



**Request for Proposal**

REQUEST FOR PROPOSALS  
FOR OPERATION AND MANAGEMENT  
OF THE SCHOOL FOOD SERVICE PROGRAM  
FOR PHOENIX CHARTER ACADEMY- Lawrence

**Location**

15 Union St., Lawrence, MA 01840

**Proposal Due Date: Friday, June, 23, 2023 5:00 PM EST**

**Point of Contact**

Denise Valdes, Food Service Director  
65 Lincoln St., Lawrence, MA 01109  
dvaldes@phoenixcharteracademy.org - (617) 548-6624



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## SECTION 1: INTRODUCTION

### 1.1 Introduction

Phoenix Charter Academy- Lawrence is soliciting Proposals for the Operation and Management of the School Food Service Program for their campus in the 2023-2024 School Year. The term of the contract will be for one (1) year with four (4) options of one-year renewals for up to a total of five (5) years. Proposals must be submitted on or before **Friday, June, 23, 2023 5:00 PM EST.**

Phoenix Charter Academy- Lawrence, the School Food Authority (SFA), will award the contract to the most advantageous proposal from a responsible and responsive offer or, taking into consideration both the price and the evaluation criteria set forth. Phoenix Charter Academy- Lawrence reserves the right to waive any informality in any proposal and to reject any or all proposals that do not meet the minimum criteria that will be used to evaluate the proposals. Phoenix Charter Academy- Lawrence also reserves the right to reject any or all proposals if it determines it to be in the best interest of Phoenix Charter Academy- Lawrence To do so. Bid documents may be obtained from **Denise Valdes, Food Service Director** (dvaldes@phoenixcharteracademy.org).

**SUBMISSION DUE DATE: Friday, June, 23, 2023 5:00 PM EST**

### 1.2 About Phoenix Charter Academy- Lawrence

Phoenix Charter Academy Lawrence challenges resilient, disconnected students with rigorous academics and relentless support, so they take ownership of their futures and succeed in high school, college and as self-sufficient adults. Our school is part of the free public school system and enrollment is open to all students.

In the 2023 - 2024 school year, Phoenix Charter Academy- Lawrence will enroll students at our main campus.

- **15 Union Street, Lawrence MA 01840**
  - 150 students, Grades 9 - 12



### 1.3 Schedule of Events

The schedule of events set out herein represents Phoenix Charter Academy- Lawrence’s schedule that will be followed. Phoenix Charter Academy- Lawrence Reserves the right to adjust the proposed dates on an as needed basis with or without notice.

Description	Date	Time
RFP released (including COMMBUYS, media, Phoenix Charter Academy- Lawrence website)	06/7	
Deadline for written questions sent to the Point of Contact	06/16	
Deadline for written question responses shared with all bidders	06/21	
Proposal due	06/23	
Delivery of meals for Phoenix Charter Academy- Lawrence taste tests to: <u>10 units</u> 15 Union St, Lawrence, MA 01840	06/14	
Final Evaluation, 9AM - 12PM	06/27	
Notice of Intent to Award	06/28	
Unexecuted agreement shared with Department of Elementary and Secondary Education (DESE)	7/1	
Contractor begins work (on or around)	7/1	



## SECTION 2: GENERAL INFORMATION

### 2.1 School Information

Campus	Phoenix Charter Academy- Lawrence- 15 Union Street Lawrence, MA 01840
Grades Served	9- 12
Estimated Enrollment Fall '23	150
Meals Offered	Breakfast Lunch Snack*
Estimated Breakfast Times	8:30 - 10:30 A.M.
Estimated Lunch Times	12:00 - 12:30 P.M. (subject to change)
Service Days	190 school days, Monday - Friday

*\*Grades 9 - 12, may serve a midday snack that is not reimbursed via NSLP.*

Please review the current draft of the Phoenix Charter Academy- Lawrence academic calendar, [linked here](#). This calendar is subject to change.



