

SCHOOL FOOD AUTHORITY/COMMERCIAL VENDOR CONTRACT

School Nutrition Programs

VENDOR CONTRACT

Between

School Food Authority:	Name of Commercial Vendor:
Agreement Number:	
Address:	Address:
City, State, Zip:	City, State, Zip:
Contact Person:	Contact Person:
Phone:	Phone:
Email:	Email:

I. Purpose and Term

The purpose of this contract is for the School Food Authority (the "SFA") to obtain vended meals. Vendor will provide the meals/meal components only, generally bulk, pre-packaged or pre-plated. This contract is used for the Vendor that prepares, cooks, and packages unitized or bulk-form meals, with or without milk, off-site at their own facilities. Vendor must provide address to SFA of any location where meal preparation takes place. **Vendor will not provide employees** to serve or prepare meals onsite or to manage any aspect of the food service. (NOTE: If Vendor's employees are responsible for the management of the program and/or for the final preparation of meals and/or for the serving of bulk, pre-packaged or pre-plated meals, Vendor is acting in the capacity of a food service management company and this contract is no longer valid).

The SFA hereby agrees to purchase from Vendor, and Vendor hereby agrees to provide to the SFA, the lunches, breakfasts, and afterschool snacks as indicated in **Section II** below (collectively referred to in this contract as the "vended meals"), as part of the respective United States Department of Agriculture ("USDA") School Nutrition Programs, all in accordance with the terms of this contract and applicable Federal and State regulations.

SFA must procure complete meals ONLY, either with or without milk. No other options or substitutions permitted.

Vendor will provide the vended meals to the SFA school sites listed in **Section XX-LIST OF SFA SCHOOLS RECEIVING VENDED MEALS**.

This contract is effective for the period commencing on _____ and ending June 30, _____ unless terminated earlier as provided herein.

If the original length of this contract is and less than three (3) years, the contract may be renewed for one two-year or two one-year extensions subject to the terms of N.J.S.A. 18A:18A-42. At no point in time may this contract be renewed or extended beyond a term of five (5) consecutive years. All contract renewals will be subject to the availability and annual appropriation of sufficient funds required to meet the extended obligation. If funds are not available, the SFA shall have the right to terminate the renewal, as provided herein.

This contract may be renewed by mutual agreement of the SFA and Vendor subject to the following limitations:

- a. Each renewal shall be awarded by a resolution from the SFA upon a finding that the services are being performed by Vendor in an effective and efficient manner;
- b. The contract shall not be renewed or extended if it will cause the term of agreement to run for more than a total of five (5) consecutive years;
- c. Any price change included as part of a renewal shall be based upon the price of the original contract as cumulatively adjusted pursuant to any previous adjustment or renewal and shall not exceed the change in

the Index Rate (as defined in the Public School Contracts Law, N.J.S.A. 18A:18A-2) for the twelve (12) months preceding the most recent quarterly calculation available at the time the contract is renewed; and

- d. The terms and conditions of the contract shall remain substantially the same (N.J.S.A. 18A:18A-42)

II. Meal Requirements

Under this contract, Vendor will provide (SFA – **MUST check all that apply**):

- Lunches meeting National School Lunch Program requirements set forth in 7 CFR Section 210.10.
- Breakfasts meeting School Breakfast Program requirements set forth in 7 CFR Section 220.8.
- Afterschool snacks meeting Afterschool Care Snacks requirements set forth in 7 CFR Section 210.10.

All vended meals will conform to the current applicable meal pattern requirements set forth by federal regulations.

III. Milk (SFA – **MUST check only one**)

- All vended meals supplied by Vendor will **include milk**.

OR

- Vendor will supply all vended meals without milk, SFA will purchase milk separately.

For all purchases of fresh milk for the SFA vended meals, Vendor shall purchase an amount of fresh milk from New Jersey producers at least equal to the amount of fresh milk proposed to be furnished to the SFA, in accordance with N.J.S.A. 18A:18A-6 and N.J.A.C. 2:55-1.1 *et seq.*

IV. Menus

Vendor will provide meals on the following days of the week:

- Monday Tuesday Wednesday Thursday Friday Saturday Sunday

Vendor will initially supply vended meals in accordance with the cycle menu that was included in the bid or proposal that Vendor submitted to the SFA for the award of this contract.

