

GENERAL INFORMATION

A. INTENT

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

B. PROCUREMENT METHOD

The contract awarded will be a **cost reimbursable contract**.

1. For a fixed price contract, the contract is awarded to the bid with the combined lowest price per meal.
2. For a cost reimbursable contract, the bid must be submitted in two parts: a guaranteed price per meal/meal equivalent and a written presentation. The guaranteed price per meal may be weighted as 50% or more of the evaluation criteria while the presentation must be weighted as less than 50%. Evaluation criteria and method are shown on Bid Point Calculator and Evaluation Criteria.

C. BID SUBMISSION AND AWARD

1. Sealed bids/proposals are to be submitted to **Dr. James Avery, Ed.D., Superintendent**. Bids/proposals will not be accepted after **2:00 p.m. on Friday, March 3, 2006**. Bid/proposal is to be submitted in a sealed envelope marked "Food Service Management Bid."
2. The SFA reserves the right to reject any or all bids, if deemed to be in the best interest of the SFA.
3. To be considered, each bidder must submit a complete response to this solicitation using the forms provided.
4. Awards shall be made to the qualified and responsible bidder whose bid is responsive to this solicitation. A responsible bidder is one whose financial, technical, and other resources indicate an ability to perform the services required by this solicitation.
5. Bidders or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting bids; failure to do so will be at the bidder's own risk and he/she cannot secure relief on the plea of error.
6. **If additional information is required, please contact Dr. James Avery, Ed.D., Superintendent at (506) 749-5123.**

D. INCURRED COSTS

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

E. CONTRACT TERMS

This contract shall be for a period of one year beginning on or about **July 1, 2006 and ending June 30, 2007**, with up to four one-year renewals, with mutual agreement between the SFA and the FSMC.

Fee Adjustments. Renegotiation of the administrative and management fees charged to the SFA in subsequent years of the agreement must not increase during the term of this contract.

F. PRE-BID MEETING

Interested bidders must meet to review the specifications, to clarify any questions, and for a walk-through of the facilities with school officials on **Friday, February 3, 2006 at 10:30 a.m. at the New Haven High School Library; 57700 Gratiot Avenue, New Haven, MI 48048**. Attendance is required.

G. LATE BIDS

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

H. BONDING REQUIREMENT

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

I. GIFTS FROM FSMC

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

J. SELECTION OF MANAGER

The SFA reserves the right to interview and approve the on-site food service manager.

K. EMPLOYEES

The current food service employees of the SFA will continue to be employed by SFA.

L. MEAL EQUIVALENTS

For the purpose of making the meal count computation, the number of lunches/breakfasts served to children shall be determined by actual count. The FSMC and SFA shall determine meal equivalents by dividing the net a la carte and catering revenue by the sum of the Federal free lunch reimbursement plus the value of USDA entitlement and bonus-donated foods. This equivalent factor will be used for the

optional years of contract renewal (maximum of 4). The revenue shall include catering sales, adult meals, and a la carte sales to students and adults **less sales tax**. If applicable, include revenue from vending machine sales as part of the a la carte revenue.

M. PAYMENT AND FEES

The following definitions are provided to clarify cost included in the **administrative cost** bid:

Centralized company administrative cost, profit, data processing, generalized marketing, training of management in company specific areas, and legal fees.

The following definitions are provided to clarify **allowable direct costs**:

Food is defined as and limited to those items purchased for use in the preparation and service of student, adult, catered and a la carte meals as specified under terms and conditions. This includes the cost of commodity handling and warehousing charges.

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

Contracted Services is cost incurred to pay for a service provided by another company. Typical cost would be: laundry services, pest control, and periodic maintenance services. Those costs normally recognized as a part of the FSMC administrative cost cannot be separately contracted for and charged to the SFA account.

Transportation Cost is cost incurred in operating a food service delivery vehicle. This would include gas, oil, tune-ups, and minor repairs. Cost of the purchase of a vehicle would be a capital expense.

