United States Department of Agriculture
Food and Nutrition Service
Mountain Plains Region
1244 Speer Boulevard
Denver, CO 80204

Reply to Attn. of: SP 94-C-13

NOV 8 1993

Subject: Prototype Food Service Management Contracts from New York State

To: STATE AGENCY DIRECTORS (Special Nutrition Programs) - Colorado ED, Iowa, Kansas, Missouri ED, Montana OPI, Nebraska ED, North Dakota, South Dakota, Utah, Wyoming ED

This memorandum serves to establish that these prototype contracts are in compliance with Program regulations, and may serve as models for prototype contracts State agencies (SAs) may wish to develop for their own use. The use of standardized contracts for food service management companies is not a requirement, but SAs are encouraged to seriously consider developing and utilizing them for their school food authorities.

If you have any questions about these prototypes, please contact our office.

Ann C. Hector

ANN C. HECTOR
Regional Director
Special Nutrition Programs

Attachments: New York State Prototype Food Service Management Contracts

CONTRACTING FOR SCHOOL FOOD SERVICE
FACT SHEET I - PROCEDURE*

A school district considering entering into an agreement with a food service management company for the purpose of operating its cafeteria programs should take the following steps:

I. Contact the Bureau of School Food Management and Nutrition, New York State Education Department, Room 761 EBA, Albany, New York 12234 for a copy of the Standard Bid Specifications and Contract Form which identify requirements for contracting.

II. Upon receipt of the prototype contract, the District readies the contract for bidding by including those specifications appropriate to its program needs.

The bid specifications must be submitted, prior to advertising for bids, to the Bureau of School Food Management and Nutrition for approval. (See Fact Sheet II)

III. The contract is bid, in accordance with Section 305 of the Education Law.*

A. The advertisement that bid proposals are being accepted and the date, place and time that the proposals will be publicly opened is published.

(1) Date of bid opening must be at least six days after publication of announcement.
Note: It is recommended that bid opening be four (4) weeks from date of publication to allow bidders the opportunity to develop an accurate bid.

(2) Advertisement must be in the District's official newspaper.

B. Bid proposals are opened.

The District has the right to reject any or all bids (with reason), or waive any technical defect so long as it is done universally and without prejudice.

C. Bid is awarded by the District's Board of Education to the lowest responsible bidder.

D. Bidders are notified of the award.

* A school district considering contracting with a food service management company for the purposes of operating its school feeding programs should, prior to the contracting process, review the possible implications in employee-employer relations under the Taylor Law with the School District Legal Counsel.

IV. The original and three (3) copies of the completed contract must be submitted to the State Office of the Bureau of School Food Management and Nutrition.

A. If the contract complies with all State and Federal regulations, it will be approved. The Bureau of School Food Management retains two (2) copies of the contract and two (2) are returned to the District; one (1) to be sent to the food service management company.

B. If the contract is unapprovable, communication between the Bureau and the District will continue until all problems are corrected.

Note: An approvable contract must be on file with the Bureau of School Food Management and Nutrition before a District may begin earning Federal and State reimbursement for that contract term.

For further information or clarification, contact the Bureau of School Food Management and Nutrition at (518) 473-8781.

CONTRACTING FOR SCHOOL FOOD SERVICE
FACT SHEET II - THE CONTRACT

The Standard Bid Specifications and Contract form are continually subject to revision in order to incorporate all updated State and Federal regulations as well as to clarify those areas that have been problematic to school districts in the past.

School districts, before submitting the contract to prospective bidders, are encouraged to include their own specifications and/or redefine certain clauses in the prototype contract. Contract approval process is as follows:

I. Submit revised specifications to the Bureau of School Food Management and Nutrition for approval prior to advertising for bids.

   A. If approved:

      (1) The District is notified in writing.

      (2) Follow contracting procedure outlined in Fact Sheet I.

   B. If not approved:

      (1) Contact with the District will define problem areas.

      (2) District must revise material as indicated.

II. If unapproved specifications go out to bid, and an award is made, any problems will have to be handled when the completed contract is submitted to the Bureau of School Food Management and Nutrition. This may result in a time delay plus the District may have to rebid with a revised contract form. Loss of reimbursement may result.

Note: Simultaneously with or after the award of contract, alterations of the specifications that would permit unfair advantage or favoritism are prohibited.

III. Certain areas in the contract are mandated (cannot be excluded). Some of the major areas are as follows:

(1) Twenty-one day cycle menu (Schedule B)

(2) Procurement Specifications (Schedule A)

(3) Bid Form
- bid must be a fixed fee
- award is to the lowest responsible bidder, responsibility to be determined by the board.

(4) Performance Security
- must be at least 5% of annual projected operating cost.

(5) Sixty-day termination clause
- either party may terminate contract <u>with cause</u>, with sixty days' written notification.

(6) Non-collusive statement - Appendix A

(7) Financial Budget Projection - Schedule C

(8) Signatures of both parties

IV. Any time the words F.S. Contractor/S.F.A. appear in the specifications the District must make a choice.

For further information or clarification, contact the Bureau of School Food Management and Nutrition at (518) 473-8781.

CONTRACTING FOR SCHOOL FOOD SERVICE
FACT SHEET III
CONTRACT TYPE I
AWARD BASIS - ADMINISTRATIVE SERVICE FEE

In an effort to assist school administrators, the following definitions have been developed. These definitions should be continually referenced when questions arise concerning payments obligated under the Type I food service management company contract.

Allowable Direct Costs are those costs which are incurred solely for the SFA's on-site operation as defined herein:

Labor is defined as and limited to on-site employees responsible for the management, preparation, service, and clean-up of meals.

Food is defined as and limited to those items purchased for use in the preparation and service of student, ala carte and adult meals as specified herein.

Miscellaneous Expenses are defined as paper supplies (including decorations), equipment rental, cleaning materials, commodity handling and warehousing charges, travel as required for effective program management, and as agreed upon by the SFA*, uniforms, menu paper and printing, taxes and licenses, laundry, insurances and other costs as contractually obligated herein.

*Travel as required for effective program management and as agreed upon by the School Food Authority:

Travel as required ...
Ex. -Travel of the manager from one building in the district to another. Also
-Travel to regional meetings.

Travel as agreed upon ...
Ex. -Travel to special meetings.
-Travel of regional chef, dietician, etc. if such visits are deemed necessary for efficient operation by the School Food Authority.

Note: Allowable direct cost of operations is defined as labor, food and miscellaneous expenses. All program expenses not otherwise defined in the contract will be assumed by the F.S. Contractor under the Administrative Service Fee.

Administrative Service Fee is defined as all other costs except food, labor, and miscellaneous costs as defined herein.

When the award of contract is based solely on Administrative Service Fee, the New York State Education Department's Office of Counsel has ruled that the Governing Board of the S.F.A. must purchase all food and non-food items in accordance with General Municipal Law Section 103 and Part 114 of the Regulations of the Commissioner of Education (8NYCRR Part 114).

1. The School Food Authority and Food Service Contractor would cooperatively develop the bid specifications.

2. Bids would be advertised in the School Food Authority's official paper.

3. Bids would be opened in the District office.

4. The Food Service Contractor would <u>not</u> be prohibited from submitting a bid.

5. Title to all purchased commodities remains with the Contractor.

6. Items purchased under the Farm Bill must be made by the School Food Authority.

It is recommended that the contract be bid on either an annual or per meal basis (indicated by School Food Authority prior to bidding). However, should the District decide to accept both annual and per meal bids, the per meal bids will be annualized and the award based on an annual fee.

CONTRACTING FOR SCHOOL FOOD SERVICE
FACT SHEET IV
CONTRACT TYPE II
AWARD BASIS - MAXIMUM PER MEAL COST REIMBURSEMENT

In an effort to assist school administrators, the following definitions have been developed. These definitions should be continually referenced when questions arise concerning payments obligated under the Type II food service management company contract.

Allowable Direct Costs are those costs which are incurred solely for the SFA's on-site operation as defined herein:

Labor is defined as and limited to on-site employees responsible for the management, preparation, service, and clean-up of meals.

Food is defined as and limited to those items purchased for use in the preparation and service of student, ala carte and adult meals as specified herein.

Miscellaneous Expenses are defined as paper supplies (including decorations) equipment rental, cleaning materials, commodity handling and warehousing charges, travel as required for effective program management and as agreed upon by the SFA*, uniforms, menu paper and printing, taxes and licenses, laundry, insurances and other costs as contractually obligated herein.

*Travel as required for effective program management and as agreed upon by the School Food Authority:

Travel as required ...
Ex. -Travel of the manager from one building in the district to another. Also
-Travel to regional meetings.

Travel as agreed upon ...
Ex. -Travel to special meetings.
-Travel of regional chef, dietician, etc. if such visits are deemed necessary for efficient operation by the School Food Authority.

Note: Allowable direct cost of operations is defined as labor, food and miscellaneous expenses. All program expenses not otherwise defined in the contract will be assumed by the F.S. Contractor under the Administrative Service Fee.

Administrative Service Fee is defined as all other costs except food, labor, and miscellaneous costs as defined herein.

The Maximum Per Meal Cost Reimbursement figure is composed of the Administrative Service Fee and the total of the projected Direct Cost of Operations (food, labor, miscellaneous) per meal.

(Example only)

Administrative Service Fee	$ .10
Direct Cost of Operations	+1.15
Maximum Per Meal Cost Reimbursement	$1.25

It is the $1.25 figure (in this example) that would appear on the bid form as the bid price.

Although the Maximum Per Meal Cost Reimbursement is the bid price, the per meal reimbursement to the F.S. Contractor is contingent upon:

- Direct cost of operations as audited and approved,
  and
- limited to the extent of program income.

Note: At no time during the contract period will the per meal reimbursement to the management company exceed the contract terms (the number of meals plus equivalent meals* multiplied by the Maximum Per Meal Cost Reimbursement figure).

*Equivalent meals are calculated by dividing the ala carte/adult sales figure by the Equivalent Meals Conversion Factor (supplied by the Bureau of School Food Management and Nutrition).

Any special function or catered event that is outside the child nutrition program operation, and is provided by the food service contractor, must be billed outside the contract. The district has an obligation to reimburse the school cafeteria account and the contractor out of the General Fund account for the cost of these services. Payments received by the contractor for these services cannot be reflected as "a la carte sales" when calculating equivalent meals under the Type II contract.

For more information about payment under the Type II contract, see Fact Sheet IVa.

Upon contract renewal, the increase in the bid price is restricted to the N.Y., Northeastern New Jersey Consumer Price Index (CPI-U) for all urban consumers for the immediately preceding twelve month period. Reason for any increase should be documented by the vendor. The maximum extension price is limited to the latest available CPI-U at the time of the extension agreement.

Special ATTENTION SHOULD BE PAID TO THE CONTENT OF THE MENU TO BE USED FOR BIDDING THE MAXIMUM PER MEAL COST CONTRACT. BECAUSE THE MENU AS BID MUST BE USED FOR THE FIRST 21 DAYS OF SERVICE AND SETS THE QUALITY STANDARD THEREAFTER, BIDDERS USE THE INFORMATION CONTAINED ON THE MENU WHEN CALCULATING FOOD COST. IT WOULD THEREFORE BE DIFFICULT FOR THE F.S. CONTRACTOR TO INCREASE THE QUALITY OF THE PROGRAM SUBSEQUENT TO THE BID.

CONTRACTING FOR SCHOOL FOOD SERVICE
FACT SHEET IVA
CALCULATING VENDOR REIMBURSEMENT UNDER THE TYPE II CONTRACT

Award of bid under the Type II contract is to the responsible food service contractor bidding the lowest maximum program cost as calculated on a per meal basis.

Payment to the vendor is:

Contingent upon

1. Direct cost of operations (food, labor, and miscellaneous costs as defined in the contract) as audited and approved.

2. Administrative service fee (quoted per meal fee multiplied by meals served)

Limited to

1. The extent of program income

2. Contract terms - meals plus equivalent meals multiplied by the bid price.

For all examples:

Meal pattern meals served in one month	13,000
Equivalent meals served in one month	7,000
Total	20,000

Bid Price

Direct operating costs	$1.05
Administrative Fee	.10
Total	$1.15

2. Maximum allowable monthly payment under contract: 20,000 (total meals) x $1.15 (bid price) = $23,000

Example 1

Actual costs for one month

Food	$13,000	
Labor	8,500	
Misc.	2,500	
Adm. Fee	2,000	($.10 x 20,000 meals)
Total	$26,000	

A. Actual Costs = $26,000 B. Maximum Payment = $23,000

Payment to the vendor the lesser of A or B

Payment to vendor for this month = B = $23,000

Example 2

Actual Costs for one month

Food	$10,000	
Labor	7,000	
Misc.	2,000	
Adm. Fee	2,000	($.10 x 20,000 meals)
Total	$21,000	

C. Actual Costs = $21,000 B. Maximum Payment = $23,000

Payment to vendor = A = $21,000

Reminder: Although the district is billed on a weekly or monthly basis, the contract bid is based on the full school year. Therefore, a district may reimburse a vendor in October for overages that occurred in September.

Example:

Expenses in September:	$26,000
Maximum allowable payment:	23,000
Payment for September:	$23,000
Expenses in October:	$21,000
Maximum allowable payment:	23,000
Payment for October:	
$21,000 + $2,000 (of overage from Sept) = $23,000	
Expenses in November:	$23,000
Maximum allowable payment:	23,000
Payment for November:	$23,000
Expenses in December:	$20,000
Maximum allowable payment:	23,000
Payment for December:	
$20,000 + $1,000 (unpaid overage from Sept) = $21,000	
Expenses in January:	$22,500
Maximum allowable payment:	23,000
Payment for January:	$22,500

Note: Expenses may not be carried over from one contract year to another.

For further information or clarification, contact the Bureau of School Food Management and Nutrition at (518) 473-8781.

TYPE I
ADMINISTRATIVE SERVICE FEE

SA # _____
AGREEMENT # _____

AGREEMENT

between District Name _____

Address _____

_____

Telephone # _____

and Management Company Name _____

Address _____

_____

Telephone # _____

SPECIFICATIONS AND BID FORM
FOR FOOD SERVICE PROGRAMS
UNDER MANAGEMENT COMPANY OPERATIONS
BID NO. _____

In accordance with the provisions of Section 305 of the Education Law, an advertisement for bids was published in the _____ on _____, 19____. As stated in such notice, bids will be publicly opened and read in the office of _____ on _____, 19___ at _____ (a.m.) (p.m.).

CHILD NUTRITION PROGRAM

Management Company Contract

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1. PURPOSE

The purpose of this solicitation is to provide for the operation of a food service program. The F.S. Contractor will assume responsibility for the efficient management of the food service program including purchasing, receiving, storing, setting up cafeteria lines, counter service, dining room service, clean-up, sanitation, training, hiring and supervising personnel, and presenting food in a way to create optimum student participation. The program will include the use of federally donated commodities.

The Bidder under these specifications will be referred to as the F. S. CONTRACTOR and the contract will be between the F.S. CONTRACTOR and the S.F.A. (School Food Authority).

2. DEFINITIONS

School Food Authority (S.F.A.) is the School District.

Board is the Board of Education of the School Food Authority.

Bidding Documents include the Advertisement or "Notice to Bidders."

Instructions to Bidders all "Conditions and Specifications," the bid proposal forms, including any "Addenda" issued prior to the opening of bids, and the "Contract."

Notice to Bidders is the formal statement issued by the School Food Authority inviting bids on all the services, materials, supplies or equipment described in the Bidding Documents.

Addenda are written instruments issued by the School Food Authority prior to the opening of bids which modify or interpret the Bidding Documents by addition, deletions, clarifications or corrections.

Bid is a complete and properly signed proposal on the forms provided herein to provide the food service program management services, equipment, supplies or materials required for the sum stipulated therein supported by data called for by the Bidding Documents.

Bidder is any individual, company or corporation submitting a bid.

Successful Bidder is a Bidder to whom an award is made by the Board.

F.S. Contractor is a Bidder with whom a Contract is executed by the School Food Authority.

Conditions and Specifications constitute any description in the Bidding Documents of Services, materials, supplies, and/or equipment required for the performance of the obligations under the Contract or the circumstances under which such services, materials, supplies, and/or equipment are to be provided.

Contract is a formal agreement duly executed by the authorized representatives of the School Food Authority and the F.S. Contractor which calls for the provision of all services, materials, supplies or equipment by the F.S. Contractor in

accordance with all Conditions and Specifications in the Bidding Documents, for a price to be paid by the S.F.A.

Allowable Direct Costs are those costs which are incurred solely for the S.F.A.'s on-site operation as defined herein:

-**Labor** is defined as and limited to on-site employees responsible for the management, preparation, service, and clean-up of meals.

-**Food** is defined as and limited to those items purchased for use in the preparation and service of student, a la carte and adult meals, as specified herein.

-**Miscellaneous expenses** are defined as paper supplies (including decorations), equipment rental, cleaning materials, commodity handling and warehousing charges, travel as required for effective program management and agreed upon by S.F.A., uniforms, menu paper and printing, taxes and licenses, laundry, and insurances and other costs as contractually obligated herein.

