awardee," 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; the application/proposal control number assigned by the Federal agency). Included 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 5.
 - a. Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

The certifying official shall sign and date the form, print his/her name, title, and telephone number

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing 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 this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.