Non-food Expenses are defined as paper supplies (including decorations), equipment rental, cleaning materials, travel as required for effective program management, uniforms, printing, taxes and licenses, insurance, and as contractually obligated herein. Products embossed with the FSMC logo are not to be considered allowable direct cost items.

Cost of Capital Equipment is the cost of purchasing equipment and installation of equipment exceeding \$5,000.00, which has had prior approval by the SFA.

Goods purchased become the property of the SFA, should not be company specific, and must be used solely to benefit the SFA. Reimbursement for cost of goods will be the actual purchases as documented by invoices less all discounts and rebates taken by the company. Where rebates are not made directly to the FSMC without designation to specific FSMC accounts, the FSMC will prorate the discount and credit the SFA.

STANDARD TERMS AND CONDITIONS

I. SCOPE AND PURPOSE

- A. The Food Service Management Company (FSMC) shall operate in conformance with the School Food Authority's (SFA) Agreement with the Michigan Department of Education (MDE) SM-4458 and attachments.
- B. The FSMC, as an independent contractor, shall have the exclusive right to operate the National School Lunch Program (NSLP), and/or School Breakfast Program (SBP), and/or Special Milk Program (SMP), and/or Summer Food Service Program (SFSP).
- C. The FSMC shall be an independent contractor and not an employee of the SFA. The employees of the FSMC are not employees of the SFA.
- D. The food service provided shall be operated and maintained as a benefit to the SFA's students, faculty, and staff.
- E. All income accruing as a result of payments by children and adults, federal and state reimbursements, and all other income from sources such as donations, special functions, grants, loans, etc., shall be deposited in the SFA's food service account. Any profit or guaranteed return shall remain in the SFA food service account. The SFA and the FSMC agree that this contract is neither a "cost-plus-a-percentage-of-income" nor a "cost-plus-a-percentage-of-cost" contract, as required under 7 CFR 210.16(c), 7 CFR 3016, and 7 CFR 3019.
- F. The SFA shall be legally responsible for the conduct of the food service program, and shall supervise the food service operations in such manner as will ensure compliance with the rules and regulations of the MDE and the United States Department of Agriculture (USDA) regarding each of the Child Nutrition Programs covered by this contract.
- G. The SFA shall retain control of the Child Nutrition Programs food service account and overall financial responsibility for the Child Nutrition Programs.
- H. The SFA shall establish all selling prices for reimbursable and non-reimbursable meals/milk and a la carte prices. Exception: Non-pricing programs need not establish a selling price for reimbursable meals/milk.
- I. The FSMC shall provide additional food service, such as banquets, parties, refreshments for meetings, etc, as requested by the SFA. The SFA or requesting organization will be billed for the actual cost of food, supplies, and labor; plus a mutually agreed upon mark up and the FSMC overhead and administrative expenses if applicable, for providing such service. USDA commodities shall not be used for these special functions.
- J. The FSMC shall cooperate with the SFA in promoting nutrition education and coordinating the SFA's food service with classroom instruction.

- K. The FSMC shall comply with the rules and regulations of the MDE and the USDA, and any additions or amendments thereto, including but not limited to, 7 CFR Parts 210, 215, 220, 245, and 250 and 225, if applicable; and Food and Nutrition Service instruction and policy, as applicable.
- L. The FSMC shall make substitutions in the food components of the meal pattern for students with disabilities when their disability restricts their diet, and those non-disabled students who are unable to consume regular lunch because of medical or other special dietary needs. Substitutions shall be made on a case-by-case basis when supported by a statement of the need for substitutes that includes recommended alternative foods, unless otherwise exempted by the Food and Nutrition Service, USDA. Such statement shall in the case of a student with a disability, be signed by a medical doctor or in the case of a non-disabled student, be signed by a recognized medical authority. There will be no additional charge to the student for such substitutions.

II. SIGNATURE AUTHORITY

- A. The SFA shall retain signature authority for the application/agreement to participate in the NSLP, and/or SBP, and/or SMP, and/or SFSP including, but not limited to the Year End Report SM-4012 (A and/or R), Application Renewal, the Verification of Application Form, and letters to the MDE to amend the application.
- B. The SFA shall retain signature authority for the Monthly Claim for Reimbursement, SM-4012-SL.