(SFA – **MUST check one or both, if applicable**)

Subsequent menus will be:

- Provided by the Vendor and prepared on a [weekly] [bi-weekly] [monthly] (Drop down) basis at least [5 Days] [10 Days] [30 Days] (Drop down) in advance of their effective dates.
- Provided by the SFA and prepared on a [weekly] [bi-weekly] [monthly] (Drop down) basis at least [5 Days] [10 Days] [30 Days] (Drop down) in advance of their effective dates.

Menu Substitutions

For all meals provided: In the event of a one-day school closing due to inclement weather or an emergency, Vendor may choose to provide that day's scheduled meal on the next day. Additionally, Vendor may choose to provide a substitution to a meal component as long as Vendor first notifies the SFA of the substitution. All substitutions shall meet all meal pattern requirements.

V. Delivery (SFA – *MUST check only one*)

Vendor will deliver vended meals in separate, suitable transport containers for each meal type to each SFA vended site indicated on List of SFA Schools Receiving Vended Meals.

OR

Vendor will package vended meals in separate, suitable transport containers for each meal type **to be picked up by the SFA.**

OR

Vendor will deliver bulk quantities of frozen meals/meal components.

If Vendor is delivering meals, Vendor will be responsible for the condition and care of vended meals, including maintaining the proper temperature of meal components, until the SFA accepts delivery. Vendor will prepare a daily delivery receipt for each SFA vended site. An authorized SFA representative will count and verify all vended meals upon receipt at each SFA vended site and note any discrepancies on the daily delivery receipt.

OR

If SFA is picking up meals, Vendor will be responsible for the condition and care of vended meals, including maintaining the proper temperature of meal components, until picked up by the SFA. Vendor will prepare a daily delivery receipt and an authorized SFA representative will count and verify all vended meals at pick up and note any discrepancies on the daily delivery receipt.

- A. SFA school calendar will be provided to the Vendor prior to the start of the school year/contract.
- B. Ordering and delivery schedules will be developed to the mutual agreement of both the SFA and the Vendor. Contact persons, ordering procedures, ordering times and dates will be established.
- C. Meal order adjustments and cancellations (snow days, delayed openings) will be coordinated between the SFA and the Vendor within mutually agreed upon timeframes.

VI. Packaging

(SFA – *MUST check one or both, if applicable*)

Vendor will provide all vended meals as pre-plated individual, unitized meals packaged in containers suitable for transport and adhering to HACCP requirements.

AND/OR

Vendor will provide vended meals in bulk quantities, delivered in containers suitable for transport and adhering to HACCP requirements and accompanied by written instructions listing the planned portion size to be served of each food component in order to meet the applicable meal pattern requirements.

All vended meals supplied by Vendor will include the following:

(SFA – *MUST check all that apply*)

None

- Eating utensils
- Condiments
- Paper goods
- Serving utensils
- Steam Table Pans
- Disposable Meal Trays

VII. Charges and Billing

The SFA will pay the following charges for vended meals that meet the School Nutrition Programs requirements and that are provided in accordance with this contract, prices are inclusive of delivery and all items listed in **Section VI**:

MENU PATTERN	UNIT PRICE PER MEAL OR SNACK	ESTIMATED NUMBER OF MEALS PER DAY	NUMBER OF SERVING DAYS	ESTIMATED ANNUAL COST
BREAKFAST: Price 1				
Grades K-5				
Grades K-8				
Grades 6-8				
Grades 9-12				
BREAKFAST: Price 2 (If applicable)				
Grades K-5				
Grades K-8				
Grades 6-8				
Grades 9-12				
LUNCH:				
Grades K-5				
Grades K-8				
Grades 6-8				
Grades 9-12				
AFTER SCHOOL SNACK				

TOTAL COST:

Vendor will submit a written invoice to the SFA at the beginning of each calendar month listing the numbers and types of vended meals provided on each day of the preceding month, the monthly total for each type of vended meal provided, and their respective unit prices. The SFA will make payment to Vendor within [30 Days] [45 Days] [60 Days].