Note: Allowable direct cost of operations is defined as labor, food and miscellaneous expenses. All program expenses not otherwise defined in the contract will be assumed by the F.S. Contractor under the Administrative Service Fee.

Administrative Service Fee is defined as all other costs except labor, food and miscellaneous costs as defined herein.

All additional definitions set forth in the Conditions and Specifications are generally applicable to the Bidding Documents.

3. BIDDER RESPONSIBILITY

The bidder is responsible for personally examining the job sites where work under the bidding document is to be performed as they relate to the conditions existing at each job site. No pleas of ignorance relating to any data, conditions or requirements that exist or that may be encountered under this contract will be accepted as a result of failure or omission on the part of the F.S. Contractor to fulfill in every respect all the requirements, nor will the same be accepted as a basis for any claim whatsoever for extra charges for food services. Such visits will be scheduled through _____

4. PRIOR YEARS PARTICIPATION

A. Participation in meal pattern lunches for the 19___ - 19___ School Year was:

School	Selling Price Student	Selling Price Adult	Student Enrollment	Average Daily Participation Free	Average Daily Participation Red.	Average Daily Participation Paid	Total Adults/ Faculty Staff

The requirements of Meal Pattern lunches are found in 7CFR 210.10. The F.S. Contractor will comply with any and all amendments thereto.

B. Participation in School Breakfast Program for the 19___ - 19___ School Year was:

School	Selling Price Student	Selling Price Adult	Student Enrollment	Average Daily Participation Free	Average Daily Participation Red.	Average Daily Participation Paid	Total Adults/ Faculty Staff

The requirements of School Breakfast Program are found in 7CFR 220.8. The F.S. Contractor will comply with any and all amendments thereto.

C. Ala Carte Sales for the 19 ___-___ School year totaled: _____.

D. Sales in the Special Milk Program for the 19 ___ - ___ school year totaled: _____.

E. Child Nutrition revenues (breakfast and lunch) for the 19___-___ year totaled: _____.

5. PRICES

A. The prices to be charged for the 19___ - 19___ (upcoming) school year are as follows:

School	Student Meal Pattern Lunch	Adult Lunch*	Student Milk	Adult Milk	Student Breakfast	Adult Breakfast
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

*The price of an adult meal should at least be equal to the free reimbursement rate, plus the donated commodity entitlement rate, plus sales tax. These prices may be changed only after approval by the Board of Education of the S.F.A. The F.S. Contractor shall be notified of such approval thirty (30) days before new prices are effective.

A La Carte
Pricing Schedule

Item	Student Price	Adult Price

6. SUBMISSION OF BIDS

A. Bids shall be submitted on the forms provided by the District.

B. Bidders requiring clarification or interpretation of the Bidding Documents shall make a request to the District prior to the date fixed for the opening of bids.

C. Any clarification, interpretation, correction or change of this Document shall be made by Addendum prior to bidding.

7. REJECTION OF BIDS

The S.F.A. reserves the right to reject any and all bids.

8. AWARD OF BID

A. Award of the Contract shall be to the lowest responsible Bidder, which responsibility shall be determined by the board.

B. If the district allows Bidders to bid under more than one option on page 13 of BID FORM, the district will consider bids in the following order to determine the lowest responsible Bidder: Option A, Option B, Option C.

9. SPECIAL and GENERAL CONDITIONS

The Bidder will comply with the Special and General Conditions attached hereto and in all respects made a part of this bid specification.

10. CONTRACT

The successful bidder shall enter into the DISTRICT-FOOD-SERVICE MANAGEMENT COMPANY CONTRACT attached hereto and in all respects made a part of this bid specification. By submitting a bid, the bidder agrees to all the terms and conditions contained herein.

11. CONTINGENCY BUDGETS

In any district operating under a contingency budget and conducting food service operations, the following conditions must be adhered to:

A. The program at all times must be self sustaining;

B. There can be no transfer or loan of funds from the General Fund;

C. In the event of the end of the month operating statement from the F.S. Contractor reflects a deficit, such deficit will be the responsibility of the F.S. Contractor pending mutual determination by such F.S. Contractor and the S.F.A. as to actions to be taken to dissolve such deficit.

12. MENU CYCLE

The 21-day cycle menu, see Schedule A, shall be used as a standard for the purpose of basing bids or estimating average cost per meal. The F.S. Contractor must adhere to the cycle for the first 21 days of meal service. Menu standard as presented in the 21-day cycle menu must be maintained as to type and quality of meal service.

13. PURCHASE SPECIFICATIONS

The grade, purchase unit, style, weight, ingredients, formulation, etc. as set forth by the School Food Authority, shall be complied with by the Food Service Management Company. See Schedule B.

Schedule B

PROCUREMENT SPECIFICATIONS

To be developed by S.F.A. based on individual S.F.A. preferences and requirements.

14. SPECIAL AND GENERAL CONDITIONS

A. Bids will be received as stated on the cover sheet, for the privilege and right to conduct/operate food service within facilities listed in Appendix C and as set forth below.

B. The S.F.A. shall furnish all electricity, gas, water, heat and light to the F.S. CONTRACTOR for its operation as in the judgment of the S.F.A. is reasonably needed and necessary.

C. The S.F.A. shall furnish all necessary equipment to operate the personal food programs. At the time of contract signing, an itemized inventory (to be certified by representatives of both parties) of all items furnished or to be furnished by the S.F.A., including miscellaneous kitchen items, will be made a part of this contract.

D. As a direct cost of operation the F.S. CONTRACTOR will maintain the initial adequate inventory of chinaware, glassware, and silverware furnished by the S.F.A. Regarding all equipment, furnishings and smallwares used for the services hereunder, the F.S. CONTRACTOR agrees that it will use the S.F.A. equipment, machinery, paraphernalia in good and proper manner and shall keep the same free from damages, in proper condition and in a state of cleanliness to assure STRICT COMPLIANCE WITH HEALTH REGULATIONS AS PROVIDED AND REQUIRED BY THE STATE OF NEW YORK, dealing with S.F.A. facilities, as with all other health laws.

1. Repairs necessary due to the negligence of the F.S. CONTRACTOR, its employees or agents shall be the sole responsibility and the sole expense of the F.S. CONTRACTOR.

2. The S.F.A. agrees to at its sole option to repair or replace any equipment not functioning properly or which is missing upon proper written notification by the F.S. CONTRACTOR or the need for such repair or replacement and the availability of normal repair or replacement facilities.

3. No alterations, changes, or improvements shall be made to the areas granted to the F.S. CONTRACTOR without obtaining prior written permission of the S.F.A. with the final decision as to alterations, changes, or improvements reserved solely for the S.F.A.

E. The S.F.A. will provide for the removal of all trash and garbage with the F.S. CONTRACTOR being responsible for proper sanitary storage and placement of said trash and garbage until its removal.

F. The S.F.A. shall be responsible for repairs to all permanent fixtures such as faucets, lights, sewers, air conditioning, heating and all other electrical work NOT considered to be food equipment, since such food equipment is dealt with in Item d above.

G. Upon termination of this contract the F.S. CONTRACTOR will surrender to the S.F.A. all equipment and furnishings located in the food services facilities and/or as listed on the certified inventory list of all S.F.A. owned property (both capital and/or expendable) as referred to in Paragraph c hereunder. Such property and equipment or its equal

quality replacement must be returned to the S.F.A. in the same good order and condition as when received by the F.S. CONTRACTOR, reasonable wear and tear, damage from casualty fire and hazards covered by insurance ALONE EXCEPTED. Another inventory shall be taken upon termination to determine the status of all equipment hereunder. Discrepancies shall be corrected at the F.S. CONTRACTOR'S sole expense with said replacement based on a comparison with the original inventory.

H. The S.F.A. shall have unlimited access, with or without notice to the F.S. CONTRACTOR, to all areas used by the F.S. CONTRACTOR FOR PURPOSES OF INSPECTIONS AND AUDITS.

I. The F.S. CONTRACTOR shall adhere strictly to all applicable Pure Food Laws, ordinances as well as all related regulations as adopted and promulgated by the Federal Government, the State of New York, the local Departments of Health and said F.S. CONTRACTOR will otherwise fully comply at all times with the rules and regulations as set up by the S.F.A. as well as with any change in the State and/or County Laws, etc., covering and controlling food services at the facilities.

J. The F.S. CONTRACTOR shall have the sole responsibility to compensate its employees, including all applicable taxes and insurances and shall be solely responsible for any losses incurred by the S.F.A. resulting from dishonest, fraudulent or negligent acts on the part of its employees or agents. All food service employees shall comply with all rules of the S.F.A. for cleanliness and courtesy.

K. The F.S. CONTRACTOR will maintain all employees on its payroll with the exception of _____.

L. The F.S. CONTRACTOR shall be solely responsible for the purchase and payment of all foods and beverages necessary for it to render proper performance of the food service program as stated herein. Such purchases and performance shall apply to all items in addition to food and beverage which will be necessary for compliance with and of this agreement.

15. BONDS AND INSURANCE:

The F.S. CONTRACTOR shall procure and maintain at its own expense a general liability policy listing the S.F.A. as one of the insured, including products liability in the amounts of at least $_____ for injury and death, and property damage with a limit of $ _____ for each accident provided by insurance companies authorized to do business in the State of New York.

16. PERFORMANCE SECURITY:

The F.S. CONTRACTOR shall be required to:

A. Submit with the bid an assurance by a surety authorized to conduct business within New York State, that if selected as the successful bidder, and upon award of the contract, a performance bond will be issued in the amount of $ _____ *(5% of annual projected operating costs). Simultaneously with delivery of the executed contract, the successful vendor must provide to the S.F.A. the executed surety

company bond as required, to be held as security by the S.F.A. for the faithful performance by F.S. Contractor of all terms of the contract.

OR

B. Submit with the bid an authorization for the S.F.A. to hold in a reserve fund the amount of $ _____ *(5% of annual projected operating costs) out of the initial revenues produced by the school lunch program and earned by the management company.

The S.F.A. shall retain such reserve fund until the F.S. CONTRACTOR has faithfully performed all terms of the contract.

OR

C. Submit with the bid a certified check payable to the S.F.A. in the amount of $_____ (5% of annual projected operating costs) upon award of bid. The S.F.A. shall return all such checks to the unsuccessful bidders.

The S.F.A. shall retain the successful bidder's check until the F.S. CONTRACTOR has faithfully performed all terms of the contract.

*A 5% security is the minimum requirement. A security greater than 10% of the annual projected operating costs (Schedule C, Item B) must be approved by the Bureau of School Food Management and Nutrition.

The New York State Education Department recommends that all security forms be left open to the bidder. However, the S.F.A. may choose to eliminate one or more options.

17. SUBMITTALS

Bidders will provide, along with their completed bids, evidence demonstrating an ability to administer school food service programs, including, if applicable, a list of any and all school districts which they have served during the past three years, a summary of their past experience over at least three years of successfully operating a complex food service program requiring nutritional meals and in compliance with the applicable regulations of the State of New York. In lieu of organizational experience, staff expertise must be demonstrated.

BID FORM

We, the undersigned agree to operate the food service management program as described the bid specifications for the 19___ - 19___ school year.

This proposal is subject to all the attached definitions, terms, conditions, and specifications and we hereby agree to enter into the attached S.F.A. - F.S. Contractor agreement subsequent to the award of the bid.

	Bid Amount** Annual or Per Meal
Option A Guaranteed Return to District	
TOTAL ADMINISTRATIVE/SERVICE FEE for the operation of the program wherein all operating costs, the administrative/service fee and program costs incurred by the district of $*_____ will accrue from program income including all cash receipts from the sale of meal pattern lunches, a la carte items, special milk program, adult lunches, breakfast program and federal and State reimbursements including cash and commodities. Any deficit will be assumed by the F.S. Contractor.	_____ _____
Option B Break Even	
TOTAL ADMINISTRATIVE/SERVICE FEE for the operation of the program wherein all operating costs and the administrative/service fee will accrue from program income including all cash receipts from the sale of meal pattern lunches, a la carte items, special milk program, adult lunches, breakfast program, and federal and State reimbursements including cash and commodities. Any deficit will be assumed by the F.S. Contractor	_____ _____
Option C General Fund Subsidy	
TOTAL ADMINISTRATIVE/SERVICE FEE for the operation of the program requiring a General Fund subsidy of $ *_____ to cover reimbursement, the administrative/service fee and operating costs which exceed cash receipts from the sale of meal pattern lunches, a la carte items, special milk program, adult lunches, breakfast program, and federal and State reimbursements including cash and commodities. The S.F.A. shall not be liable from the General Fund over and above this subsidy.	_____ _____

Per Meal Bids

If the bid is to be awarded upon a per meal basis, the bidder must complete Section C on the following page. The conversion factor to be used to convert a la carte sales is $1.49. (This must reflect the most current rate issued by the State Education Department at the time of advertisement).

*To be completed by the S.F.A.
**The S.F.A. must choose the basis of the bid award--either annual fee or per meal fee--prior to the advertisement/bid process

Submitted by: _____ _____
Authorized Signature

Address: _____ _____
Title

_____

ANNUAL FINANCIAL BUDGET PROJECTION

A proposed financial budget must be included by the bidder in the bid proposal. It should contain the following information:

A. Projected Gross Receipts

1. CASH SALES

   a. Student Meal Pattern Lunches _____
   b. Adult Lunches _____
   c. A la carte _____
   d. Special Milk _____
   e. Breakfast Program _____

2. FEDERAL AND STATE REIMBURSEMENTS _____

3. GENERAL FUND SUBSIDY (where applicable) _____

4. TOTAL RECEIPTS _____

B. Projected Expenses

1. FOOD COSTS _____

2. LABOR-SALARIES/FRINGE BENEFITS _____

3. MISCELLANEOUS (as defined herein) _____

4. ADMINISTRATIVE SERVICE FEE _____

5. TOTAL EXPENSES _____

6. DISTRICT RETURN/FUND BALANCE _____
   (Item A.4 minus Item B.5) this amount must equal or exceed the guaranteed return specfied under bid option A (page *), if applicable.)

C. Projected Meals

1. STUDENT MEAL PATTERN
   Breakfast _____
   Lunch _____
   Total _____

2. A IA CARTE SALES _____
   divided by
   Conversion Factor $1.49
   Equivalent Meals _____

3. Total Projected Meals _____

Cost Responsibility Detail Sheet

The SFA has deemed the following cost responsibility schedule to be a necessary part of this bid specification. Costs which are not provided for under the contract terms but are necessary for the effective on-site operation of the food service program and are directly incurred for the SFA's operation must be assigned by the SFA prior to bid opening and designated below:

	F.S. Contractor	S.F.A.	N.A.
Food:			
Food Purchases	X		
Commodity Processing Charges	X		
Processing and Payment of Invoices	X		
Labor:			
Wages	X		
Fringe Benefits and Insurance	X		
Payroll Taxes	X		
Preparation and Processing of Payroll	X		
Miscellaneous/Additional Items:			
Paper and Cleaning Supplies	X		
China/Silverware/Glassware -			
initial inventory		X	
replacement during operation	X		
Telephone - local		X	
long distance	X		
Uniforms/laundry*			
Sanitation of cafeteria tables and floors*			
Trash removal* - from kitchen			
from dining area			
from premises			
Equipment replacement and repair -			
non expendable		X	
expendable			
Products and Public Liability Insurance*			
Equipment rental* (explain)			
Car/truck rental* (explain)			
Storage costs (food and non-food supplies)*			
Courier services (bank deposits, school deliveries)*			
Employee recruitment - initial replacement*	X		
Sales tax		X	
Other* (cannot include overhead expenses incurred by F.S. Contractor)			

*These direct cost items may or may not apply to each S.F.A. At local discretion, based upon actual practice and need, the S.F.A. should assign cost responsibility for those items applicable to their operation or designate them as N/A.

A G R E E M E N T

THIS AGREEMENT, made this _____ day of _____ by and between the _____ in the _____, (City) New York, hereinafter referred to as S.F.A. (School Food Authority) and _____ hereinafter referred to as F.S. Contractor.

W I T N E S S E T H:

WHEREAS, the S.F.A. has advertised for sealed bids for Food Service Management to the facilities listed in Appendix C in accordance with the specifications attached hereto and made a part hereof as if same were set forth in full, and

WHEREAS, the F.S. Contractor submitted a proposal for Food Service Management to the said facilities dated _____ and has been awarded a contract therefore,

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter expressed, it is mutually covenanted and agreed by and between the parties hereto as follows:

1. SCOPE AND PURPOSE

   A. The S.F.A. shall retain control of the quality, extent and general nature of the food service program and the prices to be charged.

   B. The S.F.A. shall be responsible for the cost of the food service program as indicated in the bid specifications and entitled to all receipts generated pursuant to this contract.

   C. The F.S. Contractor shall receive for its services a reasonable fixed fee.

   D. All net income accruing to the S.F.A. from the food service program shall remain in the program.

   E. The F.S. Contractor shall be an independent contractor and not an employee of the S.F.A. nor are the employees of the Contractor employees of the S.F.A., except _____
   _____
   _____

   F. The F.S. Contractor, as independent contractor, shall have the exclusive right to operate the school lunch program and/or breakfast program, and/or special milk program.

