Vended School Meal Contract

**for**

**Ontonagon Area School District**

**RFP: Request for Proposal**

# GENERAL PROCEDURAL TERMS AND CONDITIONS

## INTENT

This solicitation is for the purpose of entering into a contract for the purchase of vended meals for the Ontonagon Area School District herein after referred to as the School Food Authority (SFA). The bidder will be referred to, as the Vendor and contract will be between the Vendor and the SFA.

* 1. The SFA shall retain **signature authority** for the application/agreement to participate in the National School Lunch Program (NSLP), and/or School Breakfast Program (SBP), and/or Special Milk Program (SMP), and/or Afterschool Snack Program, and/or Summer Food Service Program (SFSP), and/or Child and Adult Care Food Program (CACFP) including, but not limited to the Application Renewal, the Verification of Application Form, and letters to the MDE to amend the application. [7 CFR 210.16 (a)(5)]
  2. The SFA shall retain **signature authority** for the Monthly Claim for **Reimbursement. [7 CFR 210.16(a)(5)]**

## MEALS AND EQUIVALENTS

* 1. The Vendor will prepare the following meals: breakfast, lunch, including eating utensils, paper services items, condiments), and provide safe transportation containers, if needed. The Vendor shall serve meals on such days and such times as requested by the SFA.
  2. All meals provided shall conform to the minimum meal requirements including the nutrient standards of the United States Department of Agriculture (USDA) for those meals and for the age group served. The Vendor shall comply with the rules and regulations of MDE and USDA, and any additions or amendments thereto, including but not limited to, 7 CFR Parts 210, 215, 220, 245, 250, 225, 3016, and 3019, if applicable; and Food and Nutrition Service instruction and policy, as applicable.
  3. The Vendor shall make substitutions in the food components of the meal pattern for students with disabilities when their disability restricts their diet, and those non-disables 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 USDA Food and nutrition Service. 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. [7CFR210.10(g)]
  4. The Vendor shall be liable for meals that do not meet the meal pattern requirements as specified in the Contract, or are spoiled or unwholesome at the time of delivery. The SFA shall not pay for such meals.
  5. The Vendor shall cooperate with the SFA in promoting nutrition education and coordinating the SFA’s food service with classroom instruction in accordance with the school district’s Wellness Plan.
  6. The SFA shall retain control of the quality, extent, and general nature of the food service.
  7. The Vendor 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.
  8. In order for the Vendor to offer a la carte food service, the Vendor must offer free, reduced price, and paid reimbursable meals to all eligible children.
  9. For the purpose of making the meal count computation, the number of lunches, breakfasts, and snacks served to children shall be based on a projection of the number of meals and snacks to be served. The Vendor and SFA shall determine a la carte meal equivalents by dividing a projected net a la carte and catering revenue (if applicable) by the sum of the Federal free lunch reimbursement plus the value of USDA entitlement and bonus donated foods. 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.

## DELIVERY, ORDERING, AND PAYMENT

* 1. Delivery of meals will be made to the SFA’s dining site each day food is served. The Vendor is liable for meals delivered outside of the agreed upon delivery time.
  2. Vendor shall, on a monthly basis, invoice the SFA. Payment shall be due within thirty (30) days of the monthly invoice. All overdue invoices are subject to finance charges, as the parties shall agree in writing. Finance charges cannot be paid from the non-profit food service fund.
  3. All bids shall be calculated based on the information provided by the SFA in the *Information Section* of this solicitation. All bids shall be submitted using the Bid Sheet – Vended School Meals Contract form.
  4. The Vendor shall receive a fixed price per meal (breakfast and lunch) and fixed price per meal equivalent (a la carte).
  5. The Vendor shall receive a fixed per unit rate for each one-half pint of milk served in the Special Milk Program.
  6. The Vendor must subtract from the SFA’s monthly bill/invoice, the value of all USDA Foods received for use in the SFA’s meal service in the school year or fiscal year (including both entitlement and bonus foods), and including the value of donated food contained in processed end products. Credit issued by the Vendor to the SFA for USDA Foods received shall be recorded on the monthly bill/invoice as a separate line item and shall be clearly identified and labeled.
  7. The Vendor shall submit separate billing for special functions conducted outside of the non-profit school food service account.

