

Notice

The suggested form below is provided as an option to deal with regulatory changes that take effect for the 2021-2022 school year. School Food Authorities may add other language or sections to this amendment form to amend their Food Service Management Contracts, consistent with their customary business practices and applicable law and regulations.

**REQUEST FOR PROPOSAL AND CONTRACT NO. 10-18-CN2018 BETWEEN
BROWNWOOD ISD, SFA, AND SOUTHWEST FOOD EXCELLENCE, FSMC
THIRD AMENDMENT**

This Contract Amendment (Amendment) is made in consideration of the mutual covenants and Agreements contained herein by and between BROWNWOOD ISD, School Food Authority, (SFA), and SOUTHWEST FOOD EXCELLENCE, Food Service Management Company, (FSMC), to amend the Request for Proposal and Contract No. 10-18-CN2018 (Contract) that was executed by SFA and FSMC and effective on July 1, 2020.

The Contract is amended as follows:

1. Throughout the Contract, the terms "USDA commodities" are deleted and replaced with the current term for such commodities, which is "USDA Foods."
2. Page 2 of the Contract and Exhibit G, "Schedule of Applicable Laws," are amended by deleting the existing nondiscrimination statements and replacing them in their entirety with the following nondiscrimination statement:

"The program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR Part 42; and FNS directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.

By accepting this assurance, the Program applicant agrees to compile data, maintain records, and submit reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review such records, books, and accounts as needed, to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Program applicant, its successors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Program applicant."

3. Section II, A. "Legal Notice," and Exhibit G, "Schedule of Applicable Laws," are amended by adding the following statement encouraging the use of Historically Underutilized Businesses (HUBs):

“The SFA strongly encourages Historically Underutilized Businesses (HUB), Minority and Women Business Enterprises (MWBE), and labor surplus area vendors to compete for this RFP.”

4. Section II, C. “Procurement Method,” second bulleted paragraph, is amended by adding the following statement that price must be the primary factor for all proposal evaluations: “USDA policy requires price to be the primary evaluation factor.”

5. Section III, A. “Definitions,” is amended by deleting the reference, if any, and definition for “Retroactive Incentive Fee” and replacing it with the following definition for “Incentive fee” :

-“Incentive Fee” means an additional fee paid as an incentive to the FSMC to improve SFA’s food service participation, the amount of which depends on FSMC’s performance during the current school year and related to a benchmark number established by the SFA. Incentive Fees may only apply to meals served in the SFA’s food service operation during the current school year;” and

-The option for and reference to a “Retroactive Incentive Fee” in Section III, B is hereby deleted.

6. Section III, B. “Scope and Purpose of this Contract,” is amended by adding the following to the Contract:

- “The duration of the contract, unless terminated in accordance with Section III, Paragraph L, is valid for the 2021-2022 school year;”
- “This contract and this Amendment is for a one-year period beginning July 1, 2021, and terminating on June 30, 2022;”
- “This contract may be renewed as allowed by regulation provided the parties have not exhausted all renewals remaining under the contract for additional one-year terms upon mutual agreement between the SFA and FSMC and is subject to the fulfillment of all contract terms;” and
- “The SFA is responsible for the establishment and maintenance of the free and reduced-price meal eligibility documentation.”

7. Section III, C. “Food Service of the Contract,” is amended by adding the following to the Contract:

- “The FSMC will provide meals on days and times as requested by the SFA and in alignment with the SFA school calendar;”
- “The FSMC will provide meals in compliance with the meal pattern as required by USDA and reflected in TDA guidance;” and,
- “When an accommodation is made without a medical disability, the FSMC must provide the same special dietary accommodation for all students if a special dietary accommodation is made for one student.”

8. Section III, D. “Use of Advisory Group/Menus,” and Exhibit G, “Schedule of Applicable Laws” of this contract are amended by adding the following statements at the end of those sections:

“There is no requirement for submission of a 21-day a la carte menu. All a la carte sales must be in compliance with the competitive foods requirements of this Contract and applicable federal regulations.”