III. FREE AND REDUCED PRICE MEALS POLICY

- A. The SFA shall be responsible for the establishment and maintenance of the free and reduced price meals eligibility roster.
- B. The FSMC shall implement an accurate point of service meal/milk count using the meal counting system submitted by the SFA in its application to participate in the Child Nutrition Programs and approved by the MDE, as required under 7 CFR Part 210.8. Such meal/milk counting system must eliminate the potential for the overt identification of free and reduced price eligible students under 7 CFR Part 245.8. The SFA shall evaluate the monthly meal claim information submitted by the FSMC and verify that the information is accurate before submitting a claim for reimbursement using the Michigan Education Information System (MEIS).
- C. The SFA shall be responsible for the development, distribution, and collection of the parent letter and application for free and reduced price meals and/or free milk.
- D. The SFA shall be responsible for requesting a direct certification list from the MDE each year for use to determine eligibility for free meals without obtaining an application from the parent/guardian.
- E. The SFA shall be responsible for the determination of eligibility for free and reduced price meals and free milk and will not disclose confidential information to the FSMC that is not needed for meal counts from free and reduced price meal applications and/or the direct certification list, if used, as required under 7 CFR 210.16(a). The SFA will provide the FSMC with a list of children and their category of eligibility. This list must be updated when changes occur in a student's eligibility status.

- F. The SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free and reduced price meals and free milk.
- G. The SFA shall be responsible for verifying applications for free and reduced price meals, as required by federal regulations.
- H. The SFA shall be responsible for performing the annual on-site review.

IV. USDA DONATED FOOD

- A. Any USDA donated food received by the SFA and made available to the FSMC must accrue solely to the benefit of the SFA's non-profit school food and shall be fully utilized therein.
- B. The SFA shall retain title to all USDA donated food.
- C. The FSMC is prohibited from entering into any processing contracts utilizing USDA donated food on behalf of the SFA.
- D. The FSMC shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to, USDA donated food.
- E. The FSMC shall select, accept, and use USDA donated food in as large quantities as may be efficiently utilized in the SFA's non-profit food service, subject to approval of the SFA.
- F. The FSMC shall account for all USDA donated food separately from purchased food unless the SFA has chosen not to maintain a separate inventory. The FSMC is required to maintain accurate and complete records with respect to the receipt, use/disposition, storage, and inventory of USDA donated food. Failure by the FSMC to maintain the required records under this contract shall be considered prima facie evidence of improper distribution or loss of the USDA donated food.
- G. The FSMC shall have records available to substantiate that the full value of all USDA donated food is used solely for the benefit of the SFA.
- H. **If this is a fixed price contract**, the SFA must determine the existence of the proper pass through value of the USDA donated commodities, e.g., credits or reductions on the invoice in the month of utilization.

If this is a cost-based contract, the FSMC must provide the district with a copy of the quarterly *Recipient Entitlement Balance Report* from MDE.

In either case, the values are to be based on the values at the point the SFA receives the commodities from the State distributing agency and are to be based on the MDE Commodity Value Added Listing pertinent to the time period. This information is available from the Michigan Department of Education, Food Distribution Program.

- I. The FSMC is to properly credit the SFA's food service account monthly for all discounts, rebates,

and allowances received by the FSMC associated with the purchase of processed commodity products on behalf of the SFA as well as the full value of USDA-donated commodities. All costs charged to the SFA must be net of all discounts, rebates, and allowances received by the FSMC. The cost reduction shall be shown on the monthly invoice or operating statement as a credit or reduction in the amount billed to the SFA. In turn, the SFA must ensure that the food service account is being credited for these entitled benefits from USDA donated-commodities, purchase discounts, rebates, and allowances.