## CONTRACT TERMS

* 1. This contract shall be for an initial term of one year effective on \_\_\_\_\_\_\_\_\_\_\_\_\_ or upon written approval of the contract by the Michigan Department of Education (MDE), whichever occurs last, and ending June 30, \_\_\_\_\_\_\_\_ with up to four (4) one-year renewals, with mutual agreement between the SFA and Vendor. [7CFR 210.16 (d)]

In no event shall the contract be effective without prior approval of MDE. Per 7CFR 250.53(a) (12), contract extensions or renewals are contingent upon the fulfillment of all contract provisions relating to USDA Foods.

* 1. The only rates that may be adjusted in subsequent years of this contract are the fixed price per meal for lunch and/or breakfast, and/or the fixed per unit rate for each snack served, and/or fixed per unit rate for one-half pint of milk contained within this contract. Before any fixed rate or fee increases can be implemented as part of a contract renewal agreement, the Vendor shall document to the SFA, through a written financial analysis, the need for such increases. Renegotiation of all fixed rates in subsequent years of the contract must not exceed the *Consumer Price Index for Urban Consumers – Food Away from Home* annualized rate for December of the current school year, or a flat percentage rate \_\_\_\_\_\_\_\_ as determined by the school district.
  2. This solicitation/contact, the RFP proposal of the successful bidder, attachments, and mutually negotiated and MDE-approved addenda constitute the entire agreement between the SFA and Vendor. Aside from the adjustments and amendments referenced in Section (F) (2), supra, additional documents and/or agreements, including non-negotiated provisions developed by the contractor, cannot become part of the executed contract. Any additional documents resulting in a substantial change to the contract awarded by the SFA will not be executed by the SFA without prior MDE approval. No other contracts will be signed by the SFA.
  3. All state agency-mandated changes to the terms of this contract or any amendment will be incorporated therein before the SFA executes any agreement between it and the Vendor.

## STANDARD TERMS AND CONDITIONS

* 1. The Vendor shall operate in conformance with the School Food Authority’s (SFA) Agreement with the Michigan Department of Education (MDE) and any attachments.
  2. The Vendor, as an independent contractor, shall have the exclusive right to operate the NSLP, and/or SBP, and/or SMP, and/or Afterschool Snack, and/or SFSP, and/or CACFP.
  3. The Vendor shall be an independent contractor and not a SFA agent or representative. The employees of the Vendor are not employees of the SFA. All Vendor employees shall remain directly accountable to the Vendor for the duration of this contract. Except as otherwise expressly stated in this agreement, the Vendor has the sole responsibility and authority to hire, assign, supervise, evaluate, and discipline any personnel assigned by it in the performance of this contract.
  4. The food service provided shall be operated and maintained as a benefit to the SFA’s students, faculty, and staff.
  5. 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. The SFA and Vendor 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©, 7 CFR 3016.36(f)(4), and 7 CFR 3019.44(c).
  6. 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 contact. [7 CFR 210.16(a)(2)]
  7. The SFA shall retain control of the Child Nutrition Program’s food service accounts and overall financial responsibility for the Child Nutrition Programs.
  8. The SFA shall establish all selling prices for reimbursable and non-reimbursable meals/milk and a la carte prices. [7 CFR 210.16(a)(4)]
  9. The Vendor 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 Vendors overhead and administrative expenses if applicable, for providing such service. USDA Foods shall not be used for these special functions.

## FREE AND REDUCED PRICE MEALS POLICY

* 1. The SFA shall be responsible for or may delegate to the Vendor the establishment and maintenance of the free and reduced price meals eligibility roster. [Food Service, Administrative Policy #3, SY 2008-2009]
  2. The SFA shall be responsible for or may delegate to the Vendor the development, distribution, and collection of the parent letter and application for free and reduced price meals and/or free milk. [Food Service, Administrative Policy #3, SY 2008-2009]
  3. The SFA shall be responsible for or may delegate to the Vendor accessing the direct certification report available from the Center for Educational Performance and Information (CEPI) each year of eligible students for free meals. Students on this report will not require an application from the parent/guardian. [Food Service, Administrative Policy #3, SY 2008-2009]
  4. The SFA shall be responsible for or may delegate to the Vendor the determination of eligibility for free and reduced price meals and free milk. Neither the SFA or the Vendor will not disclose confidential information that is not needed for meal counts from free and reduced price meal applications and/or the direct certification list, if used. The SFA will provide the Vendor with a list of children and their category of eligibility. This list must be updated when changes occur in a student’s eligibility status. [Food Service, Administrative Policy #3, SY 2008-2009]
  5. The SFA shall be responsible for conducting any hearings related to determinations regarding eligibility for free and reduced price meals and free milk. [Food Service, Administrative Policy #3, SY 2008-2009]
  6. The SFA shall be responsible for or may delegate to the Vendor the responsibility for verifying applications for free and reduced price meals, as required by federal regulations. [Food Service, Administrative Policy #3, SY 2008-2009]
  7. The SFA shall be responsible for performing the annual on-site review. [Food Service, Administrative Policy #3, SY 2008-2009]