G. The food service provided shall be operated and maintained as a benefit to the S.F.A. students, faculty and staff and not as a source of profit to the contractor.

H. The S.F.A. shall be legally responsible for the conduct of the food service program, and shall supervise the food service operations in such manner as will insure compliance with the rules and regulations of the New York State Department of Education and the United States Department of Agriculture regarding school food service program.

I. The F.S. Contractor shall promote nutrition-health education as required by the local County, State or Federal Governments.

J. The F.S. Contractor shall comply with the rules and regulations of the Commissioner of Education and the United States Department of Agriculture, and any additions or amendments thereto.

2. FREE AND REDUCED MEAL POLICY

A. The S.F.A. free and reduced meal policy for the reimbursed school lunch and/or breakfast and/or special milk and/or commodity distribution programs is defined in Appendix B and hereby in all respects made a part of this contract.

B. The written policy of the S.F.A. requiring feeding of needy children free or at reduced price shall apply to the F.S. Contractor's food service operation.

C. The S.F.A. shall be responsible for the implementation of this policy.

D. The S.F.A. shall make appropriate and adequate financial arrangements for funds to defray the necessary costs of the service of free or reduced price meals to needy children.

E. The S.F.A. shall be responsible for the establishment and maintenance of the free and reduced price eligibility roster.

F. Meals shall be served and proper accurate pupil participation records shall be maintained by the F.S. Contractor.

3. MEALS

A. The F.S. Contractor shall serve reimburseable meal pattern lunches pursuant to the National School Lunch Program.

B. The F.S. Contractor should offer a choice of reimbursable meal pattern lunches, subject to approval of the S.F.A.

C. The F.S. Contractor shall serve reimbursable breakfasts pursuant to the School Breakfast Program where indicated in Appendix C.

D. The F.S. Contractor shall serve reimbursable milk pursuant to the Special Milk Program where indicated in Appendix C.

E. The F.S. Contractor shall promote maximum participation in the Child Nutrition Programs.

F. The F.S. Contractor shall provide condiments and utensils as needed.

G. The F.S. Contractor shall provide specified types of service in the locations listed in Appendix C and hereby in all respects made a part of this contract.

H. The F.S. Contractor shall use the S.F.A. facilities for the preparation of food to be served in the designated attendance units.

I. All a la carte items served by the F.S. Contractor shall be approved by the S.F.A. in advance of sale.

J. All a la carte prices charged by the F.S. Contractor shall be approved by the S.F.A. in advance of sales.

K. The F.S. Contractor shall sell on the premises only those foods and beverages authorized by the S.F.A. and only at the times and places designated by the S.F.A.

L. The F.S. Contractor shall not sell, dispense, or cause to be on premises, the items listed in Appendix D and hereby in all respects made a part of the contract.

M. The F.S. Contractor may use fillers or extenders, such as "textured vegetable protein," in foods served upon approval of the S.F.A. and as regulated by U.S.D.A.

N. Neither the S.F.A. nor the F.S. Contractor shall authorize the distribution of non-nutritious foods pursuant to State and federal laws and regulations.

O. The F.S. Contractor shall make substitutions in the minimum food components of the meal pattern if individual participation children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods and should be approved by the State Education Department. The S.F.A. shall notify the Contractor of any special dietary needs.

P. The S.F.A. and F.S. Contractor employees may purchase meals at the option and direction of the S.F.A at prices approved by the S.F.A. The Contractor shall not count these meals for reimbursement under the National School Lunch Program and/or Special Milk and/or School Breakfast Program.

4. MENUS

A. The S.F.A. shall establish an advisory board comprised of students, teachers, and parents to assist in menu planning.

B. Menus shall be reviewed and approved by the S.F.A. and available for distribution _____ days prior to actual preparation and service of foods.

5. FEDERALLY DONATED COMMODITIES

A. Any federally donated commodities received by the S.F.A. and made available to the F.S. Contractor shall accrue only to the benefit of the S.F.A.'s nonprofit school food service program and shall be used therein.

B. The F.S. Contractor shall have records available to substantiate the use of federally donated commodities in reimbursable meal pattern lunches.

C. The F.S. Contractor shall select, accept and use in as large quantities as may be efficiently used in S.F.A.'s nonprofit school service, the type and quantities of available federally donated commodities, subject to the approval of the S.F.A.

D. The F.S. Contractor/S.F.A. shall be responsible for transportation and storage charges for federally donated commodities, if any.

E. The F.S. Contractor shall account for all federally donated commodities separately from purchased commodities.

F. Title of products purchased or processed using federally donated commodities must remain with the S.F.A. Any charges incurred by the F.S. Contractor when processing or purchasing products containing government commodities shall be paid by the F.S. Contractor and charged back to the S.F.A. as a food cost.

6. PURCHASES

A. The Governing Board shall purchase all food and non-food commodities in compliance with General Municipal Law Section 103 and Part 114 of the Regulations of the Commissioner of Education (8 NYCRR Part 114). Such purchases shall be made by the F.S. Contractor.

B. Legal title to all commodities purchased by the F.S. Contractor shall remain with the F.S. Contractor.

C. The F.S. Contractor may submit bids for the purpose of supplying commodities to the food service program pursuant to (A).

D. Purchases exempt from competitive bidding pursuant to General Municipal Law section 103(9) shall be made in compliance with section 113.3 of the Regulations of the Commissioner of Education (8NYCRR S 114.3).

7. USE OF FACILITIES

A. The S.F.A. 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.

B. The S.F.A. shall make available without any cost or charge to the F.S. Contractor area or areas of the premises agreeable to both parties in which the F.S. Contractor shall render its services; such area or areas

reasonably necessary for providing efficient food service.

C. The S.F.A. may request of the F.S. Contractor, additional food service programs; however, the S.F.A. reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after the S.F.A. regularly scheduled lunch or breakfast periods provided such use does not interfere with the operation of the School Lunch and/or Breakfast and/or Special Milk Programs.

D. If the S.F.A. uses the facilities for extracurricular activities before or after the S.F.A. regularly scheduled lunch or breakfast period, the S.F.A. shall return facilities and equipment to the F.S. Contractor in the same condition as received, normal wear and tear excepted.

8. INVENTORY, EQUIPMENT, STORAGE

A. The F.S. Contractor and the S.F.A. shall inventory the equipment and commodities owned by the S.F.A. at the beginning of the school year, including but not limited to silverware, trays, chinaware, glassware, kitchen utensils, food commodities.

B. The F.S. Contractor shall maintain the inventory of silverware, chinaware, glassware, kitchen utensils, and other operating items necessary for the food service operation.

C. The S.F.A. shall replace expendable equipment and replace, repair and maintain equipment except when damages result from the use of less than reasonable care by the employees of the F.S. Contractor.

D. The F.S. Contractor shall maintain adequate storage practices, inventory, and control of federally donated foods in conformance with S.F.A.'s agreement with the Office of General Services.

E. The F.S. Contractor shall provide locks for food storage areas under its direct supervision. One set of keys to those locks shall be provided by the F.S. Contractor to the S.F.A.

F. The S.F.A. shall provide the F.S. Contractor with local telephone service.

G. The S.F.A. shall furnish and install any equipment or make any structural changes needed to comply with Federal, State and local laws, ordinances, rules and regulations.

H. The S.F.A. shall be responsible for any losses including federally donated commodities, which may arise due to equipment malfunction or loss of electrical power not within the control of the F.S. Contractor.

I. All food preparation and serving equipment owned by S.F.A. shall remain on the premises of the S.F.A.

J. The S.F.A. shall not be responsible for loss or damage to equipment owned by the F.S. Contractor and located on the S.F.A. premises.

K. The F.S. Contractor shall notify the S.F.A. of any equipment belonging to the Contractor on S.F.A. premises within ten (10) days of its placement on the S.F.A. premises.

L. The F.S. Contractor/S.F.A. shall pay for oil and gas used by its owned, hired, or other vehicles under its supervision used for delivering food or non-food commodities.

M. The F.S. Contractor/S.F.A. shall provide its own drivers for owned, hired, or other vehicles under its supervision used for delivering food or non-food commodities.

9. SANITATION

A. The F.S. Contractor shall place garbage and trash in plastic bags and place in designated areas.

B. The S.F.A. shall remove all garbage and trash from the designated areas.

C. The F.S. Contractor shall clean the kitchen area, including but not limited to sinks, counters, grease traps, tables, chairs, silverware, and utensils.

D. The F.S. Contractor shall operate and care for all equipment and food service areas (walls, windows, lights, excepted) in a clean, safe, and healthy condition in accordance with standards acceptable to the S.F.A. and comply with all applicable laws, ordinances, regulations and rules of Federal, State, and local authorities.

E. The S.F.A. shall be responsible for cleaning of ducts and hoods above the filter line and will provide extermination services as needed.

F. The S.F.A. shall be responsible for painting and/or decorating within the kitchen and dining areas.

G. The F.S. Contractor shall comply with all local and state sanitation requirements in the preparation of food.

10. EMPLOYEES

A. The F.S. Contractor shall comply with all wage and hours of employment requirements of Federal and State Law.

B. All employees of the F.S. Contractor shall be paid in accordance with the Fair Labor Standard Act, as amended, and any other applicable statutes.

C. The F.S. Contractor shall comply with Titles VI and VII of the Civil Rights Act of 1964 and the implementing regulations of the United States Department of Agriculture issued thereunder and any additions or amendments thereto.

D. The F.S. Contractor shall provide Workman's Compensation for its employees.

E. The F.S. Contractor shall instruct its employees to abide by the policies, rules and regulations, with respect to use of S.F.A. premises as established by S.F.A. from time to time and which are furnished in writing to the F.S. Contractor.

F. The F.S. Contractor shall maintain its own personnel policies and fringe benefits for its employees, subject to review by the S.F.A.

G. The F.S. Contractor shall provide the S.F.A. with a list of its personnel policies.

H. Staffing patterns shall be mutually agreed upon.

I. Any employee who is continued as an employee of the F.S. Contractor shall be subject to the personnel policies and termination rules of the F.S. Contractor.

J. The F.S. Contractor shall not be responsible for hiring employees in excess of the number required for efficient operation.

K. The F.S. Contractor shall provide the S.F.A. with a schedule of employees, positions, assigned locations, salaries (and hours to be worked) two full calendar weeks prior to the commencement of operation.

L. The S.F.A. shall provide sanitary toilet facilities for the employees of the F.S. Contractor.

M. The S.F.A. may request in writing the removal of an employee of the F.S. Contractor who violates health requirements or conducts himself/herself in a manner which is detrimental to the physical, mental, or moral well-being of students.

N. In the event of the removal or suspension of any such employee, the F.S. Contractor shall immediately restructure its staff without disruption in service.

O. All F.S. Contractor personnel assigned to each school shall be instructed on the use of all emergency valves, switches, fire and safety devices in the kitchen and cafeteria areas.

11. EMERGENCY CLOSING

The S.F.A. shall notify the F.S. Contractor of any interruption in utilities of which it has knowledge.

12. LICENSES, FEES, TAXES

A. The F.S. Contractor shall be responsible for paying all applicable taxes and fees, including but not limited to excise tax, State and local income taxes, payroll, and withholding taxes and hold the S.F.A. harmless for all claims arising under such taxes and fees.

B. The S.F.A. shall be responsible for paying sales tax collected on any receipts deposited in the S.F.A's name.

C. The F.S. Contractor shall obtain and post all licenses, permits and food handler's cards as required by Federal, State, or local law.

D. The F.S. Contractor shall comply with all health and safety regulations required by Federal, State, or local law.

E. The F.S. Contractor and the S.F.A. shall comply with all building rules and regulations.

F. The F.S. Contractor shall maintain applicable health certification.

G. The F.S. Contractor shall have State or local health certification for any facility outside the S.F.A. in which it proposes to prepare meals and the F.S. Contractor shall maintain this health certification for the duration of the contract.

13. INCOME, REIMBURSEMENT

A. The S.F.A. shall receive all income from the program(s) and deposit it in the school cafeteria fund accounts.

B. Authority to sign claims for reimbursement shall remain with the S.F.A.

C. If reimbursement is denied as a direct result of the failure of the F.S. Contractor to comply with the provisions of this contract, the F.S. Contractor shall assume responsibility for the amount denied.

14. FINANCIAL ACCOUNTING, BOOKS AND RECORDS

A. Financial accounting by the F.S. Contractor shall be in accordance with New York State Department of Education rules and regulations and applicable State Laws.

B. The administrative/service fee is $ _____.

C. The F.S. Contractor reimbursement shall not exceed the contract terms (eligible direct cost of operation plus administrative fee) and will be reimbursed only as approved and audited by _____ or _____ _____ or his authorized representative.

S.F.A. shall designate by name and title the employee whose responsibility shall be to supervise and audit all financially related operations of the F.S. Contractor.

(Choose One)

The F.S. Contractor shall bill the S.F.A. for the eligible direct costs of operation incurred at the close of each week of program operation.

The F.S. Contractor shall bill the S.F.A. for the estimated weekly eligible direct costs of operation in advance of program operation.

The F.S. Contractor shall bill the S.F.A. for the estimated eligible direct costs of operations for the previous week of program operation.

D. The F.S. Contractor's cost reimbursement shall not exceed contract terms (eligible direct cost of operation plus administrative fee as bid), is contingent upon the direct cost of operations as audited and approved, and limited to the extent of program income.

E. The S.F.A. shall make payment within 15 days to the F.S. Contractor for the direct costs of operation after the submission of a valid claim in accordance with Section C above for each week of program operation to the extent of the school cafeteria fund account balance. Normal credit terms will be 15 days from billing date.

F. In the event estimated direct costs of operation do not equal actual costs of operations, adjustments shall be made within 10 working days following the close of the month of operation.

G. The F.S. Contractor shall maintain such records (supported by invoices, receipts, or other evidence) as the S.F.A. will need to meet monthly reporting responsibilities and shall submit monthly operating statements in a format approved by the S.F.A. no later than the 10th calendar day succeeding the month in which services were rendered; participation records shall be submitted no later than the 5th working day succeeding the month in which services were rendered.

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

I. The F.S. Contractor shall provide the S.F.A. with a year end statement.

J. The S.F.A. will audit food, labor, and other large expense items quarterly as well as performing random audits on smaller expense categories.

K. The S.F.A. shall audit the F.S. Contractor's operations as part of its year end audit.

L. Books and records of the F.S. Contractor pertaining to the school feeding operations shall be available, for a period of three (3) years from the end of the contract term (including extensions) to which they pertain, for inspection and audit by either State or Federal representatives and auditors.

M. No payment shall be made for meals that are spoiled or unwholesome at time of delivery, or do not meet the detailed specifications for each food component in the meal pattern or do not otherwise meet the requirements of the contract.

15. PERFORMANCE SECURITY, INSURANCE

A. The F.S. Contractor shall provide security form as authorized prior to the commencement of food service operations.

B. The performance security shall be in a form acceptable to the S.F.A.,

and shall be in the amount of $ _____.

C. The F.S. Contractor shall submit the performance security to the S.F.A. prior to the commencement of program operations.

D. The S.F.A. shall be named an additional insured on all required insurance policies.

E. The contract of insurance shall provide for notice to the S.F.A. of cancellation of insurance policies sixty (60) days before such cancellation is to take effect.

F. The F.S. Contractor shall provide a certificate of insurance for all required policies; the certificate of insurance shall contain: 1) names and addresses of insured, 2) titles and locations of the operations to which the insurance applies, 3) number of the policy and type or types of insurance in force thereunder on the date of the certificate, 4) expiration date of the policy and the type and types of insurance in force thereunder on the date of the certificate, 5) statement that the insurance of the type afforded by the policy applies to all of the operations and activities on and at the site of the project or incidental thereto, which are undertaken by the Contractor during the performance of the contract.

16. TERM, TERMINATION

A. This contract shall become effective on _____, 19 ___ and terminate on _____, 19 ___.

B. This contract may be extended by the S.F.A., and the F.S. Contractor under the rules and regulations prescribed by the Commissioner of Education; however, pursuant to federal regulations, such extensions shall be executed prior to termination of the preceding contract period and shall not extend the original contract period beyond five years.

C. The S.F.A. or the F.S. Contractor may terminate the contract, for cause, by giving sixty (60) days written notice, except: If the F.S. Contractor makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of bidders insolvency. If anticipated revenues from Federal and State reimbursement are reduced and, the F.S. Contractor submits in writing a proposal of recommended changes necessary to maintain program solvency, and, the S.F.A. persistently or repeatedly refuses or fails to grant or take appropriate action to maintain program solvency, the F.S. Contractor may, without prejudice and with 7 day written notice, terminate the contract.

D. Neither the F.S. Contractor nor the S.F.A. shall be responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any acts not within the control of either the F.S. Contractor or the S.F.A., respectively, and which by the exercise of due diligence it is unable to prevent.