V. HEALTH CERTIFICATIONS

- A. The SFA shall maintain all applicable health certifications on its facilities and shall ensure that all state and local regulations are being met by the FSMC preparing or serving meals at any SFA facility.
- B. The FSMC shall maintain for the duration of the contract state and/or local health certifications for any facility outside the SFA in which it proposes to prepare meals and shall maintain this health certification for the duration of the contract as required under 7 CFR 210.16(c).

VI. MEALS

- A. The FSMC shall serve meals on such days and at such times as requested by the SFA.
- B. The SFA shall retain control of the quality, extent, and general nature of the food service.
- C. The FSMC shall offer free, reduced-price, and paid reimbursable meals to all eligible children participating in the SBP and/or NSLP.
- D. In order for the FSMC to offer a la carte food service, the FSMC must offer free, reduced-price, and paid reimbursable meals to all eligible children.
- E. The FSMC shall serve reimbursable lunches and breakfasts pursuant to the NSLP, where indicated on the enclosed *The School District Information* forms.
- F. The FSMC shall serve reimbursable milk pursuant to the SMP, where indicated on the enclosed *The School District Information* forms.
- G. The FSMC shall promote maximum participation in the Child Nutrition Programs.
- H. The FSMC shall provide the specified types of service in the schools/sites listed in *The School District Information* forms, which is hereby in all respects made a part of this contract.
- I. The FSMC shall sell on the premises only those foods and beverages authorized by the SFA and only at the times and places designated by the SFA.
- H. No payment will be made to the FSMC for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the SFA for each food component in the meal pattern, or do not otherwise meet the requirements of the contract.

VII. BOOKS AND RECORDS

- A. The FSMC shall maintain such records (supported by invoices, receipts, or other evidence) as the SFA will need to meet monthly reporting responsibilities and shall submit monthly operating statements in a format approved by the SFA no later than insert number of days calendar days of the succeeding month in which services were rendered. Participation records shall be submitted in a timely manner to facilitate claims submission no later than the tenth (10th) day of the succeeding month in which services were rendered. The SFA shall perform edit checks on the participation records provided by the FSMC prior to the preparation and submission of the claim for reimbursement.
- B. The FSMC shall maintain records at the SFA to support all allowable expenses appearing on the monthly operating statement. These records shall be kept in an orderly fashion according to expense categories.
- C. The SFA shall conduct an internal audit of food, labor, and other large expense items quarterly, as well as performing random audits on smaller expense categories.
- D. The SFA and the FSMC must provide all documents as necessary for the independent auditor, MDE Reviewers, or agents of USDA to conduct the SFA's single audit.
- E. Books and records of the FSMC pertaining to the Child Nutrition Program operations shall be made available, upon demand, in an easily accessible manner for a period of three (3) years from the end of the contract term (including renewals) to which they pertain, for audit, examination, excerpts, and transcriptions by the SFA and/or any state or federal representatives and auditors.
- F. If audit findings regarding the FSMC's records have not been resolved within the three (3) year record retention period, the records must be retained beyond the three (3) year period, for as long as required for the resolution of the issues raised by the audit.
- G. The FSMC shall not remove state or federal required records from SFA premises upon contract termination.
- H. The SFA shall conduct a quarterly internal review of all records and documentation associated with the procurement of food and non-food items to ensure that the FSMC is complying with all applicable competitive procurement procedures according to 7 CFR Parts 3016 and 3019. The FSMC is to properly credit the SFA's food service account monthly for all discounts, rebates, and allowances received by the FSMC from the purchase of goods and services on the behalf of the SFA.

All costs charged to the SFA must be net of all discounts, rebates, and allowances received by the FSMC. This cost reduction shall be shown on the monthly invoice or operating statement as a credit or reduction to the amount billed to the SFA. In turn, the SFA must ensure that the food service account is being credited for these entitled discounts, rebates, and allowances.

- I. The FSMC shall surrender to the SFA upon termination of the contract all records pertaining to the operation of the food service, to include all food and non-food inventory records, menus, production

records, product invoices, claim documentation, financial reports, and procurement documentation. The records shall be in appropriate order and complete to the extent necessary to reconstruct individual cost of prior FSMC billings.