## USDA FOODS

* 1. Any USDA Foods received by the SFA and made available to the Vendor must accrue solely to the benefit of the SFA’s non-profit school food service program and shall be fully utilized therein. The Vendor must credit the SFA for the value of all UDSA Foods received for use in the SFA’s meal service program, including the value of USDA Foods contained in processed end products, in accordance with 7 CFR 250.51(a).
  2. The SFA shall retain title to all USDA Foods. [7 CFR 250.13 ©
  3. The Vendor is prohibited from entering into any processing contracts utilizing USDA donated commodity food on behalf of the SFA. [7 CFR 250.50(d)]
  4. The Vendor shall collaborate with Sponsor on the selection of USDA Foods and they will accept and use USDA Foods in as large quantities as may be efficiently utilized in SFA’s non-profit food service in a 30 day period, subject to approval of the SFA and will not accumulate excess inventory.
  5. The Vendor shall select, accept, and use USDA Foods in as large quantities as may be efficiently utilized in the SFA’s non-profit food service, subject to approval of the SFA. The Vendor will use all donated ground beef and ground port product, and all processed end products in the SFA’s food service, and all other USDA Foods and commercially purchased foods of the same generic identity, of U.S. origin, in the SFA’s food service, and all other donated commodity foods and commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality that the USDA Foods, in the SFA’s food service.
  6. The Vendor shall store and account for all USDA Foods separately from purchased food unless the SFA has chosen not to maintain a separate inventory. The Vendor is required to maintain accurate and complete records with respect to the receipt, us/disposition, storage, and inventory of all USDA Foods. The Vendor shall submit to the SFA monthly inventory reports showing all transactions for processed and non-processed USDA Foods. Quarterly physical inventories of all donated commodities must be conducted by the Vendor and supervised by the SFA. Failure by the Vendor to maintain the required records under this contract shall be considered prima facie evidence of improper distribution or loss of the USDA Foods. [7 CFR 250.16(a)(6) and 205.52(b)]
  7. The Vendor shall have records available to substantiate that the full value of all USDA Foods is used solely for the benefit of the SFA. The Vendor must provide all documents as necessary for the independent auditor, MDE reviewers, or agents of USDA who may perform onsite reviews of the Vendor’s food service operation to ensure compliance with the requirements for the management and use of USDA Foods. [7 CFR 250.54(d)(1) (2).
  8. The SFA must determine the existence of the proper pass through value of the USDA Foods, e.g. credits or reductions on the invoice in the month the commodity foods were received for use.
  9. The values of all USDA Foods are to be based on the values at the point the SFA received the commodities from the Distributing Agency and are to be based on the USDA Commodity Value Listing pertinent to the time period. This listing is available from the Michigan Department of Education, Food Distribution Program at the following website:

http:/www.Michigan.gov/documents/mde/CommFile\_11-16-2009\_alpha\_333659\_7.pdf

* 1. A year-end reconciliation shall be conducted by the SFA to ensure and verify correct and proper credit has been received for the full value of all USDA Foods used by the Vendor during the school year. The SFA reserves the right to conduct monthly commodity credit audits throughout the year to ensure compliance with federal regulations 7 CFR 210 and 7 CFR 250. [7 CFR 250.53(a)(1)]
  2. The Vendor shall accept liability for any negligence on its part that results in any loss of, improper use of, or damage to, USDA Foods and shall credit the SFA either monthly or through a year-end reconciliation. [7 CFR 250.15(c)]
  3. The SFA and Vendor shall consult and agree on end products to be produced from USDA Foods during the time of this agreement. If an agreement cannot be reached, the Vendor shall utilize the USDA Foods in the form furnished by the USDA.
  4. Upon termination of the contract, the Vendor must return all unused donated ground beef, ground pork, processed end products, and at the SFA’s discretion, return other unused donated foods. The SFA must ensure the at the Vendor has credited it for the value of all donated foods received for use in the SFA’s meal service in a school year. [7 CFR 250.52(c)]

