

# Fresh Fruit and Vegetable Program

## CONTRACT for VENDED FOODS

A school that participates in the Fresh Fruit and Vegetable Program (FFVP) must meet the program requirements specified in this agreement in order to claim FFVP reimbursements for foods provided by a Vendor.

### 1. Purpose and Term

This contract, between School Food Authority (SFA): \_\_\_\_\_

SFA's Sponsor ID Number (CLiCS): \_\_\_\_\_

and Vendor \_\_\_\_\_

authorizes that Vendor will provide fresh fruits and vegetables in accordance with this contract and the federal regulations and policies applicable to FFVP.

The contract is effective for the period of: \_\_\_\_\_ through \_\_\_\_\_.

Vendor will provide meals to SFA site(s) listed below or on an attached list.

Site Name	Site Address	CLiCS Number (If known)

SFA will notify Vendor with \_\_\_\_\_ days' notice of changes to sites.

If all sites do not receive the same types of meals, describe differences between sites here:

**2. Meal Requirements**

- a. Vendor will provide fresh fruits and vegetables that meet FFVP requirements in 7 CFR 211.
- b. Vendor will provide fresh fruits and vegetables to SFA in the following manner (check one):

- Pre-portioned snacks
- Bulk quantities accompanied as needed by written instruction regarding the planned portion size
- Service of snacks to SFA participants
- Other: \_\_\_\_\_

- c. Vendor will also provide (check all that apply):

- Low-fat dips
- Eating utensils Paper items
- Transportation containers
- Other, describe: \_\_\_\_\_

**3. Meal Charges and Billing**

- a. SFA will pay Vendor for snacks that meet FFVP requirements and are prepared and delivered in accordance with the contract. Payment will be made on the following basis (check one):

- Fixed price per snack \$ \_\_\_\_\_  
Percentage of fixed price that is administrative costs \_\_\_\_\_%
- Vendor certifies that less than 10 percent of amounts billed to SFA will be for administrative costs (ordering, planning menus, etc.)

NOTE: Neither the Minnesota Department of Education nor U.S. Department of Agriculture (USDA) assumes any liability for food payments to Vendor.

- b. Vendor will bill SFA as described (include frequency of billing): \_\_\_\_\_
- c. If the cost of a substituted food item provided to a student with a medical or special dietary need in accordance with Section IV exceeds the standard meal payment to Vendor shown above, SFA will reimburse Vendor for the additional costs if requested by Vendor and supported by documentation of the additional cost. Neither Vendor nor SFA may charge any additional amount to qualifying students who receive substitutions or modifications required by law or SFA policy.

**4. Substitutions and Modifications for Medical or Special Dietary Needs**

Vendor will substitute or modify food items for qualifying students as required by federal law (Section A below), and if required by SFA policies (Section B below).

If Vendor incurs additional costs for substitutions in accordance with Sections A and B below that exceed regular food costs, Vendor may request reimbursement from SFA for the additional costs, in accordance with Section III – Meal Charges and Billing. Neither Vendor nor SFA may charge any additional amounts to students who qualify for substitutions.

a. Substitutions or Modifications for Students with Disability – Federal Requirement

Vendor will provide substitutions to, or modifications of, foods as required by federal law for students who are documented by a physician to be unable to consume the regular foods due to a disability. A physician's statement must identify the student's disability, the major life activities affected by the disability, the food or foods to be omitted from the student's diet, and the food or choice of foods that must be substituted. The statement must be signed and dated by the physician and maintained on file.

b. Food Substitutions for Students without Disability (Optional)

If this box is checked, SFA has established a policy to offer food substitutions for students who do not have a disability but who are unable to eat the regular food due to medical or special dietary needs. Vendor will provide substitutions for students who do not have a disability upon the written request of a recognized medical authority (physician, physician's assistant, certified nurse practitioner, registered dietitian, licensed nutritionist, or chiropractor). The request must specify the food or foods to be omitted from the student's diet, the food or choice of foods that must be substituted, be signed and dated by the recognized medical authority, and be maintained on file.

**5. Ordering and Delivering**

a. SFA or sites will notify Vendor in advance of the number of snacks needed.

Vendor will use an organized system for receiving orders for delivery adjustments; documenting orders for delivery adjustments; adjusting production levels, if necessary; ensuring that delivery receipts are changed to reflect adjusted food orders; and ensuring that adjusted orders for each site are correctly packaged and loaded for delivery.

Indicate deadline(s) for SFA or sites to send orders (such as by a set time on the previous day or the same day of the meal service) and how notice will be provided, by e-mail, telephone or in person. Indicate timeline(s) for increasing and decreasing an order that has been made. If more than one site, indicate any differences between sites.

Describe here, or reference here to attached information:

b. Vendor will deliver snacks as described. Include time(s) for each site.

(For each snack service, indicate time that meal will be delivered or picked up by SFA. If more than one site, indicate for each site.) Describe here, or reference here to attached information:

c. Responsibility for transport containers:

(Indicate whether Vendor or SFA will be responsible for cleaning transport containers and, if applicable, schedule for Vendor to pick up or SFA/Site to return transport containers. If more than one site, indicate any differences between sites.)

Describe here, or reference here to attached information:

## **6. Recordkeeping and Availability of Records**

- a. Vendor agrees to maintain full and accurate records, which SFA needs to meet its responsibility for claiming reimbursements through FFVP. Required records include: 1) daily menu records, 2) daily number of snacks or quantities of food items provided to SFA.
- b. At the end of each month, Vendor will submit copies of the records of menus and numbers of snacks or quantities of food item.
- c. Vendor agrees that books and records pertaining to Vendor's food service fund will be made available to SFA upon request and agrees to retain all records for inspection and audit by representatives of SFA, Minnesota Department of Education, USDA, and U.S. General Accounting Office, at any reasonable time and place for a period of three (3) years after the final payment for the contract, except that in circumstances where audit findings have not been resolved the records must be retained beyond the three-year period until resolution of the audit.