E. Contract Cost Increase: The S.F.A. may negotiate at the end of each

one year contract period for a cost increase not to exceed the annual percentage increase of the New York - Northeastern New Jersey Consumer Price Index for all Urban Consumers for the preceding year provided it has been satisfactorily established by the F.S. Contractor that there has been at least an equivalent increase in the amount of its cost of operation during the period of the contract.

17. GENERAL

A. This contract shall be construed under the laws of the State of New York. Any action or proceeding arising out of this contract shall be brought in the appropriate courts of the State of New York.

B. The F.S. Contractor shall comply with the provisions of the bid specifications and hereby in all respects made a part of this contract.

C. No provision of this contract shall be assigned or subcontracted without prior written consent of the S.F.A.

D. This contract constitutes the entire contract between the S.F.A. and the F.S. Contractor and may not be changed, terminated or extended orally or by course of conduct.

E. No waiver of any default shall be construed to be or constitute a waiver of any subsequent default.

F. Payments on any claim shall not preclude the S.F.A. from making claim for adjustment on any item found not to have been in accordance with the provisions of this contract and bid specifications.

G. This contract shall not be renegotiated.

H. The terms and conditions of this contract are subject to review and approval by the New York State Department of Education, Bureau of School Food Management and Nutrition.

I. It is further agreed between the S.F.A. and the F.S. Contractor that the clauses attached hereto and designated as Appendix A are hereby in all respects made a part of this contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Signature _____
Title President, Board of Education

_____
(School Food Authority)
Authorized Signature _____
Title _____

_____
(Food Service Management Company)
Date _____

CORPORATE AFFIDAVIT

STATE OF NEW YORK

COUNTY OF

CITY OF

On this _____ day of _____, 19 ___, before me, the subscriber, personally came _____ to me known, who being by me duly sworn, did depose and say that he resides in the _____ of _____, State of _____, that he is the _____ of _____ the corporation described in and which executed the above instrument; that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

_____

APPENDIX A

BID PROPOSAL CERTIFICATIONS

Firm Name _____

Business Address _____

Telephone Number _____ Date of Bid _____

I. General Bid Certification

The bidder certifies that he will furnish, at the prices herein quoted, the materials, equipment and/or services as proposed on this bid.

II. Non-Collusive Bidding Certification

By submission of this bid proposal, the bidder certifies that he is complying with Section 103-d of the General Municipal Law as follows:

Statement of non-collusion in bids and proposals to policial subdivision of the state. Every bid or proposal hereafter made to a political subdivision of the state or any public department, agency or official thereof where competitive bidding is required by statute, rule, regulation, or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury; Non-collusive bidding certification.

"(a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition."

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with; provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning subparagraph one (a).

2 Any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in subdivision one of the section, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

Signature (Authorized) _____

Title _____

Note: This is a sample of an approved form which may be reproduced locally.

6869/1/02202/0027
Ap/1500/Bf/53922*

APPENDIX B

The S.F.A.'s Free and Reduced Meal Policy is as follows: Policy Statement (Agreement #) Number _____ on file, dated _____, 19 ___.

APPENDIX C

Breakfast, lunch, milk and snack food will be provided in accordance with the terms and conditions of the food services specifications at the following locations.

Facility Name	A La Carte	Adult Meals	Breakfast	Lunch	Special Milk	Split Session Kinder-garten Special Milk

APPENDIX D

The following items shall not be sold or dispensed:

_____

_____

_____

_____

_____

_____

_____

_____

_____

NON-PRICING

SA #_____

AGREEMENT # _____

AGREEMENT

between District Name _____

Address _____

_____

Telephone # _____

and Management Company _____

Address _____

_____

Telephone #_____

RE: SPECIFICATIONS AND BID FORM

FOR FOOD SERVICE PROGRAMS

UNDER MANAGEMENT COMPANY OPERATIONS

BID NO. _____

In accordance with the provisions of Section 305 of the Education Law, an advertisement for bids was published in the _____ on _____, 19____. As stated in such notice, bids will be publicly opened and read in the office of _____ on_____, 19 ____, at _____ (a.m.) (p.m.)

February 1989

CHILD NUTRITION PROGRAM

Management Company Contracts

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1. PURPOSE

The purpose of this solicitation is to provide for the operation of a food service program. The F.S. Contractor will assume responsibility for the efficient management of the food service program including purchasing, receiving, storing, setting up cafeteria lines, counter service, dining room service, clean-up, sanitation, training, hiring and supervising personnel, and presenting food in a way to create optimum student participation. The program will include the use of federally donated commodities.

The Bidder under these specifications will be referred to as the F. S. CONTRACTOR and the contract will be between the F.S. CONTRACTOR and the School Food Authority (S.F.A.).

2. DEFINITIONS

School Food Authority (S.F.A.) is the School District.

Board is the Board of Education of the School Food Authority.

Bidding Documents include the Advertisement or "Notice to Bidders."

Instructions to Bidders all "Conditions and Specifications," the bid proposal forms, including any "Addenda" issued prior to the opening of bids, and the "Contract."

Notice to Bidders is the formal statement issued by the School Food Authority inviting bids on all the services, materials, supplies or equipment described in the Bidding Documents.

Addenda are written instruments issued by the School Food Authority prior to the opening of bids which modify or interpret the Bidding Documents by addition, deletions, clarifications or corrections.

Bid is a complete and properly signed proposal on the forms provided herein to provide the food service program management services, equipment, supplies or materials required for the sum stipulated therein supported by data called for by the Bidding Documents.

Bidder is any individual, company or corporation submitting a bid.

Successful Bidder is a Bidder to whom an award is made by the Board.

F.S. Contractor is a Bidder with whom a Contract is executed by the School Food Authority.

Conditions and Specifications constitute any description in the Bidding Documents of Services, materials, supplies, and/or equipment required for the performance of the obligations under the Contract or the circumstances under which such services, materials, supplies, and/or equipment are to be provided.

Contract is a formal agreement duly executed by the authorized representatives of the School Food Authority and the F.S. Contractor which calls for the provision of all services, materials, supplies or equipment by the F.S. Contractor in

accordance with all Conditions and Specifications in the Bidding Documents, for a price to be paid by the S.F.A.

Allowable Direct Costs are those costs which are incurred solely for the S.F.A's on-site operation as defined herein.

-**Labor** is defined as and limited to on-site employees responsible for the management, preparation, service and clean-up of meals.

-**Food** is defined as and limited to those items purchased for use in the preparation and service of student, a la carte and adult meals, as specified herein.

-**Miscellaneous expenses** are defined as: paper supplies (including decorations), equipment rental, cleaning materials, commodity handling and warehousing charges, travel as required for effective program management and agreed upon by S.F.A., uniforms, menu paper and printing, taxes and licenses, laundry, and insurances and other costs as contractually obligated herein.

Note: Allowable direct cost of operations is defined as labor, food and miscellaneous expenses. All program expenses not otherwise defined in the contract will be assumed by the F.S. Contractor under the Administrative Service Fee.

Administrative Service Fee is defined as all costs other than food, labor and miscellaneous as defined herein.

Population (average or maximum) is the number of children (clients under 21) and adults who consume meals serviced by the food service operation.

All additional definitions set forth in the Conditions and Specifications are generally applicable to the Bidding Documents.

3. BIDDER RESPONSIBILITY

The bidder is responsible for personally examining the job sites where work under the bidding document is to be performed as they relate to the conditions existing at each job site. No pleas of ignorance relating to any data, conditions or requirements that exist or that may be encountered under this contract will be accepted as a result of failure or omission on the part of the F.S. Contractor to fulfill in every respect all the requirements, nor will the same be accepted as a basis for any claim whatsoever for extra charges for food services. Such visits will be scheduled through _____

4. HISTORICAL INFORMATION

History of meals served from 19___ - 19___

Date	Meals Served	Average Population Children	Average Population Adults
19 _____	_____	_____	_____
19 _____	_____	_____	_____
19 _____	_____	_____	_____
19 _____	_____	_____	_____

Actual meals served from _____, 19 ___to _____, 19 ___

Estimated maximum population during 19___ - 19___: children = _____ adults = _
_____

5. AWARD

Contract award will be based on the lowest bid proposal (see page * Bid Form) for the sum of per person, per day administrative service fee and direct operating costs (food, labor and miscellaneous). This per person, per day cost will be based upon estimated annual costs, anticipated client and adult population and, other factors, as contractually obligated herein. The bidder must submit Schedule C, page 14, which represents the annual budget projection for administrative service fee, operating costs and population estimates.

6. SPECIAL AND GENERAL CONDITIONS

The Bidder will comply with the Special and General Conditions attached hereto and in all respects made a part of this bid specification.

7. CONTRACT

The successful bidder shall enter into the DISTRICT-FOOD-SERVICE MANAGEMENT COMPANY CONTRACT attached hereto and in all respects made a part of this bid specification. By submitting a bid, the bidder agrees to all the definitions, terms and conditions contained herein.

8. MENU CYCLE

The 21-day cycle menu, see schedule B, shall be used as a standard for the purpose of basing bids or estimating average cost per day. The F.S. Contractor must adhere to the cycle for the first 21 days of meal service. Menu standard as presented in the 21-day cycle menu must be maintained as to type and quality of meal service.

9. SPECIAL DIET

The successful bidder should be prepared to supply special diet meals as required by the student/residents of _____.

10. PURCHASE SPECIFICATIONS

The grade, purchase unit, style, weight, ingredients, formulation, etc. as set forth by the School Food Authority, shall be complied with by the Food Service Management Company. See Schedule A.

11. SPECIAL AND GENERAL CONDITIONS

A. Bids will be received as stated on the cover sheet, for the privilege and right to conduct/operate food service within facilities listed in Appendix C and as set forth below.

B. The S.F.A. shall furnish all electricity, gas, water, heat and light to the F.S. CONTRACTOR for its operation as in the judgment of the S.F.A. is reasonably needed and necessary.

C. The S.F.A. shall furnish all necessary equipment to operate the personal food programs. At the time of contract signing, an itemized inventory (to be certified by representatives of both parties) of all items furnished or to be furnished by the S.F.A., including miscellaneous kitchen items, will be made a part of this contract.

D. As a direct cost of operation the F.S. CONTRACTOR will maintain the initial adequate inventory of chinaware, glassware, and silverware furnished by the S.F.A. Regarding all equipment, furnishings and smallwares used for the services hereunder, the F.S. CONTRACTOR agrees that it will use the S.F.A. equipment, machinery, paraphernalia in good and proper manner and shall keep the same free from damages, in proper condition and in a state of cleanliness to assure STRICT Compliance WITH HEALTH REGULATIONS AS PROVIDED AND REQUIRED BY THE STATE OF NEW YORK, dealing with S.F.A. facilities, as with all other health laws.

1. Repairs necessary due to the negligence of the F.S. CONTRACTOR, its employees or agents shall be the sole responsibility and the sole expense of the F.S. CONTRACTOR.

2. The S.F.A. agrees to at its sole option to repair or replace any equipment not functioning properly or which is missing upon proper written notification by the F.S. CONTRACTOR of the need for such repair or replacement and the availability of normal repair or replacement facilities.

3. No alterations, changes, or improvements shall be made to the areas granted to the F.S. CONTRACTOR without obtaining prior written permission of the S.F.A. with the final decision as to alterations, changes, or improvements reserved solely for the S.F.A.

E. The S.F.A. will provide for the removal of all trash and garbage with the F.S. CONTRACTOR being responsible for proper sanitary storage and placement of said trash and garbage until its removal.

F. The S.F.A. shall be responsible for repairs to all permanent fixtures such as faucets, lights, sewers, air conditioning, heating and all

other electrical work NOT considered to be food equipment, since such food equipment is dealt with in Item d above.

G. Upon termination of this contract the F.S. CONTRACTOR will surrender to the S.F.A. all equipment and furnishings located in the food services facilities and/or as listed on the certified inventory list of all S.F.A. owned property (both capital and/or expendable) as referred to in Paragraph c hereunder. Such property and equipment or its equal quality replacement must be returned to the S.F.A. in the same good order and condition as when received by the F.S. CONTRACTOR, reasonable wear and tear, damage from casualty fire and hazards covered by insurance ALONE EXCEPTED. Another inventory shall be taken upon termination to determine the status of all equipment hereunder. Discrepancies shall be corrected at the F.S. CONTRACTOR'S sole expense with said replacement based on a comparison with the original inventory.

H. The S.F.A. shall have unlimited access, with or without notice to the F.S. CONTRACTOR, to all areas used by the F.S. CONTRACTOR FOR PURPOSES OF INSPECTIONS AND AUDITS.

I. The F.S. CONTRACTOR shall adhere strictly to all applicable Pure Food Laws, ordinances as well as all related regulations as adopted and promulgated by the Federal Government, the State of New York, the local Departments of Health and said F.S. CONTRACTOR will otherwise fully comply at all times with the rules and regulations as set up by the S.F.A. as well as with any change in the State and/or County Laws, etc., covering and controlling food services at the facilities.

J. The F.S. CONTRACTOR shall have the sole responsibility to compensate its employees, including all applicable taxes and insurances and shall be solely responsible for any losses incurred by the S.F.A. resulting from dishonest, fraudulent or negligent acts on the part of its employees or agents. All food service employees shall comply with all rules of the S.F.A. for cleanliness and courtesy.

K. The F.S. CONTRACTOR will maintain all employees on its payroll with the exception of _____.

L. The F.S. CONTRACTOR shall be solely responsible for the purchase and payment of all foods and beverages necessary for it to render proper performance of the food service program as stated herein. Such purchases and performance shall apply to all items in addition to food and beverage which will be necessary for compliance with and of this agreement.

M. F.S. CONTRACTOR shall comply with all rules, regulations and other directives of County, State of New York and the United States concerning the operation of food services required in S.F.A. facilities.

N. The F.S. CONTRACTOR shall at all times serve only good, wholesome and palatable food and beverages in compliance with all applicable health laws.

O. The F.S. CONTRACTOR will prepare separate monthly OPERATING STATEMENTS which will reflect all true operating costs, including, but not limited to:

1) ALL direct labor assigned to the respective units.
2) ALL direct food costs.
3) ALL direct expenses and supplies.
4) ALL earned trade discounts and rebates on purchases.

P. F.S. CONTRACTOR will bill monthly the S.F.A., said bill to be received no later than 10th of the following month.

Payment will be scheduled on a monthly basis. Statements will be processed in the following manner:

1) one-twelfth (1/12th) of annual direct operating cost
2) one-twelfth (1/12th) of annual administrative cost
3) actual cost for food supplied per person/day
4) actual cost for special food items requested by _____ for use in facility programs and not included as part of regular meals served.

Q. The F.S. CONTRACTOR MUST AGREE to submit to an open book accounting policy which will enable the S.F.A. and/or the State of New York and/or the Federal Government to audit the accounts for the facility. Said audits will be made at the direction of S.F.A. and/or the State of New York and/or the Federal Government as frequently as deemed necessary. All such records shall be kept by and be available to the S.F.A. for at least three (3) years after termination of this agreement or at such later date as may be required by any local, State or Federal laws.

R. The F.S. CONTRACTOR will meet periodically with the S.F.A.'s respective designee to review the following:

1) Compliance with standards recommended by the State of New York regarding food specifications for facility.
2) Special diets that may be required from time to time.
3) The previous month's monthly OPERATING REPORT OR STATEMENT.
4) Inspection reports submitted by dietitian, or the Consultant.
5) Physical inspection of the kitchen, storage areas and dining rooms and other space assigned to the F.S. CONTRACTOR.

S. <u>Foods Services Required</u> (Modify as needed)

1) Residents will be furnished three (3) meals daily at the hours designated by S.F.A. 365 days a year. Meals will be of a high nutritional value as required by the New York State Education Department and may include special diets as required by staff physicians.

2) Two daily snacks such as milk, fruit, cookies, etc. shall be furnished at the times designated by S.F.A. Snacks will be distributed by _____.

3) F.S. CONTRACTOR will be responsible for complete cleaning and housekeeping of the food preparation and service areas, kitchen and food storage areas. F.S. CONTRACTOR will supply all items and/or equipment needed for the cleaning of these areas.

T. The F.S. CONTRACTOR will procure, post and maintain for the life of this agreement in places designated by the S.F.A. or by the laws of the State of New York, all licenses or permits required by law for its business and/or merchandise, all costs of which are to be paid by the F.S. CONTRACTORS.

U. The F.S. CONTRACTOR will provide fire and theft insurances at its own expense to cover any risk by fire and/or theft to its property located on the premises of the food service. The F.S. CONTRACTOR further agrees to provide all necessary theft and/or other insurances to cover clothes, garments and other articles owned by their employees. In case of fire damage or any unforeseen casualty, this contract may be unconditionally terminated without payment of any claims for damage or any other nature by the S.F.A.

12. BONDS AND INSURANCE:

The F.S. CONTRACTOR shall procure and maintain at its own expense a general liability policy listing the S.F.A. as one of the insured, including products liability in the amounts of at least $ _____for injury and death, and property damage with a limit of $ _____ for each accident provided by insurance companies authorized to do business in the State of New York.