**2.2 Scope of Work**

Phoenix Charter Academy- Lawrence is seeking an organization that is familiar with the following programs:

- The National School Lunch Program (NSLP)
- Community Eligibility Provision (CEP)

The ideal food vendor will meet the following qualifications:

<p><b>High Quality Food &amp; Menu Items</b></p>	<ul style="list-style-type: none"> <li>● Fresh food</li> <li>● At least one fresh vegetable option with every lunch</li> <li>● At least one fresh fruit option with every breakfast, lunch, and supper meal; no canned or frozen fruits</li> <li>● No partially or fully hydrogenated oils</li> <li>● No artificial trans fats</li> <li>● No deep fried foods</li> <li>● Whole foods &amp; ingredients, no overly processed foods; whole grains</li> <li>● Foods with little or no added sugar</li> <li>● No artificial colors, flavors, or sweeteners</li> <li>● Meat free from sodium nitrates and/or nitrates</li> <li>● No animal by-products</li> <li>● No mechanically separated meats (aka “pink slime”)</li> <li>● No rBST hormones in milk</li> <li>● No BHA &amp; BHT</li> </ul>
<p><b>An Inclusive Menu</b></p>	<ul style="list-style-type: none"> <li>● A fully pork, fish, &amp; nut free menu</li> <li>● Provide a daily vegetarian option</li> <li>● A comprehensive system for meeting other dietary needs including, but not limited to, egg-free, dairy-free, gluten-free, and soy-free diets; this system must include a safe &amp; transparent production process, safety checks, staff training, and labeling system</li> </ul>
<p><b>A Kid-Approved Menu</b></p>	<ul style="list-style-type: none"> <li>● Meals must be delicious &amp; visually appealing</li> <li>● Vendor actively seeks &amp; implements feedback from students &amp; families on a regular basis</li> </ul>
<p><b>Full Compliance</b></p>	<ul style="list-style-type: none"> <li>● All meals are produced, chilled, and delivered in compliance with the highest food safety standards.</li> <li>● All meals offered are fully NSLP compliant. All menus are fully NSLP compliant.</li> </ul>

	<ul style="list-style-type: none"> <li>● A fresh fruit and vegetable option is provided with every entree option, as required in offer vs. serve (OVS).</li> <li>● Low fat or nonfat milk is offered with every meal. A dairy free milk option is offered for students with documented allergies or intolerance.</li> <li>● Comply with all state, county and city health and sanitation requirements. Phoenix Charter Academy- Lawrence Reserves the right to inspect Vendor’s facilities at any time during the contract period.</li> <li>● Has valid all certifications and insurance documents.</li> </ul>
<b>Labor</b>	<ul style="list-style-type: none"> <li>● Servers maintain the utmost professionalism at all times with each other, Phoenix Charter Academy- Lawrence students, families, and staff.</li> <li>● Servers are receptive to feedback and consistently demonstrate a growth mindset.</li> <li>● Servers hold a ServSafe server certification, a ChokeSaver certification, and a MA Allergen certification in advance of their first day of work on Phoenix Charter Academy- Lawrence Campus.</li> <li>● Servers are fully trained in food safety, food storage, food preparation, and compliant meal service.</li> <li>● Servers are fully trained in how to safely order, store, prepare, and serve meals for students with special dietary needs or restrictions.</li> <li>● Servers consistently and accurately count meals for all meal periods and promptly share counts with Phoenix Charter Academy- Lawrence staff.</li> <li>● Servers accurately maintain all relevant records and materials pertaining to state compliance.</li> </ul>
<b>Support</b>	<ul style="list-style-type: none"> <li>● A dedicated point of contact for the account and/or a responsive customer service line that is available by phone and email during school nutrition hours (7:30 AM - 2:30 PM).</li> <li>● Meals are produced in and transported from a central kitchen that is no more than 90 minutes from our campus.</li> <li>● Necessary service products including, but not limited to, utensils, napkins, and meal trays are provided for purchase through the vendor.</li> <li>● All substitutions or menu changes are communicated in advance of service and in writing.</li> <li>● Prompt completion of unscheduled deliveries when there has been an error in delivery or a service emergency in order to ensure meal service can continue as scheduled.</li> </ul>
<b>Additional</b>	<ul style="list-style-type: none"> <li>● A demonstrated record of success in 9-12 public and/or public charter schools in the Lawrence and Western Massachusetts areas, demonstrated by an increase in participation over time and multiple positive references.</li> </ul>