## **7. Health and Sanitation**

- a. Vendor and SFA agree that state and local health and sanitation requirements will be met at all times. Vendor will meet all state and local health regulations that apply to SFA facilities and any other facilities in which foods are prepared. Vendor will maintain applicable health certifications for facilities outside SFA in which foods are prepared.
- b. All food will be properly stored, prepared, packaged and transported free of contamination and at appropriate temperatures.
- c. SFA will not pay for snacks that are unwholesome or spoiled at time of delivery.

## **8. SFA Control of Food Service**

SFA will maintain overall responsibility for administration of the food service. SFA will:

- a. Retain control of the quality, extent and general nature of the food service, including counting the numbers of reimbursable snacks and claiming FFVP reimbursement from the Minnesota Department of Education.
- b. Retain control of the nonprofit food service account and overall financial responsibility for the nonprofit food service operation.
- c. Ensure that the food service operation is in conformance with SFA's agreement with the Minnesota Department of Education to participate in FFVP.

- d. Maintain all applicable health certifications for SFA and assure that all state and local health regulations are being met by Vendor, if preparing or serving snacks at a SFA facility.
- e. Monitor vended snacks to ensure the food service is in conformance with program regulations.
- f. Retain signature authority on the FFVP agreement with the Minnesota Department of Education. Retain signature authority for the annual FFVP application and monthly FFVP claims by electronically submitting required information to the Minnesota Department of Education.
- g. Prepare contract documents for vended snacks.

## **9. Additional Vendor Responsibilities**

Vendor agrees to comply with the following requirements:

- a. Buy American domestic commodities and products for vended snacks to the maximum extent practicable. Domestic products are those that are produced in the United States and those that are processed in the United States substantially (51 percent or more) using agricultural commodities produced in the United States.
- b. Comply with the following, as applicable, incorporated into this contract by reference:
  - 1) All applicable parts of state energy conservation standards (Minn. R. Chapter 216C) and the Minnesota Energy Code (Minn. R. Chapter 7670).
  - 2) The requirements established in USDA regulations concerning USDA rights to copyrights, patent rights and rights in data and reporting of discoveries and inventions.
  - 3) If contract exceeds \$2,500: Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by the U.S. Department of Labor regulations (29 CFR Part 5).
  - 4) If contract exceeds \$10,000: Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in the U.S. Department of Labor regulations (41 CFR Part 60).
  - 5) If contract exceeds \$150,000: All applicable standards, orders and requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and the U.S. Environmental Protection Agency (EPA) regulations (40 CFR Part 15) which prohibit the use of facilities included on the EPA List of Violating Facilities. Contractor will report all violations to the grantor agency and to the EPA Administrator for Enforcement (EN-329).

## **10. Nonperformance or Noncompliance**

In cases of nonperformance or noncompliance on the part of Vendor, Vendor will pay SFA for any excess costs which SFA may incur by obtaining snacks from another source. SFA will notify Vendor of specific instances of unsatisfactory performance. If Vendor does not immediately take corrective action, SFA may negotiate another contract. Vendor in default is liable for any difference in price between the original price and the new contract price.

## 11. Termination

Either party may terminate this contract by notice in writing. The number of days required for notice of termination is \_\_\_\_\_.

## 12. Vendor Certification Statements

Check one:

- The contract is for less than \$25,000 – No additional certification statements from Vendor are required.
- The contract is for more than \$25,000 but does not exceed \$150,000. Vendor has completed and attached a signed Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower-tier Covered Transactions form.
- The contract exceeds \$150,000. Vendor has completed and attached (1) the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower-tier Covered Transactions form, (2) the Certification Regarding Lobbying form, and (3) if applicable as described on the Certification Regarding Lobbying form, the Disclosure of Lobbying Activities form.

## 13. Additional Provisions at Option of SFA and Vendor

Describe additional nonfinancial provisions here, or reference here to additional attached nonfinancial provisions:

**Signatures**

SFA Name: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_

Vendor Name: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

Date: \_\_\_\_\_

## INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT FORM

The Certification Regarding Debarment form on the following page must be signed by Vendor if the contract is for \$25,000 or more.

1. By signing and submitting this form, the prospective lower-tier participant is providing the certification set out on the certification form in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower-tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower-tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower-tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower-tier covered transaction," "participant," "person," "primary-covered transaction," "principal," "proposal" and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted to obtain a copy of those regulations.
5. The prospective lower-tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower-tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower-tier Covered Transactions," without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower-tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Excluded Parties List System (EPLS) at <http://epls.arnet.gov/>.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies as appropriate, including suspension and/or debarment.



## **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER-TIER COVERED TRANSACTIONS**

This certification must be signed by Vendor if the contract is for \$25,000 or more.

This certification is required by the regulations implementing Executive Order 12549, Executive Order 12689, and 31 U.S.C. 6101; Debarment and Suspension, 2 CFR Part 417, Subpart C, Responsibilities of Participants Regarding Transactions.

Read instructions on previous page before completing certification.

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

Vendor Name: \_\_\_\_\_

Award Number or Project Name: Fresh Fruit and Vegetable Program

Name and Title of Authorized Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **CERTIFICATION REGARDING LOBBYING**

This certification must be signed by Vendor if the contract is for \$150,000 or more. The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a federal contract, the making of any federal grant, the making of a federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment or modification of a federal contract, grant, loan or cooperative agreement;
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions;
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$150,000 for each such failure.

Vendor Name: \_\_\_\_\_

Award Number or Project Name: Fresh Fruit and Vegetable Program

Name and Title of Authorized Representative: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_