9. Section III, E. “Purchases” of the Contract is amended by deleting the existing option choices related to procurement and adding the following statements and provisions to that section:

- “The FSMC must disclose all credits, discounts, rebates, allowances, and incentives received by the FSMC on invoices submitted for payment;”

- “The FSMC must credit the SFA’s monthly bill/invoice for the market value of all credits, discounts, and rebates for purchases made on behalf of the SFA and provide documentation which allows the SFA to audit the accuracy of credits, discounts, and rebates for purchases made on behalf of the SFA;”
- “The SFA must ensure there is no conflict of interest between the SFA’s contracted FSMC and any third-party purchasing agent, including, but not limited to, ensuring that there are no duplicative fees for products or services provided by both the FSMC and any third-party purchasing agent;”
- “If the FSMC is acting as the purchasing agent on behalf of the SFA that the FSMC purchases must be in compliance with all applicable local, state, and federal regulations;”
- The following options related to procurement are added to the contract and provide three options to the SFA: “(1) SFA performs all purchasing for the food service operation; (2) FSMC performs all purchasing for the food service operation, including, but not limited to, USDA Foods processing; or (3) FSMC performs all purchasing for the food service operation, excluding USDA Foods processing.”
- The options related to geographic preference in procurement are hereby updated as follows:
- “SFA requires the FSMC to work with the SFA to establish a process for incorporating geographic preferences in the procurement of food and food products; OR The SFA does not require the FSMC to work with SFA to establish a process for incorporating geographic preference;” and
- “The FSMC must use the SFA’s USDA Foods allocation for the benefit of the SFA. Fulfillment of the contract provisions related to USDA Foods is a requirement that must be met before renewal of the Contract can be approved.”

10. Section III, F. “USDA Foods” of the Contract is amended by adding the following statements :

- “The SFA must ensure that the full value of USDA Foods is used in the meal service each year;”
- “The SFA must maintain final responsibility for management and oversight for procuring processing agreements and general management of USDA Foods;”
- “The FSMC must credit the SFA for the full value of USDA Foods contained in end products at the processing agreement value as described in the Contract;” and
- “The method used to determine the value of USDA Foods cannot be established through a post-award negotiation or by any other method that may directly or indirectly alter the terms and conditions of the procurement contract.”

11. Section III, K. “Books and Records of the Contract,” is amended by adding the following statements to that section as necessary:

- “The SFA must conduct an internal audit of food, labor, and other expense for cost-reimbursable contracts;” and
- “For purposes of this Contract, “paid adult meals” constitute nonprogram revenue.”

12. Section III, O. “Optional Requirements to Be Included,” of the Contract is amended by adding the following provision at the end of that section:

“The reimbursement of Contractor for duplicative costs is prohibited if SFA owns or purchases the Point of Service or Point of Sale system (POS) and FSMC as Contractor is merely operating or using such SFA POS system.”

13. Exhibit C, “Food Service Budget-Continued,” of the Contract is amended by adding a line item entitled: “IT System.”
14. Exhibit M, “Purchase Discounts, Rebates, Credits, and Value of USDA Foods” of the Contract is amended by stating as follows:
 - “The SFA shall verify the accuracy of credits, discounts, rebates, and the full value of USDA Foods;” and
 - “The FSMC shall be required to submit documentation to the SFA which will allow the SFA to verify the accuracy of credits, discounts, rebates and the full value of USDA Foods.”
15. All other terms of this Contract executed by SFA and FSMC shall remain the same.
16. This Amendment is only valid for the 2021-2022 school year. This Amendment shall terminate on June 30, 2022. This Amendment is executed by the Parties in their capacities, as stated below. All parties represent and warrant that the persons signing this Amendment are authorized to bind the respective parties.

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AGREEMENT

FSMC certifies that the FSMC shall operate in accordance with all applicable state and federal regulations.

FSMC certifies that all terms and conditions within the Proposal shall be considered a part of this Contract as if incorporated therein.

This Amendment to the Contract shall be in effect for one year and may be renewed by mutual agreement with another Amendment if provided in the Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed by their duly authorized representatives.

ATTEST: |

SCHOOL FOOD AUTHORITY:

BROWNWOOD ISD

Name of SFA

Signature of Authorized Representative

DR. JOE YOUNG

Typed Name of Authorized Representative

SUPERINTENDENT

Title

Date Signed

ATTEST: |
COMPANY:

FOOD SERVICE MANAGEMENT

Name of
FSMC

Signature of Authorized Representative

Typed Name of Authorized Representative

Title

Date Signed