### 2.3 Vendor Responsibilities

The Vendor shall be responsible for the following:

<p><b>Production through Delivery</b></p>	<ul style="list-style-type: none"> <li>● Produce high quality, diverse menu items appropriate for the entire Phoenix Charter Academy- Lawrence student body.</li> <li>● Weekly ordering of the number of meals needed for each day of the following week.</li> <li>● Deliver meals to location(s) at times specified.</li> <li>● Condition or care of meals until they are delivered to the school.</li> <li>● Provide the necessary utensils, napkins, and paper goods in sufficient quantity for the number of meals ordered.</li> <li>● Maintain the proper temperature of the breakfast, lunch, and snack components until they are delivered.</li> <li>● Provide Phoenix Charter Academy- Lawrence with sack or unitized lunches for field trips when requested. All meals for field trips must meet the appropriate meal pattern requirements.</li> </ul>
<p><b>Meal Service &amp; Food Safety</b></p>	<ul style="list-style-type: none"> <li>● Cook or reheat all meals to the correct temperature and ensure hot holding temperatures are at the correct levels, in accordance with the highest standards of food safety.</li> <li>● Service of meals to students, implement OVS for all students.</li> <li>● Maintain a clean and sanitary kitchen at all times.</li> </ul>
<p><b>Counting &amp; Compliance</b></p>	<ul style="list-style-type: none"> <li>● Accurately count meals at each service window and communicate counts in a manner determined by the Director of Operations or his/her designee.</li> <li>● Take &amp; record daily temperature checks for both food products and equipment.</li> <li>● Maintain all appropriate records, including but not limited to delivery &amp; production records, temperature logs, hand washing logs, etc.</li> <li>● Participate in any Department of Health inspection and/or compliance reviews with DESE.</li> <li>● Maintain all necessary records on the nutritional components and quantities of the meals served at Phoenix Charter Academy- Lawrence And make said records available for inspection by State and Federal authorities upon request.</li> </ul>
<p><b>Customer Service</b></p>	<ul style="list-style-type: none"> <li>● Respond promptly to communication from Phoenix Charter Academy- Lawrence Regarding meal service.</li> </ul>



	<ul style="list-style-type: none"> <li>● Provide a dedicated point of contact for the account and/or a responsive customer service line that is available by phone and email during school nutrition hours (7:30 AM - 2:30 PM).</li> <li>● Provided to Phoenix Charter Academy- Lawrence No later than one (1) week prior to the end of each month, a monthly menu covering the meals to be served for the following month, including all menu items for dietary restrictions.</li> <li>● Communicate all substitutions or menu changes in advance of service and in writing.</li> <li>● Promptly complete necessary unscheduled deliveries when there has been an error with an original delivery or a service emergency.</li> </ul>
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**2.4 Payment for Goods & Services Rendered**

Phoenix Charter Academy- Lawrence will commit to prompt payment of invoices to the vendor using net 30 terms.

- No payment will be made for meals that are spoiled or unwholesome at time of service, do not meet the specifications, or do not otherwise meet the requirements of the agreement. No deduction will be made unless Phoenix Charter Academy- Lawrence provides written notification of the meal service for which the deduction is to be made, specifying the number of meals for which we intend to deduct payment and setting forth the reasons for the deduction. Phoenix Charter Academy- Lawrence will provide such notice no later than three (3) business days after the date the meal was served.
- If any invoices presented for payment are not paid within the number of days specified, the charges from the invoice may be subject to a late fee, the terms to be outlined in the contract. All late fees will be paid from Phoenix Charter Academy- Lawrence’s general fund, not food service account funds.



## SECTION 3: PROPOSAL SPECIFICATIONS

### 3.1 Contract Period

The contract period will be July 1, 2023 through June 30, 2024, with the option to renew up to four (4) one-year contracts.