VIII. EMPLOYEES

- A. The SFA shall have final approval authority regarding the hiring of the FSMC's site manager.
- B. The FSMC shall comply with all wage and hours of employment requirements of federal and state laws. The FSMC shall be responsible for supervising and training personnel, including SFA employed staff. Supervision activities include employee and labor relations, personnel development, and hiring and termination of FSMC management staff, with the exception of the site manager. The FSMC shall also be responsible for the hiring and termination of non-management staff who are employees of the FSMC.
- C. The FSMC shall provide Workers' Compensation coverage for its employees.
- D. The FSMC shall instruct its employees to abide by the policies, rules, and regulations, with respect to use of the SFA's premises as established by the SFA and which are furnished in writing to the FSMC.
- E. The FSMC shall maintain its own personnel and fringe benefits policies for its employees, subject to review by the SFA.
- F. Staffing patterns, with the exception of the site manager, shall be mutually agreed upon.
- G. The FSMC shall not be responsible for hiring employees in excess of the number required for efficient operation.
- H. The FSMC shall provide the SFA with a schedule of employees, positions, assigned locations, salaries, and hours to be worked, two (2) full calendar weeks prior to the commencement of operation.
- I. The SFA shall provide sanitary toilet and hand washing facilities for the employees of the FSMC.
- J. The SFA may request in writing the removal of any employee of the FSMC who violates health requirements or conducts himself/herself in a manner, which is detrimental to the well-being of the students.
- K. In the event of the removal or suspension of any such employee, the FSMC shall immediately restructure the food service staff without disruption of service.
- L. All SFA and/or FSMC personnel assigned to each school shall be instructed in the use of all emergency valves, switches, fire and safety devices in the kitchen and cafeteria areas.

IX. MONITORING

- A. The SFA shall monitor the food service operation of the FSMC through periodic on-site visits to ensure that the food service is in conformance with all USDA program regulations.
- B. The records necessary for the SFA to complete the required monitoring activities must be maintained by the FSMC under this contract, and must be made available to the Auditor General, the USDA, the MDE, and the SFA upon request for the purpose of auditing, examination and review.

X. USE OF ADVISORY GROUP/MENUS

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

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

- A. The SFA will make available without any cost or charge to the FSMC, area(s) of the premises agreeable to both parties in which the FSMC shall render its services.
- B. The SFA may request of the FSMC additional food service programs; however, the SFA reserves the right, at its sole discretion, to sell or dispense food or beverages provided such use does not interfere with the operation of the Child Nutrition Programs. However, this does not include the expansion of food service operations outside the confines of the school/school district, such as expansion to non-affiliated charter schools, non-public, or neighboring public schools, which were not part of the original bid.
- C. The FSMC and the SFA shall inventory the equipment and commodities owned by the SFA, including but not limited to, silverware, trays, chinaware, glassware, and kitchen utensils. This will be performed at the beginning of the contract and at the beginning of each successive school year if the renewal option is utilized.
- D. The FSMC shall maintain the inventory of silverware, chinaware, kitchen utensils, and other operating items necessary for the food service operation and at the inventory level as specified by the SFA.
- E. The SFA will replace expendable equipment and replace, repair, and maintain non-expendable equipment except when damages result from the use of less than reasonable care by the employees of the FSMC.
- F. The FSMC shall maintain adequate storage practices, inventory and control of USDA donated foods in conformance with the SFA's agreement with the Michigan Department of Education.
- G. The SFA shall provide the FSMC with local telephone service.