## HEALTH CERTIFICATIONS

* 1. The Vendor agrees that the state and local health and sanitation requirements will be met at all times. All food will be properly stored, prepared, packaged and transported free of contamination and at appropriate temperatures following HACCP guidelines.
  2. 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 Vendor preparing or serving meals at any SFA facility. [7 CFR 210.16(a)(7)]
  3. The Vendor 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)(2).

## RECORD KEEPING

* 1. The Vendor agrees to maintain (for a period of three years after the end of the fiscal year to which they pertain, or until final resolution of outstanding audits or claims), all records pertaining to this Contract including records of food purchased, daily quantities prepared and delivered, daily menu records, nutrition information from food products and recipes used, and delivery receipts. The Vendor must submit delivery reports and invoices to the SFA on a monthly basis. The Vendor also agrees that such records will be made available to representatives of MDE, USDA, and the United States General Accounting Office, at any reasonable time and place. [7 CFR 210.23(c) and 250.16(b)]
  2. The Vendor agrees to comply with all requirements regarding the Nutrition Review process by MDE for the school meals including providing nutrition information on food products and recipes used.
  3. The Vendor shall surrender to the SFA upon termination of the Contract all records pertaining to the operation of the foodservice, 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 Vendor billings.
  4. The Vendor shall maintain such records (supported by invoices, receipts, and other evidence) as the SFA will need to meet monthly reporting responsibilities and shall submit monthly bills/invoices in a format approved by the SFA.
  5. The SFA and Vendor must provide all documents as necessary for the independent auditor, MDE Reviewers, or agents of the USDA to conduct the SFA’s single audit.
  6. The Vendor shall purchase all food and supplies for the SFA at the lowest prices possible consistent with maintenance of quality standards prescribed by the SFA, including taking advantage of all local trade discounts. All such transactions shall meet USDA procurement standards.

## MONITORING

* 1. The SFA shall monitor the food service operation of the Vendor through periodic on-site visits to ensure that the food service is in conformance with all USDA program regulation.
  2. The records necessary for the SFA to complete the required monitoring activities must be maintained by the Vendor 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.

## USE OF ADVISORY GROUP/MENUS

* 1. The Vendor 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.
  2. The Vendor must comply with the twenty-one (21) day menu developed by the SFA for NSLP, and/or SBP, and/or SFSP, and/or CACFP, included in the request for bid/proposal. Any changes made by the Vendor after the first twenty-one (21) day menu for the NSLP, and/or SBP, and/or SFSP, and/or CACFP 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.

## USE OF FACILITIES, INVENTORY, EQUIPMENT, AND STORAGE

* 1. The SFA will make available without any cost or charge to the Vendor, area(s) of the premises agreeable to both parties in which the Vendor shall render its services.
  2. The Vendor 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.
  3. 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 regulation.
  4. 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 Vendor.
  5. The SFA, on the termination or expiration of the contract, shall conduct a physical inventory for all equipment and commodities owned by the SFA.

## PURCHASES

* 1. The Vendor shall purchase all food and non-food commodities at the lowest price possible consistent with maintaining quality standards and in full compliance with Office of Management and Budget (OMB) Circulars A-87 and A-110, 7 CFR Parts, 210, 215, 220, 225, 245, 250, 3016, and 3019.
  2. This contract shall not prevent the SFA from participating in food consortia or purchasing food from vendors with whom the Vendor normally does not do business.

## LICENSES, FEES, AND TAXES

* 1. The Vendor and SFA shall obtain and post all licenses and permits as required by federal, state, and/or local law.
  2. The Vendor shall comply with all SFA building rules and regulations.