The SFA will not pay for vended meals that are spoiled or unwholesome at the time of delivery or that otherwise fail to meet the terms of this contract.

VIII. Recordkeeping and Availability of Records

A. Production Records: (SFA – *MUST check ONLY one*)

Vendor will provide daily production records. Vendor will complete all applicable sections. The SFA will be responsible for completing sections pertaining to HACCP and meal service on site.

OR

The SFA will complete daily production records. Vendor must provide all of the information required for the SFA to complete the records.

B. Vendor will keep and maintain all HACCP food safety records, including HACCP process, and time and temperature monitoring.

C. Vendor will provide records relating to vended meals as needed, including but not limited to, the following: recipes, nutrition fact labels, manufacturer product formulation statements and/or child nutrition (CN) labels for all menu items served as a part of the reimbursable vended meals.

D. Vendor agrees to grant the SFA, the New Jersey Department of Education, the New Jersey Department of Agriculture, the United States Department of Agriculture, the Inspectors General, the Comptroller General of the United States and its State counterparts, or any of their duly authorized representatives, access to any books, documents, papers and other records of the Vendor which are directly pertinent to this contract, for the purpose of making audit, examination, excerpts and transcripts; and shall provide timely and reasonable access to Vendor personnel for the purpose of interview and discussion related to such documents. Vendor shall retain all records required or necessary under this contract for a period of three years from the date of final payment hereunder; except that in the event of litigation, claims, or audit findings, the records must be retained until all litigation, claims and audit findings involving the records have been resolved and final action taken. Vendor will adhere to all additional exceptions, if applicable, as required by State and Federal law. Vendor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

IX. Health and Sanitation

Vendor will maintain applicable state and local health certifications for all facilities in which meals are prepared for the SFA and will provide SFA with a copy of current Health and Sanitation Certificate (within the last twelve (12) months) and Food Safety Inspection Reports for all production facilities. All food will be properly stored, prepared, packaged and transported free of contamination and at appropriate temperatures.

Vendor will provide SFA with a copy of current License to Operate a Wholesale Food-Cosmetic Establishment (N.J.S.A. 24:15-14)

Vendor will follow applicable Hazard Analysis Critical Control Point (“HACCP”) procedures in the preparation and delivery of vended meals for the SFA.

X. Additional Vendor Responsibilities

Vendor agrees to comply with the following regulatory requirements, if applicable:

- A. The Contract Work Hours and Safety Standards Act, P.L. 87-581, as supplemented by U.S. Department of Labor regulations, 29 CFR Part 5 [contracts in excess of \$100,000 which involve employment of mechanics or laborers].
- B. The Clean Air Act (42 USC section 7401 *et seq.*), the Federal Water Pollution Control Act (33 USC section 1351 *et seq.*), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR Part 15) [contracts in excess of \$100,000].
- C. 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 (42 U.S.C. 6201).
- D. All applicable certification requirements under 31 USC section 1352, and the Byrd Anti-Lobbying Amendment 45 CFR section 2543.87 [contracts in excess of \$100,000], guaranteeing that it has not used federal funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, in connection with obtaining the contract, grant or any other award.
- E. Affirmative steps to assure that small and minority firms, women's business enterprises, and labor surplus area firms are used when possible as a source of suppliers in accordance with 2 CFR Part 200.
- F. All applicable Equal Employment Opportunity regulations and orders under 41 CFR Part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, and Executive Order 11246, as amended by Executive Order 11375.
- G. Vendor will provide SFA a copy of valid New Jersey Business Registration Certificate from the Division of Revenue and Enterprise Services [DORES] or Certificate of Business Formation (for vendors contracting with Non-Public SFAs only).

XI. Nonperformance or Noncompliance

In the event of Vendor's nonperformance under this contract and/or its violation or breach of the contract terms, including liability for payment of fiscal action resulting from federal and/or state reviews or audits, the SFA shall have the right to pursue all administrative, contractual, and legal remedies against Vendor and shall have the right to seek all sanctions and penalties as may be appropriate. Any Vendor liability, where found, will extend beyond the term of the contract.

