

Request for Proposal (RFP)/Fixed-Price Contract

Nonprofit School Food Service Management Company (FSMC) Services/ School Food Authority (SFA) Consulting Services

Springs Public Schools – Empower Academy

Introduction

Springs Public Schools Empower Academy is committed to delivering high-quality educational experiences to our students. As part of our ongoing effort to enhance our school's offerings, we are seeking a consultant or company to provide startup and ongoing food service management. Our goal is to ensure compliance with all state of Tennessee requirements, deliver nutritious and appealing meals to our students, and manage food service operations effectively. For more information about our institution and values, please visit SpringsPSTN.org.

Section 1: Instructions to Bidders

This document contains a Request for Proposals for providing FSMC/SFA consulting services for Springs Public Schools – Empower Academy (SPSTN-EA) participation in the United States Department of Agriculture's School Nutrition Programs and sets forth the terms and conditions applicable to the proposed procurement. The United States Department of Agriculture's School Nutrition Programs that SPSTN-EA plans to participate in are (National School Lunch Program, School Breakfast Program, Seamless Summer Option (SSO), Afterschool Snack Program, Fresh Fruit, and Vegetable Program (FFVP), USDA (DOD) Commodities)

- 1.1 Notice is hereby given that SPSTN-EA, hereinafter referred to as the School Food Authority (SFA), intends to enter a contract for the operation of FSMC/ SFA consulting services.

All costs involved in submitting a response to this Request for Proposals (RFP) shall be borne in full by the party incurring the said cost.

The SFA reserves the right to accept any proposal which it determines most favorable to the interest of the SFA and to reject any or all proposals or any portion of any proposal submitted which, in the SFA's opinion, is not in the best interest of the SFA.

The offeror to this RFP will be referenced as the FSMC/SFA Consultant, and any contract that may arise from the RFP will be between the FSMC/SFA Consultant and the SFA.

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

1.2 Pre-bid meeting

A meeting with interested offerors to review the specifications and to clarify any questions will be held on April 22, 2024 at 4:00pm CST via Zoom at <https://springscs-org.zoom.us/j/99484522082?pwd=YkZHQ0ZCVEJ0ejkzdC96a0lheDMrdz09>

1.3 Bid submission date – All proposals must be received on or before May 6, 2024 at 9:00am CST. Proposals will not be accepted after this time. Submit proposals electronically to Erin.Bowman@SpringsPSTN.org

Offerors must submit a complete response to this RFP, including all certifications, to provide a responsive proposal.

Contracts entered based on submitted proposals are revocable if contrary to law.

1.4 Questions — Submit all questions in writing to SFA contact at Erin.Bowman@SpringsPSTN.org April 24, 2024 by 12:00pmCST.

1.5 If clarification of the specifications/instructions is required, the SFA will clarify the specifications/instructions in the form of an addendum issued to all prospective bidders. If the SFA issues any changes to this Request for Proposals (RFP), acknowledgement of receipt of such changes should be made to the SFA in writing, signed by an individual authorized to legally bind the bidder, and included in the bidder's bid package. If changes to the RFP are not acknowledged, the SFA retains the right to reject the bid as non-responsive.

1.6 The subject matter of this RFP is subject to legislative changes either by the federal or state government. If any such changes occur prior to contract award, then all bidders will have the opportunity to modify their bids to reflect such changes. If any such changes occur after a contract award has been made, then the SFA (i) reserves the right to negotiate modifications to the contract reflecting such legislative changes; and (ii) shall have no obligation to provide unsuccessful bidders with the opportunity to modify their bids to reflect such legislative changes.

1.7 To be considered, each offeror must submit a complete response to this solicitation using the forms provided, along with any other documents submitted as a part of the Proposal and considered responsive to this RFP. No other documents submitted with the RFP and the Contract will affect the Contract provisions, and there may be no modifications to the RFP and Contract language. If an offeror modifies, revises, or changes the RFP and/or contract in any manner, the SFA may reject the offer as non-responsive.

1.8 Award will be made only to a qualified and responsible offeror whose proposal is responsive to this solicitation. A responsible offeror is one who's financial, technical, and other resources indicate an ability to perform the services required. The offeror shall submit for consideration such records of work and further evidence as may be required by the SFA's Board of Trustees. Failure to furnish such records and evidence, or the inclusion of any false or misleading information therein, shall be sufficient cause for the rejection of the Proposal or termination of any subsequent Contract.