- H. The SFA shall furnish and install any equipment and/or make any structural changes needed to comply with federal, state, or local laws, ordinances, rules, and regulations.
- I. The SFA shall be responsible for any losses including USDA donated foods, which may arise due to equipment malfunction or loss of electrical power not within the control of the FSMC.
- J. All food preparation and serving equipment owned by the SFA shall remain on the premises of the SFA.
- K. The SFA shall not be responsible for loss or damage to equipment owned by the FSMC and located on the SFA premises.
- L. The FSMC shall notify the SFA of any equipment belonging to the FSMC on SFA premises within ten (10) days of its placement on SFA premises.
- M. The SFA shall have access, with or without notice, to all of the SFA's facilities used by the FSMC for purposes of inspection and audit.
- N. The FSMC shall not use the SFA's facilities to produce food, meals, or services for other organizations without the approval of the SFA. If such usage is mutually agreeable, there shall be a signed agreement, which stipulates the fees to be paid by the FSMC to the SFA for such facility usage.
- O. The SFA, on the termination or expiration of the contract, shall conduct a physical inventory of all equipment and commodities owned by the SFA.
- P. The FSMC shall surrender to the SFA upon termination of the contract, all SFA equipment and furnishings in good repair and condition.

XII. PURCHASES

- A. The FSMC shall purchase all food and non-food commodities at the lowest price possible consistent with maintaining quality standards and in full compliance with OMB Circulars A-87 and A-110, 7 CFR Parts 210, 215, 220, 225, 245, 250, 3016, and 3019.
- B. The SFA shall receive all discounts or rebates for purchases made on its behalf.
- C. This contract shall not prevent the SFA from participating in food co-ops or purchasing food from vendors with whom the FSMC normally does not do business.

XIII. SANITATION

- A. The FSMC shall place garbage and trash in containers in designated areas as specified by the SFA.
- B. The SFA shall remove all garbage and trash from the designated areas.
- C. The FSMC shall clean the kitchen and dining room areas as indicated on the *Cost Responsibility Detail Sheet*.

- D. The FSMC shall operate and care for all equipment and food service areas in a clean, safe, and healthy condition in accordance with the standards acceptable to the SFA and comply with all applicable laws, ordinances, regulations, and rules of federal, state, and local authorities, including laws related to recycling.
- E. The SFA shall clean ducts and hoods above the filter line.
- F. The SFA shall provide extermination services as needed.
- G. The FSMC shall comply with all local and state sanitation requirements in the preparation of food.

XIV. LICENSES, FEES & TAXES

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

XV. NON-DISCRIMINATION

Both the SFA and the FSMC agree that no child who participates in the NSLP, SBP, SMP or SFSP, will be discriminated against on the basis of race, color, national origin, age, sex, or disability.

XVI. EMERGENCY CLOSING

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

XVII. TERM & TERMINATION

- A. This contract shall become effective on July 1, 2006 and terminate on June 30, 2007 with up to four one-year renewals with mutual agreement between the SFA and the FSMC.
- B. The SFA or the FSMC may terminate the contract for cause by giving sixty (60) days written notice.
- C. Neither the FSMC nor the SFA shall be responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any acts not within the control of the FSMC or the SFA, respectively, and which by the exercise of due diligence they were unable to prevent.

XVIII. NON-PERFORMANCE BY FSMC

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

XIX. CERTIFICATIONS

- A. The FSMC shall comply with the mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).
- B. The FSMC shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (the "Act"), 40 U.S.C §§ 327-330, as supplemented by the Department of Labor regulations, 29 CFR, Part 5. Under Section 103 of the Act, the FSMC shall be required to compute the wages of every laborer on the basis of a standard workday of eight (8) hours and a standard workweek of forty (40) hours. Work in excess of the standard workday or standard workweek is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or forty (40) hours in any work week.
- C. The FSMC shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations, 41 CFR, Part 60.
- D. The FSMC shall comply with the following civil rights laws, as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-6, Civil Rights Compliance and Enforcement in School Nutrition Programs.
- E. The FSMC shall comply with the Buy American provision for contracts that involve the purchase of food products with Federal funds, 7 CFR, Part 250.23.
- F. The FSMC **has signed** the Certification of Independent Price Determination, which was attached as an addendum to the FSMC's bid and which is incorporated herein by reference and made a part of this contract.