- Renewal 1: 2024 - 2025
- Renewal 2: 2025 - 2026
- Renewal 3: 2026 - 2027
- Renewal 4: 2027 - 2028

### 3.2 Proposals Must Include

*Failure to submit any of the components listed below by the stated deadline of **Friday, June 23, 2023 at 5:00 PM EST** may result in a vendor being disqualified from the selection process.*

Category	Requirements
Commitment to Diversity, Equity, and Inclusion	<input type="checkbox"/> A statement demonstrating the bidder’s commitment to diversity, equity, and inclusion and how this commitment is enacted in daily practices & policies
Pricing	<input type="checkbox"/> Cost per meal (breakfast, lunch, snack) <input type="checkbox"/> Cost of any necessary storage or service equipment <input type="checkbox"/> Cost for labor (daily and/or hourly rate) <input type="checkbox"/> Estimated value of the contract based on enrollment, calendar, etc.  <b>Price Adjustment Clause</b> Should it become necessary or proper during the term of the contract to make any changes that will increase price, Phoenix Charter Academy- Lawrence must be notified immediately. Price increases must be approved by Phoenix Charter Academy- Lawrence and no payment for additional meals, equipment, or services (beyond the amount stipulated in the Contract) shall be paid without prior approval. All price increases must be supported by manufacturer documentation or a formal cost justification letter. Vendors must honor previous prices for thirty (30) days after approval and written notification from Phoenix Charter Academy- Lawrence. It is the vendor’s responsibility to keep all pricing up to date and on file with Phoenix Charter Academy- Lawrence. Price reductions may be offered at any time during the contract. Vendors shall offer Phoenix Charter Academy- Lawrence any published price reduction during the Contract term.

References	<input type="checkbox"/> At least 2 professional references, at least 1 from grade 9-12 schools of comparable size to Phoenix Charter Academy- Lawrence within Massachusetts <ul style="list-style-type: none"> <li><input type="checkbox"/> References should be from schools or partners serviced within between 2021 and the present day</li> <li><input type="checkbox"/> References must include a current &amp; accurate phone number and email address</li> </ul>
Menus & Menu Feedback	<input type="checkbox"/> Sample 21-day cycle menus (3 or more) for breakfast, lunch, and snack, including nutritional information showing compliance with federal and state meal program requirements. <ul style="list-style-type: none"> <li><input type="checkbox"/> At least one general menu, one menu appropriate for vegetarian students, one menu appropriate for students with a dairy allergy or intolerance.</li> </ul> <input type="checkbox"/> Sample form or survey collecting menu or menu item feedback from students and/or families
Meal Tasting (see section 3.4)	<input type="checkbox"/> Delivery of 2 regular entree selections from the lunch menu on <b>6/14/23</b> between 1 and 3 PM, produced for consumption on <b>6/13/23</b> ; Phoenix Charter Academy- Lawrence Will store all meals. <ul style="list-style-type: none"> <li><input type="checkbox"/> one selection must be the regular pizza offering</li> <li><input type="checkbox"/> one selection may be a menu item of your choosing</li> <li><input type="checkbox"/> both selections must be appropriate for families to heat in a home oven and/or microwave</li> </ul> <input type="checkbox"/> Deliveries should NOT include fruit, vegetables, or milk unless these components are unitized in the packaging of the primary menu item <input type="checkbox"/> Deliveries should include instructions for safely reheating menu items at home <input type="checkbox"/> Deliveries must include <b>10 units</b> of each selection to Phoenix Charter Academy- Lawrence
Organization Profile	<input type="checkbox"/> A description of the bidder & its operating principles. <input type="checkbox"/> An outline of the duration and extent of experience in the operation of public and public charter school meal services, particularly in Western Massachusetts.
Description of Services	<input type="checkbox"/> Menu development rationale