13. PERFORMANCE SECURITY:

The F.S. CONTRACTOR shall be required to:

A. Submit with the bid an assurance by a surety authorized to conduct business within New York State, that if selected as the successful bidder, and upon award of the contract, a performance bond will be issued in the amount of $ _____ *(5% of annual projected operating costs). Simultaneously with delivery of the executed contract, the successful vendor must provide to the S.F.A. the executed surety company bond as required, to be held as security by the S.F.A. for the faithful performance by F.S. Contractor of all terms of the contract.

OR

B. Submit with the bid an authorization for the S.F.A. to hold in a reserve fund the amount of $ _____ *(5% of annual projected operating costs) out of the initial revenues produced by the school lunch program and earned by the management company.

The S.F.A. shall retain such reserve fund until the F.S. CONTRACTOR has faithfully performed all terms of the contract.

OR

C. Submit with the bid a certified check payable to the S.F.A. in the amount of $_____ *(5% of annual projected operating costs) upon award of bid. The S.F.A. shall return all such checks to the unsuccessful bidders.

The S.F.A. shall retain the successful bidder's check until the F.S. CONTRACTOR has faithfully performed all terms of the contract.

*Minimum requirement

It is recommended and encouraged that all security forms be left open to the bidder. However, the S.F.A. may choose to eliminate one or more options.

14. SUBMITTALS

Bidders will provide, along with their completed bids, evidence demonstrating an ability to administer a complex food service operation requiring special nutritional meals and special diets in accordance with State of New York regulations governing same. This evidence must include, where applicable, a list of any and all similar type operations which they have served over the past three years; or, in lieu of organizational experience, staff expertise must be demonstrated.

BID FORM

We, the undersigned agree to operate the food service management program as described in the bid specifications for the 19___ - 19___ school year.

This proposal is subject to all the attached terms, conditions and specifications, and we, hereby, agree to enter into the attached S.F.A. - FOOD SERVICE MANAGEMENT COMPANY CONTRACT subsequent to the award of the bid. Award will be based upon Item III below: (Maximum per person per day)

I Administrative Service Fee
Per Person Per Day _____

II Direct Cost of Operation for:
Labor, Food and Miscellaneous
as defined herein per person per day _____

III Maximum Per Person Per Day _____

The F.S. Contractor's cost reimbursement shall not exceed the contract terms and will be contingent upon the direct cost of operations as audited and approved.

Submitted by: _____ _____

Authorized Signature

Address _____ _____

Title

_____

Telephone _____

Return all pages to:

_____

_____

_____

Schedule A

PROCUREMENT SPECIFICATIONS

To be developed by S.F.A. based on individual S.F.A. preferences and requirements.

ANNUAL FINANCIAL BUDGET PROJECTION

A proposed financial budget must be included by the bidder in the bid proposal. It should contain the following information:

Projected Total Expenses:

Food Costs: _____

Salaries/Fringe Benefits: _____

Miscellaneous/Additional Costs: _____
(as indicated on Schedule C1)

Administrative Service Fee: _____

Total Annual Costs: _____

Projected Population (persons participating in the school food service operation)

	Average Daily Population
Children (clients under 21 years of age):	_____
Adults (clients 21 and over and staff/visitors):	_____
Total Population:	_____
Total Service Days:	_____

COST RESPONSIBILITY DETAIL SHEET

The S.F.A. has deemed the following cost responsibility schedule to be a necessary part of this bid specification. Costs which are not provided for under the contract terms but are necessary for the effective onsite operation of the food service program and are directly incurred for the SFA's operation must be assigned by the S.F.A. prior to bid opening, and designated below:

	F.S. Contractor	S.F.A.	N/A
Food:			
Food Purchases	X		
Commodity Processing Charges	X		
Processing & Payment of Invoices	X		
Labor:			
Wages	X		
Fringe Benefits & Insurance	X		
Payroll Taxes	X		
Preparation & Processing of Payroll	X		
Miscellaneous/Additional Items			
Paper and Cleaning Supplies	X		
China/Silverware/Glassware - initial inventory replacement during operation		X	
Telephone - Local		X	
Long Distance	X		
Uniforms/Laundry*			
Sanitation of Cafeteria Tables and Floors*			
Trash Removal* - from kitchen			
from dining area			
from premises			
Equipment Replacement & Repair* - non-expendable		X	
expendable			
Products and Public Liability Insurance*			
Equipment Rental (explain)*			
Car/Truck Rental (explain)*			
Storage Costs (food & non-food supplies)*			
Courier Services (bank deposits, school deliveries, etc.)*			
Employee Recruitment - initial replacement*	X		
Sales Tax		X	
Other* (cannot include overhead expenses incurred by F.S. Contractor)			

*These direct cost items may or may not apply to each S.F.A. At local discretion, based upon actual practice and need, the S.F.A. should assign cost responsibility for these items, applicable to their operation, or designate them as N/A.

A G R E E M E N T

THIS AGREEMENT, made this _____ day _____ by and between the _____ in _____, (City) New York, hereinafter referred to as S.F.A. (School Food Authority) and _____ hereinafter referred to as "F.S. Contractor".

W 1 T N E S S E T H:

WHEREAS, the S.F.A. has advertised for sealed bids for Food Service Management to the facilities listed in Appendix C in accordance with the specifications attached hereto and made a part hereof as if same were set forth in full, and

WHEREAS, the F.S. Contractor submitted a proposal for Food Service Management to the said facilities dated and has been awarded a contract therefore,

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter expressed, it is mutually covenanted and agreed by and between the parties hereto as follows:

1. <u>SCOPE AND PURPOSE</u>

   A. The S.F.A. shall retain control of the quality, extent and general nature of the food service program and the prices to be charged.

   B. The S.F.A. shall be responsible for the cost of the food service program as indicated in the bid specifications and entitled to all receipts generated pursuant to this contract.

   C. The F.S. Contractor shall receive for its services a reasonable fixed fee.

   D. All net income accruing to the S.F.A. from the food service program shall remain in the program.

E. The F.S. Contractor shall be an independent contractor and not an employee of the S.F.A. nor are the employees of the Contractor employees of the S.F.A., except _____

_____

_____

F. The F.S. Contractor, as independent contractor, shall have the exclusive right to operate the school lunch program and/or breakfast program, and/or special milk program.

G. The food service provided shall be operated and maintained as a benefit to the S.F.A. students, faculty and staff and not as a source of profit to the contractor.

H. The S.F.A. shall be legally responsible for the conduct of the food service program, and shall supervise the food service operations in such manner as will insure compliance with the rules and regulations of the New York State Department of Education and the United States Department of Agriculture regarding school food service program.

I. The F.S. Contractor shall promote nutrition-health education as required by the local County, State or Federal Governments.

J. The F.S. Contractor shall comply with the rules and regulations of the Commissioner of Education and the United States Department of Agriculture, and any additions or amendments thereto.

2. FREE AND REDUCED MEAL POLICY

A. The S.F.A. free and reduced meal policy for the reimbursed school lunch and/or breakfast and/or special milk and/or commodity distribution programs is defined in Appendix B and hereby in all respects made a part of this contract.

B. The written policy of the S.F.A. requiring feeding of needy children free or at reduced price shall apply to the F.S. Contractor's food service operation.

C. The S.F.A. shall be responsible for the implementation of this policy.

D. The S.F.A. shall make appropriate and adequate financial arrangements for funds to defray the necessary costs of the service of free or reduced price meals to needy children.

E. Meals shall be served and proper accurate pupil participation records shall be maintained by the F.S. Contractor.

3. MEALS

A. The F.S. Contractor shall serve reimbursable meal pattern lunches pursuant to the National School Lunch Program, where indicated on Appendix C.

B. The F.S. Contractor should offer a choice of reimbursable meal pattern lunches, subject to approval of the S.F.A.

C. The F.S. Contractor shall serve reimbursable breakfasts pursuant to the School Breakfast Program, where indicated on Appendix C.

D. The F.S. Contractor shall serve reimbursable milk pursuant to the Special Milk Program, where indicated on Appendix C.

E. The F.S. Contractor shall promote maximum participation in the Child Nutrition Programs.

F. The F.S. Contractor shall provide condiments and utensils as needed.

G. The F.S. Contractor shall provide specified types of service in the locations listed in Appendix C and hereby in all respects made a part of this contract.

H. The F.S. Contractor shall use the S.F.A. facilities for the preparation of food to be served in the designated attendance units.

I. All a la carte items served by the F.S. Contractor shall be approved by the S.F.A. in advance of sale.

J. All a la carte prices charged by the F.S. Contractor shall be approved by the S.F.A. in advance of sales.

K. The F.S. Contractor shall sell on the premises only those foods and beverages authorized by the S.F.A. and only at the times and places designated by the S.F.A.

L. The F.S. Contractor shall not sell, dispense, or cause to be on premises, the items listed in Appendix D and hereby in all respects made a part of the contract.

M. The F.S. Contractor may use fillers or extenders, such as "textured vegetable protein," in foods served upon approval of the S.F.A. and as regulated by U.S.D.A.

N. In other than living quarters, neither the S.F.A. nor the F.S. Contractor shall authorize the distribution of non-nutritious foods pursuant to the program regulations.

O. The F.S. Contractor shall make substitutions in the minimum food components of the meal pattern if individual participation children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods and should be approved by the State Education Department. The S.F.A. shall notify the F.S. Contractor of any special dietary needs.

P. The S.F.A. and F.S. Contractor employees may purchase meals at the option and direction of the S.F.A at prices approved by the S.F.A. The Contractor shall not count these meals for reimbursement under the National School Lunch Program and/or Special Milk and/or School Breakfast Program.

4. MENUS

A. The S.F.A. shall establish an advisory board comprised of students, teachers and parents to assist in menu planning.

B. Menus shall be reviewed and approved by the S.F.A. and available for distribution _____ days prior to actual preparation and service of foods.

5. FEDERALLY DONATED COMMODITIES

A. Any federally donated commodities received by the S.F.A. and made available to the F.S. Contractor shall accrue only to the benefit of the S.F.A.'s nonprofit school service and shall be used therein.

B. The F.S. Contractor shall have records available to substantiate the use of federally donated commodities in reimbursable meal pattern lunches.

C. The F.S. Contractor shall select, accept and use in as large quantities as may be efficiently used in S.F.A.'s nonprofit school service, the type and quantities of available federally donated commodities, subject to the approval of the S.F.A.

D. The F.S. Contractor/S.F.A. shall be responsible for transportation and storage charges for federally donated commodities, if any.

E. The F.S. Contractor shall account for all federally donated commodities separately from purchased commodities.

F. Title of products purchased or processed using federally donated commodities must remain with the S.F.A. Any charges incurred by the F.S. Contractor when processing or purchasing products containing government commodities shall be paid by the F.S. Contractor and charged back to the S.F.A. as a food cost.

6. PURCHASES

A. The F.S. Contractor shall purchase all food and non-food commodities at the lowest price possible consistent with maintaining quality standards.

B. Title to all commodities purchased by the F.S. Contractor shall remain with the F.S. Contractor.

C. The F.S. Contractor may purchase from their owned or operated subsidiary facilities if the purchase price is lower than the prices otherwise available in the area.

D. The F.S. Contractor shall honor existing contracts if advantageous to the S.F.A.

7. USE OF FACILITIES

A. The S.F.A. 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.

B. The S.F.A. shall make available without any cost or charge to the F.S. Contractor area or areas of the premises agreeable to both parties in which the F.S. Contractor shall render its services; such area or areas reasonably necessary for providing efficient food service.

C. The S.F.A. may request of the F.S. Contractor, additional food service programs; however, the S.F.A. reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after the S.F.A. regularly scheduled lunch or breakfast periods provided such use does not interfere with the operation of the School Lunch and/or Breakfast and/or Special Milk Programs.

D. If the S.F.A. uses the facilities for extracurricular activities before or after the S.F.A. regularly scheduled lunch or breakfast period, the S.F.A. shall return facilities and equipment to the F.S. Contractor in the same condition as received, normal wear and tear excepted.

8. INVENTORY, EQUIPMENT, STORAGE

A. The F.S. Contractor and the S.F.A. shall inventory the equipment and commodities owned by the S.F.A. at the beginning of the school year, including but not limited to silverware, trays, chinaware, glassware, kitchen utensils, food commodities.

B. The F.S. Contractor shall maintain the inventory of silverware, chinaware, glassware, kitchen utensils, and other operating items necessary for the food service operation.

C. The S.F.A. shall replace expendable equipment and replace, repair and maintain equipment except when damages result from the use of less than reasonable care by the employees of the F.S. Contractor.

D. The F.S. Contractor shall maintain adequate storage practices, inventory, and control of federally donated foods in conformance with S.F.A.'s agreement with the Office of General Services.

E. The F.S. Contractor shall provide locks for food storage areas under its direct supervision. One set of keys to those locks shall be provided by the F.S. Contractor to the S.F.A.

F. The S.F.A. shall provide the F.S. Contractor with local telephone service.

G. The S.F.A. shall furnish and install any equipment or make any structural changes needed to comply with Federal, State and local laws, ordinances, rules and regulations.

H. The S.F.A. shall be responsible for any losses including federally donated commodities, which may arise due to equipment malfunction or

loss of electrical power not within the control of the F.S. Contractor.

I. All food preparation and serving equipment owned by S.F.A. shall remain on the premises of the S.F.A.

J. The S.F.A. shall not be responsible for loss or damage to equipment owned by the F.S. Contractor and located on the S.F.A. premises.

K. The F.S. Contractor shall notify the S.F.A. of any equipment belonging to the Contractor on S.F.A. premises within ten (10) days of its placement on the S.F.A. premises.

L. The F.S. Contractor/S.F.A. shall pay for oil and gas used by its owned, hired, or other vehicles under its supervision used for delivering food or non-food commodities.

M. The F.S. Contractor/S.F.A. shall provide its own drivers for owned, hired, or other vehicles under its supervision used for delivering food or non-food commodities.

9. SANITATION

A. The F.S. Contractor shall place garbage and trash in plastic bags and place in designated areas.

B. The S.F.A. shall remove all garbage and trash from the designated areas.

C. The F.S. Contractor shall clean the kitchen area, including but not limited to sinks, counters, grease traps, tables, chairs, silverware, and utensils.

D. The F.S. Contractor shall operate and care for all equipment and food service areas (walls, windows, lights, excepted) in a clean, safe, and healthy condition in accordance with standards acceptable to the S.F.A. and comply with all applicable laws, ordinances, regulations and rules of Federal, State, and local authorities.

E. The F.S. Contractor/S.F.A. shall be responsible for cleaning of ducts and hoods above the filter line and will provide extermination services as needed.

F. The S.F.A. shall be responsible for painting and/or decorating within the kitchen and dining areas.

G. The F.S. Contractor shall comply with all local and state sanitation requirements in the preparation of food.

10. EMPLOYEES

A. The F.S. Contractor shall comply with all wage and hours of employment requirements of Federal and State Law.

B. All employees of the F.S. Contractor shall be paid in accordance with the Fair Labor Standard Act, as amended, and any other applicable statutes.

C. The F.S. Contractor shall comply with Titles VI and VII of the Civil Rights Act of 1964 and the implementing regulations of the United States Department of Agriculture issued thereunder and any additions or amendments thereto.

D. The F.S. Contractor shall provide Workmen's Compensation for its employees.

E. The F.S. Contractor shall instruct its employees to abide by the policies, rules and regulations, with respect to use of S.F.A. premises as established by S.F.A. from time to time and which are furnished in writing to the F.S. Contractor.

F. The F.S. Contractor shall maintain its own personnel policies and fringe benefits for its employees, subject to review by the S.F.A.

G. The F.S. Contractor shall provide the S.F.A. with a list of its personnel policies.

H. Staffing patterns shall be mutually agreed upon.

I. Any employee who is continued as an employee of the F.S. Contractor shall be subject to the personnel policies and termination rules of the F.S. Contractor.

J. The F.S. Contractor shall not be responsible for hiring employees in excess of the number required for efficient operation.

K. The F.S. Contractor shall provide the S.F.A. with a schedule of employees, positions, assigned location, salaries (and hours to be worked) two full calendar weeks prior to the commencement of operation.

L. The S.F.A. shall provide sanitary toilet facilities for the employees of the F.S. Contractor.

M. The S.F.A. may request in writing the removal of an employee of the F.S. Contractor who violates health requirements or conducts himself/-herself in a manner which is detrimental to the physical, mental, or moral well-being of students.

N. In the event of the removal or suspension of any such employee, the F.S. Contractor shall immediately restructure its staff without disruption in service.

O. All F.S. Contractor personnel assigned to each school shall be instructed on the use of all emergency valves, switches, fire and safety devices in the kitchen and cafeteria areas.

11. EMERGENCY CLOSING

A. The S.F.A. shall notify the F.S. Contractor of any interruption in utilities of which it has knowledge.

12. LICENSES, FEES, TAXES

A. The F.S. Contractor shall be responsible for paying all applicable taxes and fees, including but not limited to excise tax, State and local income taxes, payroll, and withholding taxes and hold the S.F.A. harmless for all claims arising under such taxes and fees.