- G. The FSMC **has signed** the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, which was attached as an addendum to the FSMC's bid and which is incorporated herein by reference and made a part of this contract.
- H. The FSMC **has signed** the Certification Regarding Clean Water and Air, which was attached as an addendum to the FSMC's bid and which is incorporated herein by reference and made a part of this contract.
- I. The FSMC **has signed** the Certification Regarding Disclosure of Lobbying Activities, which was attached as an addendum to the FSMC's bid and which is incorporated herein by reference and made a part of this contract.

XX. MISCELLANEOUS

- A. This contract shall be construed under the laws of the State of Michigan. Any action or proceeding arising out of this contract shall be heard in the appropriate courts of the State of Michigan.
- B. The FSMC shall comply with the provisions of the bid specifications, which are hereby **in all respects made a part of this contract**.
- C. No provision of this contract shall be assigned or subcontracted without prior written consent of the SFA.
- D. No waiver of any default shall be construed to be or constitute a waiver of any subsequent claim.
- E. This response to the IFB or RFP and any riders, addenda, or appendices thereto constitutes the entire contract between the SFA and the FSMC.
- F. Any silence, absence, or omission from the contract specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail and that only materials (e.g., food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.
- G. Payments on any claim shall not preclude the SFA from making a claim for adjustment on any item found not to have been in accordance with the provisions of this contract and bid specifications.
- H. The SFA shall be responsible for ensuring the resolution of program review and audit findings.
- I. This contract is subject to review and approval by the Michigan Department of Education, School Meals Program.

AGREEMENT PAGE

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

The bidder certified that all terms and conditions within the Bid Solicitation shall be considered a part of the contract as if incorporated therein.

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

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

ATTEST:

SCHOOL FOOD AUTHORITY:

Signature of Witness for SFA

Signature of SFA Representative

Name

Title

Date

ATTEST:

FOOD SERVICE MANAGEMENT COMPANY:

Signature of Witness for FSMC

Signature of FSMC Representative

Name

Title

Date

Projected Operating Cost

NEW HAVEN

This bid is offered by Chartwells School Dining (Food Service Management Company) based upon
172,004 equivalent meals per year.

Expenses that the SFA is contracting for is indicated by an "X" in the Bid Items Column below.

	"X" Bid Items	Cost
Food Cost - Including Commodities Delivery Charge	<u> X </u>	\$ 150,168
Labor		\$ 102,779
Fringe Benefits		\$ 25,798
On-Site Manager Salary and Benefits	<u> X </u>	\$ 56,000
Contracted Services (not utilities or FSMC administrative costs)		
Transportation Cost		
Non-Food Cost	<u> X </u>	\$ 23,402
Utilities Paid by Food Service Fund		
Other (as defined on cost information sheet)		
FSMC Administrative Cost	<u> X </u>	\$ 12,456
FSMC Management Fee	<u> X </u>	\$ 7,740
Total Cost (Bid Items Only)		\$ 249,767
Bid Price Per Meal (Total Cost divided by Equivalent Meals Per Year)		\$ 1.45

Signed: *Rich Simpson*
 Food Management Company Representative

March 3, 2006
 Date

**This form is to be submitted in a separate envelope marked:
 Bid Price Per Meal**

**Insert this into the contract immediately before the
 signature page prior to signing.**

The Food Service Management Company must use the bid sheet provided by the school district in the pre-bid packet when submitting their bid.

 **AGREEMENT PAGE** 

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

The bidder certified that all terms and conditions within the Bid Solicitation shall be considered a part of the contract as if incorporated therein.

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

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

ATTEST:

SCHOOL FOOD AUTHORITY:

New Haven Community Schools

Catherine D. McDermott

James W. Arny

Name

Superintendent

Title

March 21, 2006

Date

ATTEST:

**FOOD SERVICE MANAGEMENT COMPANY:
Compass Group USA, Inc., by and through its
Chartwells Division**

Keith T. Callinan

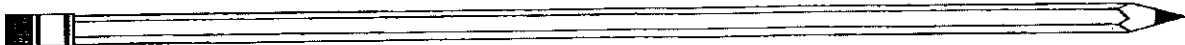
Name

President - Schools

Title

March 3, 2006

Date



SUCCESSFUL BIDDER CERTIFICATIONS

These forms will be completed by the successful bidder and district representative in duplicate. One copy will be sent with the contract for approval by Michigan Department of Education (MDE). The other copy will be retained by the school district.