	<input type="checkbox"/> How orders for meals, condiments, paper goods, and other necessary materials are placed <input type="checkbox"/> How servers are hired, managed, and evaluated <input type="checkbox"/> Equipment needed to safely serve meals and ability to provide or source said equipment <input type="checkbox"/> Customer service structures, procedures, and personnel <input type="checkbox"/> Additional available services
Compliance	<input type="checkbox"/> A copy of current permits & health certifications for the food service facility in which it prepares meals for the NSLP <input type="checkbox"/> Proof of liability insurance <input type="checkbox"/> Proposed indemnity language <input type="checkbox"/> Buy American Provision (sample language included in <a href="#">Section 5.3</a> )
For annual contracts in excess of \$150,000	<input type="checkbox"/> Certificate of Independent Price Determination <input type="checkbox"/> Certification Regarding Debarment, Suspension, and Ineligibility <input type="checkbox"/> Certification Regarding Lobbying <input type="checkbox"/> Disclosure of Lobbying Activities
<ul style="list-style-type: none"> <li>● Organizations must submit any other materials/supplies not listed above that demonstrate capacity to fulfill the requirements of this bid.</li> <li>● Duly authorized representatives of Phoenix Charter Academy- Lawrence, the MA Department of Elementary and Secondary Education, and/or the United State Department of Agriculture reserve the right to access any books, documents, papers, and/or records of the bidder which are directly pertinent to all negotiated contracts</li> </ul>	

### 3.3 Proposals May Include

- Tour of production & distribution facilities between June 12 & June 16, at the invitation of the bidder
- Any other materials/supplies not listed above that demonstrate capacity to fulfill or exceed the requirements of this bid

### 3.4 Tasting Logistics

Phoenix Charter Academy- Lawrence centers co-authorship of our school experience with our families and students. Families are an integral part of our selection process and must have the opportunity to taste the food that will ultimately be offered to our students. Vendors who do not submit meals for our family tasting event will be automatically disqualified from our selection process.

Tasting Logistics	
WHO	<ul style="list-style-type: none"> <li>● Each bidder will deliver entree selections from the regular lunch menu; selections should be appropriate for the general student population</li> <li>● Phoenix Charter Academy- Lawrence will organize and distribute menu selections to families for taste testing and ratings</li> </ul>
WHAT	<ul style="list-style-type: none"> <li>● Meals must be produced for consumption on <b>June 13, 2023</b>; Phoenix Charter Academy- Lawrence will store all meals <ul style="list-style-type: none"> <li>○ one selection must be the regular pizza offering</li> <li>○ one selection may be a menu item of your choosing</li> <li>○ both selections must be appropriate for families to heat in a home oven and/or microwave</li> </ul> </li> <li>● Deliveries should NOT include fruit, vegetables, or milk unless these components are unitized in the packaging of the primary menu item</li> <li>● Deliveries should include instructions for safely reheating menu items at home</li> </ul>
WHEN	<ul style="list-style-type: none"> <li>● Meals must be delivered on <b>6/14/23</b> between 1PM and 3PM</li> </ul>
WHERE	<p><u><b>10 units of each selection</b></u> 15 Union Street Lawrence, MA 01840</p>
HOW	<ul style="list-style-type: none"> <li>● Families will taste meals, provide feedback, and rank all participating vendors using this <a href="#">survey</a>.</li> </ul>



## SECTION 4: SELECTION OF VENDOR

### 4.1 Selection Criteria

The selection of a vendor shall be based upon the following criteria. Bids are awarded to the most advantageous bidder with price as the primary factor among factors considered.

- Proposed price (20%)
- Confidence in the provider (20%)
- Cultural responsiveness & menu appeal (20%)
- Tasting performance (20%)
- Description of services (10%)
- Compliance with RFP specifications & deadlines (10%)

Phoenix Charter Academy- Lawrence retains the right to terminate services if the service is unsatisfactory.

Phoenix Charter Academy- Lawrence reserves the right to reject all proposals.

### 4.2 Submission

Interested vendors must submit 1 copy of their response to this Request for Proposal via email no later than **Friday, June, 23, 2023 at 5:00 PM EST** at 5 PM EST. Late proposals will not be considered under any circumstances. All proposals, including all supporting documentation, must be submitted via email to Denise Valdes at [dvaldes@phoenixcharteracademy.org](mailto:dvaldes@phoenixcharteracademy.org).

Vendors are requested to submit any questions regarding the RFP in writing to Denise Valdes at [dvaldes@phoenixcharteracademy.org](mailto:dvaldes@phoenixcharteracademy.org) no later than June 16, 2023 at 5PM. Once proposals are reviewed, vendors may be contacted for a follow up interview and/or oral presentation.