B. The S.F.A. shall be responsible for paying sales tax collected on any receipts deposited in the S.F.A.'s name.

C. The F.S. Contractor shall obtain and post all licenses, permits, and food handler's cards required by Federal, State, or local law.

D. The F.S. Contractor shall comply with all health and safety regulations required by Federal, State, or local law.

E. The F.S. Contractor shall submit a copy of the Health Department Permit to the S.F.A. prior to food service operations.

F. The F.S. Contractor and the S.F.A. shall comply with all building rules and regulations.

G. The F.S. Contractor shall maintain applicable health certification.

H. The F.S. Contractor shall have State or local health certification for any facility outside the S.F.A. in which it proposes to prepare meals and the F.S. Contractor shall maintain this health certification for the duration of the contract.

13. REJECTED ITEMS

A. The S.F.A. reserves the right to reject any and all items which do not comply with the requirements set forth herein.

B. When materials, equipment or supplies are rejected, the F.S. Contractor shall remove them from the S.F.A. premises within five (5) days of notification; failure to remove such items shall be deemed to mean they are abandoned and the S.F.A. shall have the right to dispose of them as its own property.

C. If the F.S. Contractor fails to deliver meals within the time specified, or within a reasonable time as interpreted by the S.F.A., or fails to make replacement of rejected articles when so requested, immediately or as directed by the S.F.A., the S.F.A. may purchase from other sources to take the place of the item rejected or not delivered. The S.F.A. reserves the right to authorize immediate purchase from any sources against rejections when necessary. On all such purchases, the S.F.A. shall have the option of deducting any such excess costs from monies owed to the F.S. Contractor under the terms of this Agreement. Should the cost be less, the F.S. Contractor shall have no claim to the difference.

14. INCOME, REIMBURSEMENT

A. The S.F.A. shall receive all income from the program(s) and deposit it in the school cafeteria fund accounts.

B. Authority to sign claims for reimbursement shall remain with the S.F.A.

C. If reimbursement is denied as a direct result of the failure of the F.S. Contractor to comply with the provisions of this contract, the F.S. Contractor shall assume responsibility for the amount denied.

15. FINANCIAL ACCOUNTING, BOOKS AND RECORDS

A. Financial accounting by the F.S. Contractor shall be in accordance with New York State Department of Education rules and regulations and applicable State Laws.

B. The administrative/service fee is ($_____ Child Nutrition, $_____ - Other).

C. The Contractor shall bill the S.F.A. for contracted costs monthly, within ten (10) working days following the close of the month of operation.

D. The guaranteed maximum variable cost ($_____, Child Nutrition, $_____ Other).

E. Food and food service supplies shall not exceed the annual total shown in Section D above, and will be reimbursed monthly only as approved and audited by authorized S.F.A representative: _____ (S.F.A. shall designate by name or title the employee whose primary responsibility shall be to supervise and audit all financially related operations of the private food management company).

F. The F.S. Contractor shall maintain such records (supported by invoices, receipts, or other evidence) as the S.F.A. will need to meet monthly reporting responsibilities and shall submit monthly operating statements in a format approved by the S.F.A. no later than the 10th calendar day succeeding the month in which services were rendered; participation records shall be submitted no later than the 5th working day succeeding the month in which services were rendered.

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

H. The F.S. Contractor shall provide the S.F.A. with a year end statement.

I. The S.F.A. will audit food, labor, and other large expense items quarterly as well as performing random audits on smaller expense categories.

J. The S.F.A. shall audit the F.S. Contractor's operations as part of its year end audit.

K. Books and records of the F.S. Contractor pertaining to the school feeding operations shall be available, for a period of three (3) years from the end of the contract term (including extensions) to which they pertain, for inspection and audit by either State or Federal representatives and auditors.

L. No payment shall be made for meals that are spoiled or unwholesome at time of delivery, or do not meet the detailed specifications for each food component in the meal pattern or do not otherwise meet the requirements of the contract.

16. PERFORMANCE SECURITY, INSURANCE

A. The F.S. Contractor shall provide security form as authorized prior to the commencement of food service operations.

B. The performance security shall be in a form acceptable to the S.F.A., shall be the named obligee and shall be in the amount of $ _____.

C. The F.S. Contractor shall submit the performance security to the S.F.A. prior to the commencement of program operations.

D. The S.F.A. shall be named an additional insured on all required insurance policies.

E. The contract of insurance shall provide for notice to the S.F.A. of cancellation of insurance policies sixty (60) days before such cancellation is to take effect.

F. The F.S. Contractor shall provide a certificate of insurance for all required policies; the certificate of insurance shall contain: 1) names and addresses of insured, 2) titles and locations of the operations to which the insurance applies, 3) number of the policy and type or types of insurance in force thereunder on the date of the certificate, 4) expiration date of the policy and the type and types of insurance in force thereunder on the date of the certificate, 5) statement that the insurance of the type afforded by the policy applies to all of the operations and activities on and at the site of the project or incidental thereto, which are undertaken by the Contractor during the performance of the contract.

17. TERM, TERMINATION

A. This contract shall become effective on _____, 19 ____ and terminate on _____, 19 ___.

B. This contract may be extended by the S.F.A., and the F.S. Contractor under the rules and regulations prescribed by the Commissioner of Education; however, pursuant to federal regulations, such extensions shall be executed prior to termination of the preceding contract period and shall not extend the original contract period beyond five years.

C. The S.F.A. or the F.S. Contractor may terminate the contract, for cause, by giving sixty (60) days written notice, except: If the F.S. Contractor makes a general assignment for the benefit of creditors, or

if a receiver is appointed on account of bidders insolvency.

D. Neither the F.S. Contractor nor the S.F.A. shall be responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any acts not within the control of either the F.S. Contractor or the S.F.A., respectively, and which by the exercise of due diligence it is unable to prevent.

E. Contract Cost Increase: The S.F.A. may negotiate at the end of each one year contract period for a cost increase not to exceed the annual percentage increase of the New York - Northeastern New Jersey Consumer Price Index for all Urban Consumers for the preceding year provided it has been satisfactorily established by the F.S. Contractor that there has been at least an equivalent increase in the amount of its cost of operation during the period of the contract.

18. GENERAL

A. This contract shall be construed under the laws of the State of New York. Any action or proceeding arising out of this contract shall be brought in the appropriate courts of the State of New York.

B. The F.S. Contractor shall comply with the provisions of the bid specification and hereby in all respects made a part of this contract.

C. No provision of this contract shall be assigned or subcontracted without prior written consent of the S.F.A.

D. This contract constitutes the entire contract between the S.F.A. and the F.S. Contractor and may not be changed; terminated or extended orally or by course of conduct.

E. No waiver of any default shall be construed to be or constitute a waiver of any subsequent default.

F. Payments on any claim shall not preclude the S.F.A. from making claim for adjustment on any item found not to have been in accordance with the provisions of this contract and bid specifications.

G. This contract shall not be renegotiated.

H. The terms and conditions of this contract are subject to review and approval by the New York State Department of Education, Bureau of School Food Management and Nutrition.

I. It is further agreed between the S.F.A. and the F.S. Contractor that the clauses attached hereto and designated as Appendix A are hereby in all respects made a part of this contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Authorized Signature _____

Title _____

_____

(School Food Authority)

Authorized Signature _____

Title _____

_____

(Food Service Management Company)

Date _____

CORPORATE AFFIDAVIT

STATE OF NEW YORK

COUNTY OF

CITY OF

On this _____ day of _____, 19 ___, before me, the subscriber, personally came _____ to me known, who being by me duly sworn, did depose and say that he resides in the _____ of _____, State of _____, that he is the _____ of _____ the corporation described in and which executed the above instrument; that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

_____

_____

APPENDIX A

BID PROPOSAL CERTIFICATIONS

Firm Name _____

Business Address _____

Telephone Number _____ Date of Bid _____

I. General Bid Certification

The bidder certifies that he will furnish, at the prices herein quoted, the materials, equipment and/or services as proposed on this bid.

II. Non-Collusive Bidding Certification

By submission of this bid proposal, the bidder certifies that he is complying with Section 103-d of the General Municipal Law as follows:

Statement of non-collusion in bids and proposals to policial subdivision of the state. Every bid or proposal hereafter made to a political subdivision of the state or any public department, agency or official thereof where competitive bidding is required by statute, rule, regulation, or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury; Non-collusive bidding certification.

"(a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition."

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with; provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning subparagraph one (a).

2 Any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in subdivision one of the section, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

Signature (Authorized) _____

Title _____

Note: This is a sample of an approved form which may be reproduced locally.

6869/1/02202/0027
Ap/1500/BI/53922*

APPENDIX A

S.F.A.'s Free and Reduced Meal Policy is as follows: Policy Statement Agreement Number _____on file, dated _____, 19 ___.

APPENDIX B

Breakfast, lunch, milk and snack food will be provided in accordance with the term and conditions of the food services specifications at the following locations.

Facility Name	Adult Meals	Breakfast	Lunch	Milk	Dinner	Snacks

APPENDIX C

The following items shall not be sold or dispensed:

_____
_____
_____
_____
_____
_____
_____
_____
_____

TYPE II
MAXIMUM PER MEAL COST REIMBURSEMENT

SA # _____
AGREEMENT # _____

AGREEMENT

between District Name _____

Address _____

_____

Telephone # _____

and Management Company Name _____

Address _____

_____

Telephone # _____

SPECIFICATIONS AND BID FORM
FOR FOOD SERVICE PROGRAMS
UNDER MANAGEMENT COMPANY OPERATIONS
BID NO. _____

In accordance with the provisions of Section 305 of the Education Law, an advertisement for bids was published in the _____ on _____, 19____. As stated in such notice, bids will be publicly opened and read in the office of _____ on _____, 19___ at _____ (a.m.) (p.m.).

CHILD NUTRITION PROGRAM

Management Company Contract

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1. PURPOSE

The purpose of this solicitation is to provide for the operation of a food service program. The F.S. Contractor will assume responsibility for the efficient management of the food service program including purchasing, receiving, storing, setting up cafeteria lines, counter service, dining room service, clean-up, sanitation, training, hiring and supervising personnel, and presenting food in a way to create optimum student participation. The program will include the use of federally donated commodities.

The Bidder under these specifications will be referred to as the F.S. CONTRACTOR and the contract will be between the F.S. CONTRACTOR and. the S.F.A. (School Food Authority).

2. DEFINITIONS

School Food Authority (S.F.A.) is the School District.

Board is the Board of Education of the School Food Authority.

Bidding Documents include the Advertisement or "Notice to Bidders" and the documents contained herein.

Instructions to Bidders include all "Conditions and Specifications," the bid proposal forms, including any "Addenda" issued prior to the opening of bids, and the "Contract."

Notice to Bidders is the formal statement issued by the School Food Authority inviting bids on all the services, materials, supplies or equipment described in the Bidding Documents.

Addenda are written instruments issued by the School Food Authority prior to the opening of bids which modify or interpret the Bidding Documents by addition, deletions, clarifications or corrections.

Bid is a complete and properly signed proposal on the forms provided herein to provide the food service program management services, equipment, supplies or materials required for the sum stipulated therein supported by data called for by the Bidding Documents.

Bidder is any individual, company or corporation submitting a bid.

Successful Bidder is a Bidder to whom an award is made by the Board.

F.S. Contractor is a Bidder with whom a Contract is executed by the School Food Authority.

Conditions and Specifications constitute any description in the Bidding Documents of services, materials, supplies, and/or equipment required for the performance of the obligations under the Contract or the circumstances under which such services, materials, supplies, and/or equipment are to be provided.

Contract is a formal agreement duly executed by the authorized representatives of the School Food Authority and the F.S. Contractor which calls for the provision

of all services, materials, supplies or equipment by the F.S. Contractor in accordance with all Conditions and Specifications in the Bidding Documents, for a price to be paid by the S.F.A.

Allowable Direct Costs are those costs which are incurred solely for the S.F.A.'s on-site operation as defined herein:

-**Labor** is defined as and limited to on-site employees responsible for the management, preparation, service, and clean-up of meals.

-**Food** is defined as and limited to those items purchased for use in the preparation and service of student, a la carte and adult meals, as specified herein.

-**Miscellaneous expenses** are defined as: paper supplies (including decorations), equipment rental, cleaning materials, commodity handling and warehousing charges, travel as required for effective program management and agreed upon by S.F.A., uniforms, menu paper and printing, taxes and licenses, laundry, and insurances and other costs as contractually obligated herein.

Note: Allowable direct cost of operations is defined as labor, food and miscellaneous expenses. All program expenses not otherwise defined in the contract will be assumed by the F.S. Contractor under the Administrative Service Fee.

Administrative Service Fee is defined as all costs other than food, labor and miscellaneous as defined herein.

All additional definitions set forth in the Conditions and Specifications are generally applicable to the Bidding Documents.

3. BIDDER RESPONSIBILITY

The bidder is responsible for personally examining the job sites where work under the bidding document is to be performed as they relate to the conditions existing at each job site. No pleas of ignorance relating to any data, conditions or requirements that exist or that may be encountered under this contract will be accepted as a result of failure or omission on the part of the F.S. Contractor to fulfill in every respect all the requirements, nor will the same be accepted as a basis for any claim whatsoever for extra charges for food services. Such visits will be scheduled through _____

4. PRIOR YEARS PARTICIPATION

A. Participation in meal pattern lunches for the 19___ - 19___ School Year was:

School	Selling Price Student	Selling Price Adult	Student Enrollment	Average Daily Participation Free	Average Daily Participation Red.	Average Daily Participation Paid	Total Faculty/Staff

The requirements of Meal Pattern lunches are found in 7CFR 210.10. The F.S. Contractor will comply with any and all amendments thereto.

B. Participation in School Breakfast Program for the 19___ - 19___ School Year was:

School	Selling Price Student	Selling Price Adult	Student Enrollment	Average Daily Participation Free	Average Daily Participation Red.	Average Daily Participation Paid	Total Faculty/Staff

The requirements of School Breakfast Program are found in 7CFR 220.8. The F.S. Contractor will comply with any and all amendments thereto.

C. Ala Carte Sales for the 19___ - ___ School year totaled: _____

D. Sales in the Special Milk Program for the 19 __ - __ school year totaled: _____.

E. Child Nutrition revenues (breakfast and lunch) for the 19____-____ year totaled: _____.

5. PRICES

A. The prices to be charged for the 19___ - 19___ (upcoming) school year are as follows:

School	Student Meal Pattern Lunch Paid	Student Meal Pattern Lunch Red.	Adult Lunch*	Student Milk	Adult Milk	Student Breakfast Paid	Student Breakfast Red.	Adult Breakfast
_____	____	____	____	____	____	____	____	_____
_____	____	____	____	____	____	____	____	____
_____	____	____	____	____	____	____	____	____
_____	____	____	____	____	____	____	____	____
_____	____	____	____	____	____	____	____	____
_____	____	____	____	____	____	____	____	____

*The price of an adult meal should at least be equal to the free reimbursement rate, plus the donated commodity entitlement rate, plus sales tax. These prices may be changed only after approval by the Board of Education of the S.F.A. The F.S. Contractor shall be notified of such approval thirty (30) days before new prices are effective.

A La Carte
Pricing Schedule

Item	Student Price	Adult Price

6. SUBMISSION OF BIDS

A. Bids shall be submitted on the forms provided by the District.

B. Bidders requiring clarification or interpretation of the Bidding Documents shall make a request to the District prior to the date fixed for the opening of bids.

C. Any clarification, interpretation, correction or change of this Document shall be made by Addendum prior to bidding.

7. REJECTION OF BIDS

The S.F.A. reserves the right to reject any and all bids.

8. AWARD OF BID

A. Award of the Contract shall be to the lowest responsible Bidder, which responsibility shall be determined by the board.

B. If the district allows Bidders to bid under more than one provision on page 17, BID FORM, the district will consider bids in the following order to determine the lowest responsible Bidder: Option A, Option B, Option C.

9. SPECIAL AND GENERAL CONDITIONS

The Bidder will comply with the Special and General Conditions attached hereto and in all respects made a part of this bid specification.

10. CONTRACT

The successful bidder shall enter into the DISTRICT-FOOD-SERVICE MANAGEMENT COMPANY CONTRACT attached hereto and in all respects made a part of this bid specification. By submitting a bid, the bidder agrees to all the terms and conditions contained herein.

11. CONTINGENCY BUDGETS

In any district operating under a contingency budget and conducting food service operations, the following conditions must be adhered to:

A. The program at all times must be self sustaining;

B. There can be no transfer or loan of funds from the General Fund;

C. In the event of the end of the month operating statement from the F.S. Contractor reflects a deficit, such deficit will be the responsibility of the F.S. Contractor pending mutual determination by such F.S. Contractor and the S.F.A. as to actions to be taken to dissolve such deficit.