## INSURANCE AND INDEMNIFICATION

* 1. A Certificate of Insurance of the Vendor’s insurance coverage, indicating the specified amounts, must be submitted at the time of award. The Vendor shall provide the SFA copies of all applicable insurance policies at the time of award. All insurance required as a result of a response to this RFP shall provide that the insurer will provide notice of cancellation directly to the SFA thirty (30) days before such cancellation occurs.
  2. The SFA shall keep its buildings, including the premises, and all property contain therein insured against loss or damage by fire, explosion, and similar casualties.
  3. The Vendor shall indemnify and hold harmless the SFA, or any employee, director, or agent of the SFA from and against all claims, damages, losses, and expenses (including attorneys’ fees and court costs incurred to defend litigation), decrees or judgments whatsoever arising from any and all injuries, including death or damages to or destruction of property, resulting from the Vendor’s acts, or omissions, willful misconduct, or breach of the Vendor’s obligations under the Agreement by the Vendor and its agents, servants, or employees, or other persons under its supervision or direction.
  4. The Vendor shall not be required to indemnify or hold harmless the SFA from any liability or damages arising from the SFA’s sole acts or omissions.

## EMERGENCY CLOSING

* 1. The SFA shall notify the Vendor of any interruption in utility service of which it has knowledge.
  2. The SFA shall notify the Vendor of any delay in the beginning of the school day or the closing of school(s) due to snow or other emergency situations.

## TERMS AND TERMINATION

* 1. This contract shall be for an initial term of one year effective on \_\_\_\_\_\_\_\_\_\_\_\_\_ or upon written approval of the contract by the Michigan Department of Education, whichever occurs last, and ending on June 30, \_\_\_\_\_\_\_ with up to four (4) one-year renewals with mutual agreement between the SFA and the FSMC. [7 CFR 210.16(d)]

In no event shall the contract become effective without the prior approval of the MDE. Per 7 CFR 250.53 (a) (12), contract extensions or renewal are contingent upon the fulfillment of all contract provisions relating to USDA Foods.

* 1. The SFA or the FSMC may terminate the contract with or without cause by giving sixty (60) days written notice.
  2. Neither the Vendor 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 Vendor or the SFA, respectively, and which by the exercise of due diligence they were unable to prevent.

## NON-PERFORMANCE BY VENDOR

In the event of the Vendor’s non-performance under this contract an/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 Vendor and shall have the right to seek all sanctions and penalties as may be appropriate.

## CERTIFICATIONS

* 1. The Vendor 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.
  2. The Vendor shall comply with all applicable civil rights laws, as amended, which include but are not limited to: Title VI and Title VII 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; FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities; the Michigan Elliott-Larsen Civil Rights Act; and the Michigan Persons with Disabilities Civil Right Act.
  3. The Vendor shall comply with the Buy American provision from contracts that involve the purchase of food products with Federal funds, 7 CFR, Part 250.23.
  4. The successful Vendor **has signed** the Certification of Independent Price Determination, which was attached as an addendum to the Vendor’s bid and which is incorporated herein by reference and made a part of this contract.
  5. The successful Vendor **has signed** the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, which was attached as an addendum to the Vendor’s bid and which is incorporated herein by reference and made a part of this contract.
  6. The successful Vendor **has signed** the Certification Regarding Clean Water and Air, which was attached as an addendum to the Vendor’s bid and which is incorporated herein by reference and made a part of this contract.
  7. The successful Vendor **has signed** the Certification Regarding Disclosure of Lobbying Activities, which was attached as an addendum to the Vendors bid and which is incorporated herein by reference and made a part of this contract.

## MISCELLANEOUS

* 1. Except as otherwise expressly stated, this contract shall be construed as arising under the laws of the State of Michigan. An action or proceeding arising out of this contract shall be heard in the appropriate courts within the State of Michigan.
  2. The Vendor shall comply with the provisions of the bid specifications, which are hereby **in all respects made a part of this contract.**
  3. No provision of this contract shall be assigned or subcontracted without prior written consent of the SFA.
  4. No waiver of any default shall be construed to be or constitute a waiver of any subsequent claim.
  5. 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.
  6. Payments on any claim shall not preclude the SFA from making a claim for adjustments on any item found not to have been in accordance with the provisions of this contract and bid specifications.
  7. The SFA shall be responsible for ensuring the resolution of program review and audit findings.
  8. This contract is subject to review and approval by the Michigan Department of Education.

## Bids must be submitted on or before 12:00 Noon, Thursday, April 2, 2015 to:

James Bobula, Superintendent

Ontonagon Area School District

701 Parker Avenue

Ontonagon MI 49953

Phone (906) 813-0614