Submittals must be valid for 60 days following the submission deadline.

### 4.3 Notice of Intent to Award

Vendors will be notified of their acceptance or rejection by 5PM on June 28, 2023 via email and/or phone call.

### 4.4 Bid Protest Procedure

A vendor who is aggrieved by the solicitation, evaluation, or award of a contract by Phoenix Charter Academy- Lawrence, hereinafter referred to as the Protesting Party, may file a formal protest with the Food Service Director. Such protests must be in writing and received, in hard copy, at 15 Union Street no



later than July, 5 2023 at 5PM. Protests may be mailed or delivered by the Protesting Party to Phoenix Charter Academy- Lawrence and other Interested Parties. For the purposes of this section, "Interested Parties" means all vendors who have submitted bids or proposals for the applicable contract. The protest must be mailed or delivered to Interested Parties contemporaneously with filing the protest with Phoenix Charter Academy- Lawrence.

1. In the event of a timely protest or appeal under this section, Denise Valdes of Phoenix Charter Academy- Lawrence makes a determination that the award of the contract or implementation of the contract without delay are necessary to protect the best interests of Phoenix Charter Academy- Lawrence.
2. A formal protest must be sworn and, under the penalties of perjury, contain:
  1. a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;
  2. a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection;
  3. a precise statement of the relevant facts;
  4. an identification of the issue or issues to be resolved; and
  5. argument and authorities in support of the protest.
3. To be considered timely, the protest must be filed:
  1. by the end of the posted solicitation period, if the protest concerns the solicitation documents or actions associated with the publication of solicitation documents; or
  2. no later than July, 5 2023 at 5PM, if the protest concerns the award.
4. If Phoenix Charter Academy- Lawrence determines that it may need to utilize the services of an actuary, consultant, or another professional (Professional Services) in its efforts to resolve the protest, the Protesting Party shall be required to post a bond in an amount no less than the estimated cost to Phoenix Charter Academy- Lawrence for such Professional Services. The amount of the bond shall be determined in the sole discretion of Phoenix Charter Academy- Lawrence. The Protesting Party shall post the bond within five calendar days of notice from Phoenix Charter Academy- Lawrence that such bond is required or shall be deemed to have waived the right to protest.
  1. If such Professional Services are utilized by Phoenix Charter Academy- Lawrence and the bid protest is not finally resolved in favor of the Protesting Party, the Protesting Party shall be required to forfeit its bond.
  2. If such Professional Services are not utilized by Phoenix Charter Academy- Lawrence and/or the bid protest is finally resolved in favor of the Protesting Party, the Protesting Party's bond shall be returned to the Protesting Party after final resolution of the bid protest.
5. The Food Service Director of Phoenix Charter Academy- Lawrence may accept written responses to the protest from Interested Parties and Phoenix Charter Academy- Lawrence staff.
6. The Executive Director and the Food Service Director may confer with the General Counsel of Phoenix Charter Academy- Lawrence in their review of the protest.



7. The Executive Director of Phoenix Charter Academy- Lawrence shall have the authority to settle and resolve the protest.
8. If the protest is not resolved by mutual agreement, the Executive Director of Phoenix Charter Academy- Lawrence will issue a written determination on the protest.
  1. If the Executive Director of Phoenix Charter Academy- Lawrence determines that no violation of rules or statutes has occurred, he/she shall inform the Protesting Party and Interested Parties by letter that sets forth the reasons for the determination.
  2. If the Executive Director of Phoenix Charter Academy- Lawrence determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he/she shall so inform the Protesting Party and Interested Parties by letter which sets forth the reasons for the determination and the appropriate remedial action.
9. A decision issued in writing by the Executive Director of Phoenix Charter Academy- Lawrence shall be the final administrative action of Phoenix Charter Academy- Lawrence, and no further appeal shall be permitted.



## SECTION 5: COMPLIANCE

### 5.1 Formal Procurement Section, Question 8: Did the Invitation for Bid or Request for Proposal include the following clauses, as applicable: [Appendix II to 2 CFR 200/7 CFR 3019.48]

- a) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- b) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- c) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- d) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay



wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- e) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- f) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- g) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.