12. MENU CYCLE

The 21-day cycle menu, see Schedule A, shall be used as a standard for the purpose of basing bids or estimating average cost per meal. The F.S. Contractor must adhere to the cycle for the first 21 days of meal service. Menu standard as presented in the 21-day cycle menu must be maintained as to type and quality of meal service.

13. PURCHASE SPECIFICATIONS

The grade, purchase unit, style, weight, ingredients, formulation, etc. as set forth by the S.F.A., see Schedule B, shall be complied with by the Food Service Management Company.

Schedule B

PROCUREMENT SPECIFICATIONS

To be developed by S.F.A. based on individual S.F.A. preferences and requirements.

14. SPECIAL AND GENERAL CONDITIONS

A. Bids will be received as stated on the cover sheet, for the privilege and right to conduct/operate food service within facilities listed in Appendix C and as set forth below.

B. The S.F.A. shall furnish all electricity, gas, water, heat and light to the F.S. CONTRACTOR for its operation as in the judgment of the S.F.A. is reasonably needed and necessary.

C. The S.F.A. shall furnish all necessary equipment to operate the personal food programs. At the time of contract signing, an itemized inventory (to be certified by representatives of both parties) of all items furnished or to be furnished by the S.F.A., including miscellaneous kitchen items, will be made a part of this contract.

D. As a direct cost of operation the F.S. CONTRACTOR will maintain the initial adequate inventory of chinaware, glassware, and silverware furnished by the S.F.A. Regarding all equipment, furnishings and smallwares used for the services hereunder, the F.S. CONTRACTOR agrees that it will use the S.F.A. equipment, machinery, paraphernalia in good and proper manner and shall keep the same free from damages, in proper condition and in a state of cleanliness to assure STRICT COMPLIANCE WITH HEALTH REGULATIONS AS PROVIDED AND REQUIRED BY THE STATE OF NEW YORK, dealing with S.F.A. facilities, as with all other health laws.

1. Repairs necessary due to the negligence of the F.S. CONTRACTOR, its employees or agents shall be the sole responsibility and the sole expense of the F.S. CONTRACTOR.

2. The S.F.A. agrees to at its sole option to repair or replace any equipment not functioning properly or which is missing upon proper written notification by the F.S. CONTRACTOR or the need for such repair or replacement and the availability of normal repair or replacement facilities.

3. No alterations, changes, or improvements shall be made to the areas granted to the F.S. CONTRACTOR without obtaining prior written permission of the S.F.A. with the final decision as to alterations, changes, or improvements reserved solely for the S.F.A.

E. The S.F.A. will provide for the removal of all trash and garbage with the F.S. CONTRACTOR being responsible for proper sanitary storage and placement of said trash and garbage until its removal.

F. The S.F.A. shall be responsible for repairs to all permanent fixtures such as faucets, lights, sewers, air conditioning, heating and all other electrical work NOT considered to be food equipment, since such food equipment is dealt with in Item D above.

G. Upon termination of this contract the F.S. CONTRACTOR will surrender to the S.F.A. all equipment and furnishings located in the food services

facilities and/or as listed on the certified inventory list of all S.F.A. owned property (both capital and/or expendable) as referred to in Paragraph C hereunder. Such property and equipment or its equal quality replacement must be returned to the S.F.A. in the same good order and condition as when received by the F.S. CONTRACTOR, reasonable wear and tear, damage from casualty fire and hazards covered by insurance ALONE EXCEPTED. Another inventory shall be taken upon termination to determine the status of all equipment hereunder. Discrepancies shall be corrected at the F.S. CONTRACTOR'S sole expense with said replacement based on a comparison with the original inventory.

H. The S.F.A. shall have unlimited access, with or without notice to the F.S. CONTRACTOR, to all areas used by the F.S. CONTRACTOR FOR PURPOSES OF INSPECTIONS AND AUDITS.

I. The F.S. CONTRACTOR shall adhere strictly to all applicable Pure Food Laws, ordinances as well as all related regulations as adopted and promulgated by the Federal Government, the State of New York, the local Departments of Health and said F.S. CONTRACTOR will otherwise fully comply at all times with the rules and regulations as set up by the S.F.A. as well as with any change in the State and/or County Laws, etc., covering and controlling food services at the facilities.

J. The F.S. CONTRACTOR shall have the sole responsibility to compensate its employees, including all applicable taxes and insurances and shall be solely responsible for any losses incurred by the S.F.A. resulting from dishonest, fraudulent or negligent acts on the part of its employees or agents. ALL food service employees shall comply with all rules of the S.F.A. for cleanliness and courtesy.

K. The F.S. CONTRACTOR will maintain all employees on its payroll with the exception of _____.

L. The F.S. CONTRACTOR shall be solely responsible for the purchase and payment of all foods and beverages necessary for it to render proper performance of the food service program as stated herein. Such purchases and performance shall apply to all items in addition to food and beverage which will be necessary for compliance with and of this agreement.

15. <u>BONDS AND INSURANCE</u>:

The F.S. CONTRACTOR shall procure and maintain at its own expense a general liability policy which names the S.F.A. as an additional insured, including products liability in the amounts of at least $ _____ for injury and death, and property damage with a limit of $ _____ for each accident provided by insurance companies authorized to do business in the State of New York.

16. <u>PERFORMANCE SECURITY</u>:

The F.S. CONTRACTOR shall be required to:

A. Submit with the bid an assurance by a surety authorized to conduct

business within New York State, that if selected as the successful bidder, and upon award of the contract, a performance bond will be issued in the amount of $ _____ *(5% of annual projected operating costs). Simultaneously with delivery of the executed contract, the successful vendor must provide to the S.F.A. the executed surety company bond as required, to be held as security by the S.F.A. for the faithful performance by F.S. Contractor of all terms of the contract.

OR

B. Submit with the bid an authorization for the S.F.A. to hold in a reserve fund the amount of $ _____ *(5% of annual projected operating costs) out of the initial revenues produced by the school lunch program and earned by the management company.

The S.F.A. shall retain such reserve fund until the F.S. CONTRACTOR has faithfully performed all terms of the contract.

OR

C. Submit with the bid a certified check payable to the S.F.A. in the amount of $_____ (5% of annual projected operating costs) upon award of bid. The S.F.A. shall return all such checks to the unsuccessful bidders.

The S.F.A. shall retain the successful bidder's check until the F.S. CONTRACTOR has faithfully performed all terms of the contract.

*A 5% security is the minimum requirement. A security greater than 10% of the annual projected operating costs (Schedule B, Item B) must be approved by the Bureau of School Food Management and Nutrition.

The New York State Education Department recommends that all security forms be left open to the bidder. However, the S.F.A. may choose to eliminate one or more options.

17. SUBMITTALS

Bidders will provide, along with their completed bids, evidence demonstrating an ability to administer school food service programs, including, if applicable, a list of any and all school districts which they have served during the past three years, a summary of their past experience over at least three years of successfully operating a complex food service program requiring nutritional meals in compliance with the applicable regulations of the State of New York. In lieu of organizational experience, staff expertise must be demonstrated.

18. AWARD OF CONTRACT

Contract will be awarded based on the lowest responsible bid proposal for maximum per meal cost reimbursement, which shall reflect per meal cost for:

I.	Administrative service fee	_____ (per meal)
II.	Direct cost of operations for: labor, food and miscellaneous as defined herein	+_____ (per meal)
	Maximum Per Meal Cost Reimbursement Rate	_____

The F.S. CONTRACTORS cost reimbursement shall not exceed the contract terms (meals plus equivalent meals served multiplied by the Maximum Per Meal Cost Reimbursement Rate) and will be contingent upon:

- o Direct cost of operations as audited and approved and;
- o Limited to the extent of program income.

BID FORM

We, the undersigned agree to operate the food service management program as described the bid specifications for the 19___ - 19___ school year.

This proposal is subject to all the attached definitions, terms, conditions, and specifications and we hereby agree to enter into the attached S.F.A. - F.S. Contractor agreement subsequent to the award of the bid.

Bid Amount

Option A Guaranteed Return to District

TOTAL MAXIMUM PER MEAL COST REIMBURSEMENT for the operation of the program wherein all operating costs, the administrative/service fee and program costs incurred by the district of $*_____ will accrue from program income including all cash receipts from the sale of meal pattern lunches, a la carte items, special milk program, adult lunches, breakfast program and federal and State reimbursements including cash and commodities. Any deficit will be assumed by the F.S. Contractor. _____

Option B Break Even

TOTAL MAXIMUM PER MEAL COST REIMBURSEMENT for the operation of the program wherein all operating costs and the administrative/service fee will accrue from program income including all cash receipts from the sale of meal pattern lunches, a la carte items, special milk program, adult lunches, breakfast program, and federal and State reimbursements including cash and commodities. Any deficit will be assumed by the F.S. Contractor _____

Option C General Fund Subsidy

TOTAL MAXIMUM PER MEAL COST REIMBURSEMENT for the operation of the program requiring a General Fund subsidy of $ *_____ to cover the administrative/service fee and operating costs which exceed cash receipts from the sale of meal pattern lunches, a la carte items, Special Milk Program, adult lunches, Breakfast Program, and federal and State reimbursements including cash and commodities. The S.F.A. shall not be liable from the General Fund over and above this subsidy. _____

Each bidder must complete Section C of the Financial Budget Projection on the following page. The conversion factor to be used to convert a la carte sales is $1.49 . (This conversion factor must reflect the most current rate issued by the State Education Department at the time of bid advertisement. This rate will not change upon contract extension.)

*To be completed by the S.F.A.
**The a la carte conversion factor is provided by the New York State Education Department. The most current rates at the time of bid proposal are to be used.

Submitted by: _____ _____
Authorized Signature

Address: _____ _____
Title

_____

ANNUAL FINANCIAL BUDGET PROJECTION

A proposed financial budget must be included by the bidder in the bid proposal. It should contain the following information:

A. Projected Gross Receipts

1. CASH SALES

   a. Student Meal Pattern Lunches _____
   b. Adult Lunches _____
   c. A la carte _____
   d. Special Milk _____
   e. Breakfast Program _____

2. FEDERAL AND STATE REIMBURSEMENTS _____

3. GENERAL FUND SUBSIDY (where applicable) _____

4. TOTAL RECEIPTS _____

B. Projected Expenses

1. FOOD COSTS _____

2. LABOR-SALARIES/FRINGE BENEFITS _____

3. MISCELLANEOUS (as defined herein) _____

4. ADMINISTRATIVE SERVICE FEE _____

5. TOTAL EXPENSES _____

6. DISTRICT RETURN/FUND BALANCE _____
   (Item A.4 minus Item B.5) this amount must equal or exceed the guaranteed return specfied under bid option A (page *), if applicable.)

C. Projected Meals

1. STUDENT MEAL PATTERN
   Breakfast _____
   Lunch _____
   Total _____

2. A LA CARTE SALES _____
   divided by
   Conversion Factor $1.49
   Equivalent Meals _____

3. Total Projected Meals _____

Schedule C2

Cost Responsibility Detail Sheet

The SFA has deemed the following cost responsibility schedule to be a necessary part of this bid specification. Costs which are not provided for under the contract terms but are necessary for the effective on-site operation of the food service program and are directly incurred for the SFA's operation must be assigned by the SFA prior to bid opening and designated below:

	F.S. Contractor	S.F.A.	N.A.
Food:			
Food Purchases	X		
Commodity Processing Charges	X		
Processing and Payment of Invoices	X		
Labor:			
Wages	X		
Fringe Benefits and Insurance	X		
Payroll Taxes	X		
Preparation and Processing of Payroll	X		
Miscellaneous/Additional Items:			
Paper and Cleaning Supplies	X		
China/Silverware/Glassware -			
initial inventory		X	
replacement during operation	X		
Telephone - local		X	
long distance	X		
Uniforms/laundry*			
Sanitation of cafeteria tables and floors*			
Trash removal* - from kitchen			
from dining area			
from premises			
Equipment replacement and repair -			
non expendable		X	
expendable			
Products and Public Liability Insurance*			
Equipment rental* (explain)			
Car/truck rental* (explain)			
Storage costs (food and non-food supplies)*			
Courier services (bank deposits, school deliveries)*			
Employee recruitment - initial replacement*	X		
Sales tax		X	
Other* (cannot include overhead expenses incurred by F.S. Contractor)			

*These direct cost items may or may not apply to each S.F.A. At local discretion, based upon actual practice and need, the S.F.A. should assign cost responsibility for those items applicable to their operation or designate them as N/A.

A G R E E M E N T

THIS AGREEMENT, made this _____ day _____ by and between the _____ in _____, (City) New York, hereinafter referred to as S.F.A. (School Food Authority) and _____ hereinafter referred to as "F.S. Contractor".

W 1 T N E S S E T H:

WHEREAS, the S.F.A. has advertised for sealed bids for Food Service Management to the facilities listed in Appendix C in accordance with the specifications attached hereto and made a part hereof as if same were set forth in full, and,

WHEREAS, the F.S. Contractor submitted a proposal for Food Service Management to the said facilities dated _____ and has been awarded a contract therefore,

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter expressed, it is mutually covenanted and agreed by and between the parties hereto as follows:

1. <u>SCOPE AND PURPOSE</u>

   A. The S.F.A. shall retain control of the quality, extent and general nature of the food service program and the prices to be charged.

   B. The S.F.A. shall be responsible for the cost of the food service program as indicated in the bid specifications and entitled to all receipts generated pursuant to this contract.

   C. The F.S. Contractor shall receive for its services a reasonable fixed fee.

   D. All net income accruing to the S.F.A. from the food service program shall remain in the program.

E. The F.S. Contractor shall be an independent contractor and not an employee of the S.F.A. nor are the employees of the Contractor employees of the S.F.A., except _____
_____.

F. The F.S. Contractor, as independent contractor, shall have the exclusive right to operate the school lunch program and/or breakfast program, and/or special milk program.

G. The food service provided shall be operated and maintained as a benefit to the S.F.A. students, faculty and staff and not as a source of profit to the contractor.

H. The S.F.A. shall be legally responsible for the conduct of the food service program, and shall supervise the food service operations in such manner as will insure compliance with the rules and regulations of the New York State Department of Education and the United States Department of Agriculture regarding school food service program.

I. The F.S. Contractor shall promote nutrition-health education as required by the local County, State or Federal Governments.

J. The F.S. Contractor shall comply with the rules and regulations of the Commissioner of Education and the United States Department of Agriculture, and any additions or amendments thereto.

2. FREE AND REDUCED MEAL POLICY

A. The S.F.A. free and reduced meal policy for the reimbursed school lunch and/or breakfast and/or special milk and/or commodity distribution programs is defined in Appendix B and hereby in all respects made a part of this contract.

B. The written policy of the S.F.A. requiring feeding of needy children free or at reduced price shall apply to the F.S. Contractor's food service operation.

C. The S.F.A. shall be responsible for the implementation of this policy.

D. The S.F.A. shall make appropriate and adequate financial arrangements for funds to defray the necessary costs of the service of free or reduced price meals to needy children.

E. Meals shall be served and proper accurate pupil participation records shall be maintained by the F.S. Contractor.

3. MEALS

A. The F.S. Contractor shall serve reimburseable meal pattern lunches pursuant to the National School Lunch Program.

B. The F.S. Contractor should offer a choice of reimbursable meal pattern lunches, subject to approval of the S.F.A.

C. The F.S. Contractor shall serve reimbursable breakfasts pursuant to the School Breakfast Program where indicated on Appendix C.

D. The F.S. Contractor shall promote maximum participation in the Child Nutrition Programs where indicated on Appendix C.

E. The F.S. Contractor shall serve reimbursable milk pursuant to the Special Milk Program.

F. The F.S. Contractor shall provide condiments and utensils as needed.

G. The F.S. Contractor shall provide specified types of service in the locations listed in Appendix C and hereby in all respects made a part of this contract.

H. The F.S. Contractor shall use the S.F.A. facilities for the preparation of food to be served in the designated attendance units.

I. All a la carte items served by the F.S. Contractor shall be approved by the S.F.A. in advance of sale.

J. All a la carte prices charged by the F.S. Contractor shall be approved by the S.F.A. in advance of sales.

K. The F.S. Contractor shall sell on the premises only those foods and beverages authorized by the S.F.A. and only at the times and places designated by the S.F.A.

L. The F.S. Contractor shall not sell, dispense, or cause to be on premises, the items listed in Appendix D and hereby in all respects made a part of the contract.

M. The F.S. Contractor may use fillers or extenders, such as "textured vegetable protein," in foods served upon approval of the S.F.A. and as regulated by U.S.D.A.

N. Neither the S.F.A. nor the F.S. Contractor shall authorize the distribution of non-nutritious foods pursuant to State and federal laws and regulations.

O. The F.S. Contractor shall make substitutions in the minimum food components of the meal pattern if individual participation children are unable, because of medical or other special dietary needs, to consume such foods. Such substitutions shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods and should be approved by the State Education Department. The S.F.A. shall notify the Contractor of any special dietary needs.

P. The S.F.A. and F.S. Contractor employees may purchase meals at the option and direction of the S.F.A at prices approved by the S.F.A. The Contractor shall not count these meals for reimbursement under the National School Lunch Program and/or Special Milk and/or School Breakfast Program.