1.9 Any proposal submitted after the time specified for receipt will not be considered and will be returned unopened.

- 1.10 No proposal may be altered, amended, or withdrawn after the specified time for opening proposals.
- 1.11 Potential Vendors shall submit a cover letter, which provides an overview of the offer and qualifications. Include the name, title, phone number and email address of the contact person that can answer direct questions concerning the proposal.
- 1.12 Bids shall be submitted on the forms provided with these specifications. Bids shall be submitted electronically to Erin.Bowman@SpringsPSTN.org on or before May 6, 2024 at 9:00am CST. All certifications contained herein must be signed and submitted with the bid.
- 1.13 Bids submitted after the date and time specified will not be considered. Postmarks or dating of documents will be given no consideration in the case of late bids.
- 1.14 The SFA reserves the right to reject any or all bids when there are sound documented reasons to do so, or if the FSMC/SFA Consultant does not submit all required bid documents.
- 1.15 The SFA will not give any relief for errors or omissions in this document.
- 1.16 The SFA will not allow deviations or exceptions from the specifications and conditions of this document.
- 1.17 The submission of the bid indicates that the bidder is informed of the specifications and conditions contained herein.
- 1.18 The SFA will not allow bid withdrawal or any changes after submission of the bid.
- 1.19 Once opened, no bid modification will be allowed without written approval from the SFA.
- 1.20 The SFA's officers, employees, or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractor nor potential contractors in connection with this bid.
- 1.21 The SFA reserves the right to investigate each bidder's ability to fulfill the terms of this bid.
- 1.22 All bids shall remain valid and subject to acceptance for a period of ninety (90) days after the submission date of May 6, 2024. Award of the contract shall be made to the responsive, responsible bidder as determined by the SFA, based on the criteria and specifications outlined in the RFP and further set forth in the contract.
- 1.23 If a prospective FSMC/SFA Consultant does not agree with the bid award, they have the right to protest. Disputes arising from the award of this bid must be submitted in writing to Erin Bowman at Erin.Bowman@SpringsPSTN.org no later than 5 days after the published award. The hearing official will disclose the dispute to the Tennessee Department of Education, Office of School Nutrition. The steps for dispute resolution are as follows:
 1. A meeting with the hearing official and representatives from the disputing party to discuss and resolve the complaint.
 2. A written decision letter stating the reasons for the decision will be prepared by the hearing official and submitted in writing to the protestor and all parties involved. This decision letter will be mailed to the protestor and will advise the protestor that he has a right to an additional review.

3. All employees will be notified that they cannot purchase under this procurement until a final decision is rendered.
4. In the event that purchases must be made for school meals before a final decision is rendered, the emergency purchase procedures established by the school system will be used.

- 1.24 No bid will be accepted from, or contract awarded to, any person, firm, or corporation that is in arrears or is in default to the SFA upon any debt or contract, or is a defaulter, as surety or otherwise, upon any obligation to said SFA, or has failed to perform faithfully any previous contract with the SFA.
- 1.25 All completed bids and supporting documentation submitted shall be the property of the SFA.
- 1.26 Until such time as a contract is awarded, no bidder, prospective or otherwise, shall be provided access to any supporting bid documents received by the SFA. All supporting bid documents shall be held strictly confidential and shall be reviewed and evaluated solely by SFA employees. Such documents shall not be released for distribution under the Freedom of Information Act until such time as the contract has been awarded. Violation of this clause by any bidder, prospective or otherwise, shall result in automatic disqualification of the bidder from being awarded the contract. Violation of this clause by an SFA may result in (1) temporary withholding of cash payments pending correction of the deficiency by the SFA or other more severe enforcement action; (2) disallowing of both use of funds and matching credit for all or part of the cost of the activity or action not in compliance; (3) whole or partial suspension or termination of the SFA's program; (4) withholding of further awards for the program; or (5) other remedies that may be legally available. Actions that result in the violation of law will be referred to the appropriate local, state, or federal authority having jurisdiction.
- 1.27 Timeline
- April 8, 2024, Bid available to public.
 - April 22, 2024 @ 4:00 pm, Pre-bidders meeting.
 - April 24, 2024 @ 12:00 pm, Questions due.
 - April 26, 2024 Answers due to bidders.
 - May 6, 2024 @ 9:00 am, Bid submissions due.
 - May 6, 2024, SFA reviews bids.
 - May 7, 2024, SFA recommendation to TDOE.
 - May 14, 2024, Contract awarded.
 - May 14, 2024, Awarded Vendor begins service.
- 1.28 Proposal Evaluation Plan
- The proposal evaluation plan for FSMC/SFA Consultants involves a points-based system where each consultant's score is determined by a formula based on their proposed price.