- h) Cost reimbursable contracts (7 CFR 210.21(f)) – Required provisions: The school food authority must include the following provision in all cost reimbursable contracts, including contract with cost reimbursable provision, and in solicitation documents prepared to obtain offers for such contracts:
- a. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;
  - b.
    - i. The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or
    - ii. The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;
  - c. The contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;
  - d. The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;
  - e. The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and
  - f. The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.
- i) No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include the requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.
- j) **General.** Any school food authority (including a State agency acting in the capacity of a school food authority) may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless



the company agrees to offer free, reduced price and paid reimbursable lunches to all eligible children. Any school food authority that employs a food service management company in the operation of its nonprofit school food service shall:

- (1) Adhere to the procurement standards specified in [§ 210.21](#) when contracting with the food service management company;
- (2) Ensure that the food service operation is in conformance with the school food authority's agreement under the Program;
- (3) Monitor the food service operation through periodic on-site visits;
- (4) Retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals;
- (5) Retain signature authority on the State agency-school food authority agreement, free and reduced price policy statement and claims;
- (6) Ensure that all federally donated foods received by the school food authority and made available to the food service management company accrue only to the benefit of the school food authority's nonprofit school food service and are fully utilized therein;
- (7) Maintain applicable health certification and assure that all State and local regulations are being met by a food service management company preparing or serving meals at a school food authority facility;
- (8) Establish an advisory board composed of parents, teachers, and students to assist in menu planning;
- (9) Obtain written approval of invitations for bids and requests for proposals before their issuance when required by the State agency. The school food authority must incorporate all State agency required changes to its solicitation documents before issuing those documents; and
- (10) Ensure that the State agency has reviewed and approved the contract terms and that the school food authority has incorporated all State agency required changes into the contract or amendment before any contract or amendment to an existing food service management company contract is executed. Any changes made by the school food authority or a food service management company to a State agency pre-approved prototype contract or State agency approved contract term must be approved in writing by the State agency before the contract is executed. When requested, the school food authority must submit all procurement documents, including responses submitted by potential contractors, to the State agency, by the due date established by the State agency.



## 5.2 Federal Requirements

1. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

## 5.3 Buy American Provision

Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 requires schools participating in the National School Breakfast and Lunch Programs in the contiguous United States to purchase, to the maximum extent practicable, domestic commodities or product for use in the meals served under these programs. The legislation defines "domestic commodity or product" as one that is produced in the United States and is processed in the United States substantially using agricultural commodities that are produced in the United States.

"Substantially" means that over 51% of the final processed product consists of agricultural commodities that were grown domestically. These provisions apply to all funds in the food service account and not just federal reimbursements.

Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request. To be considered for the alternative or exception, the request must be submitted in writing to a designated official, a minimum of \_\_\_ day (s) in advance of delivery. The request must include the:

- a) Alternative substitute (s) that are domestic and meet the required specifications:
  - i) Price of the domestic food alternative substitute (s); and
  - ii) Availability of the domestic alternative substitute (s) in relation to the quantity ordered.
- b) Reason for exception: limited/lack of availability or price (include price):
  - iii) Price of the domestic food product; and
  - iv) Price of the non-domestic product that meets the required specification of the domestic product.



#### **5.4 State Energy Plan Compliance**

All bidders must recognize all current mandatory standards/policies related to energy efficiency contained in the State Energy Plan issued in compliance with the Energy Policy and Conservation Act (PL 94-165).

#### **5.5 Statement of Non-Collusion**

By Submission of the Bid or Proposal, the Bidder Certifies that:

- 1) This bid or proposal has been independently arrived at without collusion with any other competitor or potential competitor;
- 2) This bid proposal has not been knowingly disclosed and will not be knowingly disclosed prior to the opening of bids or proposals for this project, to any other bidder, competitor, or potential competitor;
- 3) No attempt has been made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal;
- 4) The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties of perjury, affirms the truth thereof, such penalties being applicable to the bidder as well as to the person signing in its behalf;
- 5) That attached hereto (if a corporate bidder) is a certified copy of a resolution authorizing the execution of the certificate by the signatory of this bid or proposal on behalf of the corporate bidder.