4. MENUS

A. The S.F.A. shall establish an advisory board comprised of students, teachers and parents to assist in menu planning.

B. Menus shall be reviewed and approved by the S.F.A. and available for distribution _____ days prior to actual preparation and service of foods.

5. FEDERALLY DONATED COMMODITIES

A. Any federally donated commodities received by the S.F.A. and made available to the F.S. Contractor shall accrue only to the benefit of the S.F.A.'s nonprofit school food service program and shall be used therein.

B. The F.S. Contractor shall have records available to substantiate the use of federally donated commodities in reimbursable meal pattern lunches.

C. The F.S. Contractor shall select, accept and use in as large quantities as may be efficiently used in S.F.A.'s nonprofit school service, the type and quantities of available federally donated commodities, subject to the approval of the S.F.A.

D. The F.S. Contractor/S.F.A. shall be responsible for transportation and storage charges for federally donated commodities, if any.

E. The F.S. Contractor shall account for all federally donated commodities separately from purchased commodities.

F. Title of products purchased or processed using federally donated commodities must remain with the S.F.A. Any charges incurred by the F.S. Contractor when processing or purchasing products containing government commodities shall be paid by the F.S. Contractor and charged back to the S.F.A. as a food cost.

6. PURCHASES

A. The F.S. Contractor shall purchase all food and non-food commodities at the lowest price possible consistent with maintaining quality standards.

B. Title to all commodities purchased by the F.S. Contractor shall remain with the F.S. Contractor.

C. The F.S. Contractor may purchase from their owned or operated subsidiary facilities if the purchase price is lower than the prices otherwise available in the area.

D. The F.S. Contractor shall honor existing contracts if advantageous to the S.F.A.

7. USE OF FACILITIES

A. The S.F.A. 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.

B. The S.F.A. shall make available without any cost or charge to the F.S. Contractor area or areas of the premises agreeable to both parties in which the F.S. Contractor shall render its services; such area or areas reasonably necessary for providing efficient food service.

C. The S.F.A. may request of the F.S. Contractor, additional food service programs; however, the S.F.A. reserves the right, at its sole discretion, to sell or dispense any food or beverage before or after the S.F.A. regularly scheduled lunch or breakfast periods provided such use does not interfere with the operation of the School Lunch and/or Breakfast and/or Special Milk Programs.

D. If the S.F.A. uses the facilities for extracurricular activities before or after the S.F.A. regularly scheduled lunch or breakfast period, the S.F.A. shall return facilities and equipment to the F.S. Contractor in the same condition as received, normal wear and tear excepted.

8. INVENTORY, EQUIPMENT, STORAGE

A. The F.S. Contractor and the S.F.A. shall inventory the equipment and commodities owned by the S.F.A. at the beginning of the school year, including but not limited to silverware, trays, chinaware, glassware, kitchen utensils, food commodities.

B. The F.S. Contractor shall maintain the inventory of silverware, chinaware, glassware, kitchen utensils, and other operating items necessary for the food service operation.

C. The S.F.A. shall replace expendable equipment and replace, repair and maintain equipment except when damages result from the use of less than reasonable care by the employees of the F.S. Contractor.

D. The F.S. Contractor shall maintain adequate storage practices, inventory, and control of federally donated foods in conformance with S.F.A.'s agreement with the Office of General Services.

E. The F.S. Contractor shall provide locks for food storage areas under its direct supervision. One set of keys to those locks shall be provided by the F.S. Contractor to the S.F.A.

F. The S.F.A. shall provide the F.S. Contractor with local telephone service.

G. The S.F.A. shall furnish and install any equipment or make any structural changes needed to comply with Federal, State and local laws, ordinances, rules and regulations.

H. The S.F.A. shall be responsible for any losses including federally donated commodities, which may arise due to equipment malfunction or loss of electrical power not within the control of the F.S. Contractor.

I. All food preparation and serving equipment owned by S.F.A. shall remain on the premises of the S.F.A.

J. The S.F.A. shall not be responsible for loss or damage to equipment owned by the F.S. Contractor and located on the S.F.A. premises.

K. The F.S. Contractor shall notify the S.F.A. of any equipment belonging to the Contractor on S.F.A. premises within ten (10) days of its placement on the S.F.A. premises.

L. The F.S. Contractor/S.F.A. shall pay for oil and gas used by its owned, hired, or other vehicles under its supervision used for delivering food or non-food commodities.

M. The F.S. Contractor/S.F.A. shall provide its own drivers for owned, hired, or other vehicles under its supervision used for delivering food or non-food commodities.

9. SANITATION

A. The F.S. Contractor shall place garbage and trash in plastic bags and place in designated areas.

B. The S.F.A. shall remove all garbage and trash from the designated areas.

C. The F.S. Contractor shall clean the kitchen area, including but not limited to sinks, counters, grease traps, tables, chairs, silverware, and utensils.

D. The F.S. Contractor shall operate and care for all equipment and food service areas (walls, windows, lights, excepted) in a clean, safe, and healthy condition in accordance with standards acceptable to the S.F.A. and comply with all applicable laws, ordinances, regulations and rules of Federal, State, and local authorities.

E. The S.F.A. shall be responsible for cleaning of ducts and hoods above the filter line and will provide extermination services as needed.

F. The S.F.A. shall be responsible for painting and/or decorating within the kitchen and dining areas.

G. The F.S. Contractor shall comply with all local and state sanitation requirements in the preparation of food.

10. EMPLOYEES

A. The F.S. Contractor shall comply with all wage and hours of employment requirements of Federal and State Law.

B. All employees of the F.S. Contractor shall be paid in accordance with the Fair Labor Standard Act, as amended, and any other applicable statutes.

C. The F.S. Contractor shall comply with Titles VI and VII of the Civil

Rights Act of 1964 and the implementing regulations of the United States Department of Agriculture issued thereunder and any additions or amendments thereto.

D. The F.S. Contractor shall provide Workman's Compensation for its employees.

E. The F.S. Contractor shall instruct its employees to abide by the policies, rules and regulations, with respect to use of S.F.A. premises as established by S.F.A. from time to time and which are furnished in writing to the F.S. Contractor.

F. The F.S. Contractor shall maintain its own personnel policies and fringe benefits for its employees, subject to review by the S.F.A.

G. The F.S. Contractor shall provide the S.F.A. with a list of its personnel policies.

H. Staffing patterns shall be mutually agreed upon.

I. Any employee who is continued as an employee of the F.S. Contractor shall be subject to the personnel policies and termination rules of the F.S. Contractor.

J. The F.S. Contractor shall not be responsible for hiring employees in excess of the number required for efficient operation.

K. The F.S. Contractor shall provide the S.F.A. with a schedule of employees, positions, assigned locations, salaries (and hours to be worked) two full calendar weeks prior to the commencement of operation.

L. The S.F.A. shall provide sanitary toilet facilities for the employees of the F.S. Contractor.

M. The S.F.A. may request in writing the removal of an employee of the F.S. Contractor who violates health requirements or conducts himself/herself in a manner which is detrimental to the physical, mental, or moral well-being of students.

N. In the event of the removal or suspension of any such employee, the F.S. Contractor shall immediately restructure its staff without disruption in service.

O. All F.S. Contractor personnel assigned to each school shall be instructed on the use of all emergency valves, switches, fire and safety devices in the kitchen and cafeteria areas.

11. EMERGENCY CLOSING

The S.F.A. shall notify the F.S. Contractor of any interruption in utilities of which it has knowledge.

12. LICENSES, FEES, TAXES

A. The F.S. Contractor shall be responsible for paying all applicable taxes and fees, including but not limited to excise tax, State and local income taxes, payroll, and withholding taxes and hold the S.F.A. harmless for all claims arising under such taxes and fees.

B. The S.F.A. shall be responsible for paying sales taxes collected on any receipts deposited in its name.

C. The F.S. Contractor shall obtain and post all licenses, permits and food handler's cards as required by Federal, State, or local law.

D. The F.S. Contractor shall comply with all health and safety regulations required by Federal, State, or local law.

E. The F.S. Contractor and the S.F.A. shall comply with all building rules and regulations.

F. The F.S. Contractor shall maintain applicable health certification.

G. The F.S. Contractor shall have State or local health certification for any facility outside the S.F.A. in which it proposes to prepare meals and the F.S. Contractor shall maintain this health certification for the duration of the contract.

13. INCOME, REIMBURSEMENT

A. The S.F.A. shall receive all income from the program(s) and deposit it in the school cafeteria fund accounts.

B. Authority to sign claims for reimbursement shall remain with the S.F.A.

C. If reimbursement is denied as a direct result of the failure of the F.S. Contractor to comply with the provisions of this contract, the F.S. Contractor shall assume responsibility for the amount denied.

14. FINANCIAL ACCOUNTING, BOOKS AND RECORDS

A. Financial accounting by the F.S. Contractor shall be in accordance with New York State Department of Education rules and regulations and applicable State Laws.

B. The maximum per meal cost reimbursement is $ _____.

C. The F.S. Contractor reimbursement shall not exceed eligible direct costs of operation and the contract terms (meals/plus equivalent meals multiplied by the bid price) and will be reimbursed only as approved and audited by _____ or _____ or his authorized representative.

S.F.A. shall designate by name and title the employee whose responsibility shall be to supervise and audit all financially related operations of the F.S. Contractor.

(Choose One)

The F.S. Contractor shall bill the S.F.A. for the eligible direct costs of operation incurred at the close of each week of program operation.

The F.S. Contractor shall bill the S.F.A. for the estimated weekly eligible direct costs of operation in advance of program operation.

The F.S. Contractor shall bill the S.F.A. for the estimated eligible direct costs of operations for the previous week of program operation.

D. The F.S. Contractor's cost reimbursement shall not exceed contract terms (meals plus equivalent meals multiplied by the bid price), is contingent upon the eligible direct costs of operation as audited and approved, and limited to the extent of program income.

E. The S.F.A. shall make payment within 15 days to the F.S. Contractor for the direct costs of operation after the submission of a valid claim in accordance with Section C above for each week of program operation to the extent of the school cafeteria fund account balance. Normal credit terms will be 15 days from billing date.

F. In the event estimated direct costs of operation do not equal actual costs of operations, adjustments shall be made within 10 working days following the close of the month of operation.

G. The F.S. Contractor shall maintain such records (supported by invoices, receipts, or other evidence) as the S.F.A. will need to meet monthly reporting responsibilities and shall submit monthly operating statements in a format approved by the S.F.A. no later than the 10th calendar day succeeding the month in which services were rendered; participation records shall be submitted no later than the 5th working day succeeding the month in which services were rendered.

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

I. The F.S. Contractor shall provide the S.F.A. with a year end statement.

J. The S.F.A. will audit food, labor, and other large expense items quarterly as well as performing random audits on smaller expense categories.

K. The S.F.A. shall audit the F.S. Contractor's operations as part of its year end audit.

L. Books and records of the F.S. Contractor pertaining to the school feeding operations shall be available at the District, for a period of six (6) years from the end of the contract term (including extensions) fiscal year to which they pertain, for inspection and audit by either State or Federal representatives and auditors.

M. No payment shall be made for meals that are spoiled or unwholesome at time of delivery, or do not meet the detailed specifications for each food component in the meal pattern or do not otherwise meet the requirements of the contract.

15. PERFORMANCE SECURITY, INSURANCE

A. The F.S. Contractor shall provide security form as authorized prior to the commencement of food service operations.

B. The performance security shall be in a form acceptable to the S.F.A., and shall be in the amount of $ _____.

C. The F.S. Contractor shall submit the performance security to the S.F.A. prior to the commencement of program operations.

D. The S.F.A. shall be named an additional insured on all required insurance policies.

E. The contract of insurance shall provide for notice to the S.F.A. of cancellation of insurance policies sixty (60) days before such cancellation is to take effect.

F. The F.S. Contractor shall provide a certificate of insurance for all required policies; the certificate of insurance shall contain: 1) names and addresses of insured, 2) titles and locations of the operations to which the insurance applies, 3) number of the policy and type or types of insurance in force thereunder on the date of the certificate, 4) expiration date of the policy and the type and types of insurance in force thereunder on the date of the certificate, 5) statement that the insurance of the type afforded by the policy applies to all of the operations and activities on and at the site of the project or incidental thereto, which are undertaken by the Contractor during the performance of the contract.

16. TERM, TERMINATION

A. This contract shall become effective on _____, 19 ___ and terminate on _____, 19 ___.

B. This contract may be extended by the S.F.A. and the F.S. Contractor under the rules and regulations prescribed by the Commissioner of Education; however, pursuant to federal regulations, such extensions shall be executed prior to termination of the preceding contract period and shall not extend the original contract period beyond five years.

C. The S.F.A. or the F.S. Contractor may terminate the contract, for cause, by giving sixty (60) days written notice, except: If the F.S. Contractor makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of bidders insolvency. If anticipated revenues from Federal and State reimbursement are reduced and, the F.S. Contractor submits in writing a proposal of recommended changes necessary to maintain program solvency, and, the S.F.A. persistently or repeatedly refuses or fails to grant or take appropriate action to maintain program solvency, the F.S. Contractor may, without prejudice and with 7 day written notice, terminate the contract.

D. Neither the F.S. Contractor nor the S.F.A. shall be responsible for any losses resulting if the fulfillment of the terms of the contract shall

be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any acts not within the control of either the F.S. Contractor or the S.F.A., respectively, and which by the exercise of due diligence it is unable to prevent.

E. Contract Cost Increase: The S.F.A. may negotiate at the end of each one year contract period for a cost increase not to exceed the annual percentage increase of the New York - Northeastern New Jersey Consumer Price Index for all Urban Consumers for the preceding year provided it has been satisfactorily established by the F.S. Contractor that there has been at least an equivalent increase in the amount of its cost of operation during the period of the contract.

17. GENERAL

A. This contract shall be construed under the laws of the State of New York. Any action or proceeding arising out of this contract shall be brought in the appropriate courts of the State of New York.

B. The F.S. Contractor shall comply with the provisions of the bid specifications and hereby in all respects made a part of this contract.

C. No provision of this contract shall be assigned or subcontracted without prior written consent of the S.F.A.

D. This contract constitutes the entire contract between the S.F.A. and the F.S. Contractor and may not be changed; terminated or extended orally or by course of conduct.

E. No waiver of any default shall be construed to be or constitute a waiver of any subsequent default.

F. Payments on any claim shall not preclude the S.F.A. from making claim for adjustment on any item found not to have been in accordance with the provisions of this contract and bid specifications.

G. This contract shall not be renegotiated.

H. The terms and conditions of this contract are subject to review and approval by the New York State Department of Education, Bureau of School Food Management and Nutrition.

I. It is further agreed between the S.F.A. and the F.S. Contractor that the clauses attached hereto and designated as Appendix A are hereby in all respects made a part of this contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Signature _____
Title President, Board of Education

_____
(School Food Authority)

_____
(Food Service Management Company)
Date

CORPORATE AFFIDAVIT

STATE OF NEW YORK

COUNTY OF

CITY OF

On this _____ day of _____, 19 ___, before me, the subscriber, personally came _____ to me known, who being by me duly sworn, did depose and say that he resides in the _____ of _____, State of _____, that he is the _____ of _____ the corporation described in and which executed the above instrument; that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

_____

_____

APPENDIX A

BID PROPOSAL CERTIFICATIONS

Firm Name _____

Business Address _____

Telephone Number _____ Date of Bid _____

I. General Bid Certification

The bidder certifies that he will furnish, at the prices herein quoted, the materials, equipment and/or services as proposed on this bid.

II. Non-Collusive Bidding Certification

By submission of this bid proposal, the bidder certifies that he is complying with Section 103-d of the General Municipal Law as follows:

Statement of non-collusion in bids and proposals to policial subdivision of the state. Every bid or proposal hereafter made to a political subdivision of the state or any public department, agency or official thereof where competitive bidding is required by statute, rule, regulation, or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury; Non-collusive bidding certification.

"(a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to *such prices with any other bidder or with any* competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition."

(b) A *bid shall not be considered for award* nor shall any award be made where (a) (1) (2) and (3) above have not been complied with; provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning subparagraph one (a).

2 Any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in subdivision one of the section, shall be deemed to have been authorized *by the board of directors of the bidder, and such* authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

Signature (Authorized) _____

Title _____

Note: This is a sample of an approved form which may be reproduced locally.

APPENDIX B

The S.F.A.'s Free and Reduced Meal Policy is as follows: Policy Statement (Agreement #) Number _____ on file, dated _____, 19 ___.

APPENDIX C

Breakfast, lunch, milk and snack food will be provided in accordance with the terms and conditions of the food services specifications at the following locations.

Facility Name	A La Carte	Adult Meals	Breakfast	Lunch	Special Milk	Split Session Kinder-garten Special Milk

APPENDIX D

The following items shall not be sold or dispensed:

_____

_____

_____

_____

_____

_____

_____

_____

_____

Appendix E
(Optional)

PORTION CONTROL

See Management Company Contract Manual for sample list.