XII. Termination

The SFA or Vendor may cancel this contract for cause by giving sixty (60) days' written notification to the other party, including instances when Vendor is taken over by another entity or Vendor is sold to another entity.

The SFA or Vendor may terminate this contract at any time if it is prevented from fulfilling the terms of the contract due to war, strike, fire, flood, act of God, or any act not within its control and which, by the exercise of due diligence, it was unable to prevent. In such event, the SFA or Vendor, as the case may be, shall give written notice to the other party setting forth the reason for and the effective date of termination. Neither party shall be liable for any loss or penalty upon such termination, except that the SFA shall pay Vendor for vended meals delivered in accordance with this contract prior to the termination date.

XIII. Political Contribution Disclosure [all contracts in the amount of \$17,500 or greater]

Included in the bid/proposal submitted to the SFA for award of this contract, Vendor signed and submitted a Political Contribution Disclosure Form listing the information set forth in N.J.S.A. 19:44A-20.26. During the term of this contract, Vendor and any person or business entity having an interest in Vendor, shall not make any contribution reportable under N.J.S.A. 19:44A-1 *et seq.* to any member of the board of education of the SFA.

XIV. Debarment / Suspension Certificate

Included in the bid/proposal submitted to the SFA for award of this contract, Vendor signed and submitted a Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. Vendor shall provide immediate written notice to the SFA if it learns that its certification was erroneous when submitted or has become erroneous due to changed circumstances.

XV. Certificate of Independent Price Determination

Prior to entering into this contract, the SFA and Vendor executed a Certificate of Independent Price Determination, certifying that the prices in the offer have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition. The Certificate of Independent Price Determination shall be kept on file with the signed contract at the SFA.

XVI. Certification Regarding Lobbying

Included in the bid/proposal submitted to the SFA for award of this contract, Vendor signed and submitted a Certification Regarding Lobbying and, if applicable, a Standard Form LLL – Disclosure of Lobbying Activities. During the term of this contract, Vendor shall file with the SFA a Standard Form LLL – Disclosure of Lobbying Activities at the end of each calendar quarter in which any event occurs that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously submitted by Vendor.

XVII. Disclosure of Investment Activities in Iran

Included in its response to the SFA's specifications and before entering into this contract, Vendor signed and submitted a Disclosure of Investment Activities in Iran, pursuant to N.J.S.A. 18A:18A-49.4, which requires the SFA to implement and comply with the provisions of P.L. 2012, c. 25 (N.J.S.A. 52-32-55, *et. seq.*). P.L. 2012, c. 25 requires all bidders to complete a certification that attests that neither the bidder, nor any of its parents, subsidiaries and/or affiliates is listed on the list developed by the New Jersey Department of Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran, pursuant to section 3 of P.L.2012, c. 25 (N.J.S.A. 52:32-57).

XVIII. I. Buy American

1. The Vendor shall purchase, to the maximum extent practicable, domestic commodities or products which are an agricultural commodity produced in the United States (U.S.) or a food product processed in the U.S. substantially using agricultural commodities produced in the U.S. 7 CFR 210.21(d)(2)(i).
2. The SFA reserves the right to review vendor purchase records to ensure compliance with the Buy American provision.
3. The Vendor shall be required to use alternative domestic foods first before requesting SFA approval to purchase non-domestic foods.
4. Exceptions to the Buy American requirement may be requested from the SFA prior to a purchase when:
 - a. The food or food product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality; or
 - b. Competitive bids reveal the cost of a United States food or food product is significantly higher than the non-domestic product.
5. All exceptions must be pre-approved by the SFA and should be used as a last resort.
6. Requests for exceptions shall include:
 - a. Alternative food and food product substitutes that are domestic and meet the required specifications, including:
 - i. The price of the domestic food product alternative substitute(s); and
 - ii. The availability of the domestic food product alternative substitute(s) in relation to the quantity ordered; and
 - b. The reason for the exception (limited supply, lack of availability or price) including:
 - i. The price of the domestic food product; and

- ii. The price of the non-domestic food product that meets the required specifications of the domestic food product.