(40) points Cost & Financial Here, the "Lowest Price" refers to the lowest proposed price among all FSMC/SFA Consultants. The other FSMC/SFA Consultant's receive points equal to the lowest price divided by their price X 40. It's important to note that rounding is not permitted in this calculation. This evaluation approach encourages competitiveness among consultants by rewarding those with lower prices. The objective is to allocate points based on the relative cost-effectiveness of each proposal compared to the lowest price. The higher the points, the more favorable the evaluation for the consultant.

(30) points Specialized Experience in Child Nutrition Program Consulting and Performance History (Identifies and demonstrates FSMC/SFA Consultant's ability to provide services as stated in the RFP/Contract) Provide 2 letters from current clients with a similar scope of work. Include the contract dates, scope of work, and assessment of performance history.

(30) points Organization - Provide company background, organization structure, resumes of team members who will be working with SPSTN-EA. Resumes should include all Child Nutrition Experience. Provide a list of current clients that the organization is a FSMC/SFA Consultant for.

100 points TOTAL

CONTRACT
Between SPSTN-EA
AND
[CONTRACTOR NAME]

This Contract, by and between Springs Public Schools – Empower Academy hereinafter referred to as the “SFA” and [CONTRACTOR LEGAL ENTITY NAME], hereinafter referred to as the “FSMC/SFA Consultant,” is for the provision of SFA Consulting services, as further defined in the “SCOPE OF SERVICES.”

The FSMC / SFA Consultant is [AN INDIVIDUAL / A FOR-PROFIT CORPORATION / A NONPROFIT CORPORATION / A SPECIAL PURPOSE CORPORATION OR ASSOCIATION / A FRATERNAL OR PATRIOTIC ORGANIZATION / A PARTNERSHIP / A JOINT VENTURE / A LIMITED LIABILITY COMPANY]. The FSMC/SFA Consultant’s address is:

[ADDRESS]

Section 1: Scope and Purpose

- 1.1 During the term of this Contract, FSMC/SFA Consultant shall support the SFA’s Food Service Program in conformance with SFA’s agreement with the Department of Education.
- 1.2 The FSMC/SFA Consultant shall be an independent contractor and not an employee of the SFA. The employees of the FSMC/SFA Consultant shall be considered solely employees of the FSMC/SFA Consultant and shall not be considered employees or agents of the SFA in any fashion.
- 1.3 The SFA shall be legally and financially responsible for the conduct of the food service and shall ensure compliance with the rules and regulations of the Tennessee School Nutrition Program and the United States Department of Agriculture regarding School Nutrition Programs.
- 1.4 SFA will adhere to the procurement standards specified in 7 CFR 210.21 when contracting with the FSMC/SFA Consultant.
- 1.5 The SFA remains responsible for:
 - **Preparation of Solicitation and Contract Documents**—The SFA must prepare all solicitation documents, evaluation, and scoring criteria for contract award and obtain State agency approval of the contract prior to contract execution. This includes having the State agency annually review the contract (including all supporting documentation) per 7 CFR 210.19(a)(5)
 - **SFA Program Oversight**—the SFA remains responsible for Program operations and cannot, therefore, relinquish control of the Program to the FSMC/SFA Consultant
 - **SFA Monitoring**—The SFA designated representative will monitor the food service operation through periodic on-site visits in all schools operating the Programs, per 7 CFR 210.16(a)(3), including USDA Foods in accordance with 7 CFR 250.51(d). SFA will utilize the state monitoring forms.

- **Control the Quality, Extent and Nature of Food Service**—The SFA must retain control of the quality, extent, and general nature of the food service and the prices to be charged to the children for meals.
- **Signature Authority**—The SFA must retain signature authority on the agreement between the SFA and the State agency to participate in the Programs operated, **including the SFA's free and reduced price policy statement and the Claim for Reimbursement.**
- **Free and Reduced-Price Meal Process**—The SFA must maintain responsibility for the implementation of free and reduced-price policy in accordance with 7 CFR 245. Such responsibilities include conducting hearings related to such determinations and verification of applications for free and reduced-price meals.