Certificate of Independent Price Determination

Suspension and Debarment Certification

Clean Air and Water Certificate

Disclosure of Lobbying Activities

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

Both the School Food Authority (SFA) and Food Service Management Company (offeror) shall execute this Certificate of Independent Price Determination.

Compass Group USA, Inc., by and through its
Chartwells Division
Name of Food Service Management Company

New Haven Community Schools
Name of School Food Authority

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

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

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

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

To the best of my knowledge, this Food Service Management Company, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

Keith T. Callinan
Signature of Food Service Management
Company's Authorized Representative

President - Schools
Title

March 3, 2006
Date

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

James W. Avery
Signature of School Food Authority's
Authorized Representative

Superintendent
Title

March 21, 2006
Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side 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 for assistance in obtaining 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 Non-procurement List.
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, including suspension and/or debarment.

U. S. DEPARTMENT OF AGRICULTURE

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

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(Please read instructions 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.

Compass Group USA, Inc., by and through its
Chartwells Division

Organization Name

R/Award Number or Project Name

Keith T. Cullinan, President - Schools

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

Keith T. Cullinan

March 3, 2006

Signature(s)

Date

CLEAN AIR AND WATER CERTIFICATE

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

Compass Group USA, Inc., by and through its

New Haven Community Schools

Chartwells Division

Name of Food Service Management Company

Name of School Food Authority

THE FOOD SERVICE MANAGEMENT COMPANY AGREES AS FOLLOWS:

A. To comply with all the requirements of Section 114 of the Clean Air Act, as amended (41 U.S.C. 1857, et seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports and information as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.

B. That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.

C. To use his/her best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed.

D. To insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph.

THE TERMS IN THIS CLAUSE HAVE THE FOLLOWING MEANINGS:

A. The term "Air Act" means the Clean Air Act, as amended (41 U.S.C. 1957 et seq., as amended by Public Law 91-604).

B. The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

C. The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1957c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

D. The term "Clean Air Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342) or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

E. The term "Compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an Air or Water Pollution Control Agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.

F. The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location or sites of operations, owned, leased or supervised by the Food Service Management Company.

Keith T. Callinan

President - Schools

March 3, 2006

Signature of Food Service Management
Company's Authorized Representative

Title

Date

CERTIFICATION REGARDING LOBBYING

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds.

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by Section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of 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 grant or cooperative agreement, the undersigned shall complete and submit Standard Form-L.L.L., A Disclosure Form to Report Lobbying, in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Compass Group USA, Inc., by and through its

Chartwells Division

Name of Organization

2400 Yorkmont Road

Charlotte, NC 28217

Address of Organization

Keith T. Cullinan

Name of Submitting Official

Keith T. Cullinan

Signature

President - Schools

Title of

Submitting Official

March 3, 2006

Date

CERTIFICATION REGARDING LOBBYING - CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of 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 \$100,000 for each such failure.

<u>Compass Group USA, Inc., by and through its Chartwells Division</u>	
Organization Name	Award Number or Project Name
<u>Keith T. Cullinan, President-Schools</u>	
Name and Title of Authorized Representative	
<u>Keith T. Cullinan</u>	March 3, 2006
Signature	Date

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

This certification is required by the regulations implementing Executive Order 12549, Executive Order 12689, and 31 U.S.C. 6101; Debarment and Suspension, 7 CFR Part 3017, Subpart C, Responsibilities of Participants Regarding Transactions.

(Please read instructions on next 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.

Compass Group USA, Inc., by and
through its Chartwells Division

Organization Name

Award Number or Project Name

Keith T. Cullinan, President-Schools

Name(s) and Titles(s) of Authorized Representatives(s)

Keith T. Cullinan

Signature(s)

March 3, 2006

Date