XIX. Construction and Effect

The SFA and Vendor agree that this contract is intended to comply with applicable Federal, State and local procurement and program requirements. In the event that any provision contained in this contract should conflict with any attachment to this contract, the provisions of the contract shall control.

SAMPLE

XX. LIST OF SFA SCHOOLS RECEIVING VENDED MEALS

SCHOOL NAME & ADDRESS	SCHOOL TYPE	MEAL PATTERN GRADE GROUP	VENDED MEALS PROVIDED
SCHOOL NAME SCHOOL STREET ADDRESS SCHOOL CITY SCHOOL ZIP	<input type="checkbox"/> Elementary <input type="checkbox"/> Middle <input type="checkbox"/> High School <input type="checkbox"/> Ungraded	<input type="checkbox"/> Grades K-5 <input type="checkbox"/> Grades K-8 <input type="checkbox"/> Grades 6-8 <input type="checkbox"/> Grades 9-12	<input type="checkbox"/> Breakfast <input type="checkbox"/> Lunch <input type="checkbox"/> Afterschool Snack
SCHOOL NAME SCHOOL STREET ADDRESS SCHOOL CITY SCHOOL ZIP	<input type="checkbox"/> Elementary <input type="checkbox"/> Middle <input type="checkbox"/> High School <input type="checkbox"/> Ungraded	<input type="checkbox"/> Grades K-5 <input type="checkbox"/> Grades K-8 <input type="checkbox"/> Grades 6-8 <input type="checkbox"/> Grades 9-12	<input type="checkbox"/> Breakfast <input type="checkbox"/> Lunch <input type="checkbox"/> Afterschool Snack
SCHOOL NAME SCHOOL STREET ADDRESS SCHOOL CITY SCHOOL ZIP	<input type="checkbox"/> Elementary <input type="checkbox"/> Middle <input type="checkbox"/> High School <input type="checkbox"/> Ungraded	<input type="checkbox"/> Grades K-5 <input type="checkbox"/> Grades K-8 <input type="checkbox"/> Grades 6-8 <input type="checkbox"/> Grades 9-12	<input type="checkbox"/> Breakfast <input type="checkbox"/> Lunch <input type="checkbox"/> Afterschool Snack
SCHOOL NAME SCHOOL STREET ADDRESS SCHOOL CITY SCHOOL ZIP	<input type="checkbox"/> Elementary <input type="checkbox"/> Middle <input type="checkbox"/> High School <input type="checkbox"/> Ungraded	<input type="checkbox"/> Grades K-5 <input type="checkbox"/> Grades K-8 <input type="checkbox"/> Grades 6-8 <input type="checkbox"/> Grades 9-12	<input type="checkbox"/> Breakfast <input type="checkbox"/> Lunch <input type="checkbox"/> Afterschool Snack
SCHOOL NAME SCHOOL STREET ADDRESS SCHOOL CITY SCHOOL ZIP	<input type="checkbox"/> Elementary <input type="checkbox"/> Middle <input type="checkbox"/> High School <input type="checkbox"/> Ungraded	<input type="checkbox"/> Grades K-5 <input type="checkbox"/> Grades K-8 <input type="checkbox"/> Grades 6-8 <input type="checkbox"/> Grades 9-12	<input type="checkbox"/> Breakfast <input type="checkbox"/> Lunch <input type="checkbox"/> Afterschool Snack
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SCHOOL NAME SCHOOL STREET ADDRESS SCHOOL CITY SCHOOL ZIP	<input type="checkbox"/> Elementary <input type="checkbox"/> Middle <input type="checkbox"/> High School <input type="checkbox"/> Ungraded	<input type="checkbox"/> Grades K-5 <input type="checkbox"/> Grades K-8 <input type="checkbox"/> Grades 6-8 <input type="checkbox"/> Grades 9-12	<input type="checkbox"/> Breakfast <input type="checkbox"/> Lunch <input type="checkbox"/> Afterschool Snack

The SFA will give Vendor days advance written notice of any change to the sites or other information listed above.