

# PROVISIONS TO INCLUDE IN A PRE-PLATE MEAL VENDING SOLICITATION AND CONTRACT

Handout for MARO Training 8/3/21

Below are items and content to include in solicitations and contracts for pre-plate meal and meal component vendors. This is not an exhaustive list of what should be included. The items are denoted as either being required by regulations and policy (citation included and listed first) or recommended:

- *Menu and meal pattern requirements.* (Required) (2 CFR 200.319(d)(1-2); 7 CFR 210.10 & 220.8))
- *Meal delivery schedule and location, and related data.* (Required) (2 CFR 200.319(d)(1-2))
- *“Buy American” and related provisions.* (Required) (2 CFR 200.319(d)(1-2); 7 CFR 210.21(d))
- *Financial and cost provisions, e.g., requiring bidders to bid a fixed price per meal for fixed price contracts.* (Required) (2 CFR 200.320(a)(2), (b)(1) & (b)(2))
- *Language in Cost-Reimbursable Solicitations/Contracts.* (Required) (7 CFR 210.21(f))
- *USDA Foods provisions.* (Required unless USDA Foods are delivered direct to SFA/schools) (7 CFR 210.14(d); 7 CFR 250 Subpart C)
- *Termination clause.* (Required in contracts exceeding \$10,000) (2 CFR 200 Appendix II (B))
- *Recordkeeping Requirement.* (Required) (2 CFR 200.319(d)(1-2); 7 CFR 210.15(b))
- *Remedies for Noncompliance.* (Required for contracts exceeding \$250,000 and recommended for all other contracts.) (2 CFR 200 Appendix II (A))
- *Debarment and Suspension.* (Required) (2 CFR 200 Appendix II (H)) A contract award using Federal funds must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM). For contracts of \$25,000 or more, SFAs must ensure that awarded vendors are not debarred, suspended, or otherwise excluded from receiving such contracts. SFAs have three options for determining the exclusion status of potential contractors: (1) checking the [www.sam.gov](http://www.sam.gov) website; (2) collecting a certification from the vendor certifying that they are not debarred, suspended, or otherwise excluded; (3) Including a clause in the solicitation and signed contract.
- *Lobbying certifications.* (Required for contracts exceeding \$100,000) (2 CFR 200 Appendix II (I)) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. The Certification Regarding Lobbying and Disclosure of Lobbying Activities forms must be included in every solicitation exceeding \$100,000.

- *Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.* (Required for contracts in excess of \$150,000) (*2 CFR 200 Appendix II (G)*) Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- *Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).* (Required if applicable) (*2 CFR 200 Appendix II (E)*) Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). For more details, refer to 2 CFR 200, Appendix II.
- *Civil Rights Assurance Statement.* (Required) (*FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities*) See full statement below.
- *Daily menus and production records and other records as necessary to document SFA compliance with meal pattern requirements to be prepared and maintained by vendor at SFA site.* (Recommended)
- *Cycle menu (e.g. 21 day) included in the solicitation or submitted by bidders.* (Recommended)
- *Food Specifications.* (Recommended)
- *Meal acceptability provisions, such as taste testing, and surveys of students during the term of contract.* (Recommended)
- *Quality control and food safety provisions, including inspecting or testing a sample of meals, and requiring State or local health certification, HACCP, and food safety inspections at vendor facilities.* (Recommended)
- *Geographical preference for local products.* (Optional)
- *Renewal options.* (Recommended)
- *Prohibition on gifts and grants from vendors.* (Recommended)
- *State/local requirements.* (Recommended)
- *Drug-free workplace.* (Recommended) A clause should be included in the contract that grantees and contractors are required to abide by the provisions in the Drug-Free Workplace Act of 1988. Failure to adhere to the Act can result in debarment.

## Civil Rights Assurance Statement

(FNS Instruction 113-1, *Civil Rights Compliance and Enforcement – Nutrition Programs and Activities*)

"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 SO.3 and 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 the behalf of the Program applicant."