Section 2: FSMC/SFA Consultant Responsibilities

- 2.1 An employee of the FSMC/SFA Consultant will perform for the SFA various aspects of the application, certification, and verification process of eligibility for school meals programs. FSMC/SFA Consultant will review and process lunch applications and conduct Direct Certification Match.
- 2.2 FSMC/SFA Consultant will assist SFA with gathering all documents required for state reporting, including but not limited to, providing, edit checks from Point of Sale (POS) system for SFA to prepare reimbursement claims, and keeping copies of health inspections.
- 2.3 FSMC/SFA Consultant will assist in managing SFA's POS system and Application Processing System. This includes managing the data imports from SFA's Student Information System to the POS System, providing technical support to SFA and FSMC staff, and provide training on the POS system and Application Processing System.
- 2.4 FSMC/SFA Consultant will assist with the verification process through running the sample size and creating the letters and responses to households.
- 2.5 FSMC/SFA Consultant will provide comprehensive audit support for Procurement and Administrative Reviews, including preparation prior to audit, on-site during the audits and follow up support as needed.
- 2.6 FSMC/SFA Consultant will work with FSMC and SFA to help resolve any operational issues that may occur. FSMC/SFA Consultant will work directly with FSMC to provide any support or guidance that may be needed to ensure the program is operating efficiently.
- 2.7 FSMC/SFA Consultant will ensure SFA's wellness policy is updated and coordinate meetings with wellness committee as needed.
- 2.8 The selected firm will provide consultative services to assist the SFA with management of various aspects of the food service procurement process including preparing the RFP documents, setting up advertisements for public notification, scheduling any pre-bidders meeting, facility walk-throughs, vendor presentations and public openings, eligibility determination advice and any renewal processes.
- 2.9 FSMC/SFA Consultant will review FSMC monthly invoices to ensure accuracy to the claim.

- 2.10 FSMC/SFA Consultant will schedule check in meetings with FSMC and SFA as needed to discuss any operation needs of the food service program.
- 2.11 FSMC/SFA Consultant will monitor the food service program to ensure compliance of the child nutrition program.
- 2.12 FSMC/SFA Consultant will complete the paid lunch equity tool on a yearly basis.
- 2.13 FSMC/SFA Consultant will provide additional support as needed including but not limited to, resolving kitchen equipment repairs, health permitting or fire marshal permitting.
- 2.14 FSMC/SFA Consultant will be required to meet the USDA professional standards requirements and provide documentation on a yearly basis.
- 2.15 FSMC/SFA Consultant will provide training to SFA to meet annual Professional Standards requirements. Training will be conducted virtually or in-person if needed and requested.
- 2.16 FSMC/SFA Consultant will be available once a year for a possible site visit if necessary. Day-to-day operations can be done virtually with direct communication with the administration.
- 2.17 FSMC/SFA Consultant will provide menu, recipe nutrient analysis, and special diet development/materials if needed.
- 2.18 FSMC/SFA Consultant will provide Food (HAACP) safety plan development.

Section 3: Pricing

- 3.1 FSMC/SFA Consultant will provide a fixed price monthly fee, which will be paid net 30.
- 3.2 This Contract shall constitute the entire compensation due the FSMC/SFA Consultant for all goods and services provided under this Contract regardless of the difficulty, materials or equipment required.
- 3.3 The FSMC/SFA Consultant must submit invoices for payment within 45 days of the last day of each month or the final service for the school year.

Section 4: Terms and Termination

- 4.1 This contract is effective for the period commencing May 14, 2024 through June 30, 2024 with the option to renew annually for a period not to exceed four additional years. Renewal will begin July 1, 2024-June 30, 2025
- 4.2 Either the SFA or FSMC/SFA Consultant can terminate this contract for cause or for convenience with a 60-day written notification. Following a 60-day written notification, the SFA can terminate this contract in whole or in part without the payment of any penalty or incurring any further obligation to the FSMC/SFA Consultant.
- 4.3 Following any termination for convenience, the FSMC/SFA Consultant shall be entitled to compensation for services completed upon submission of invoices and proof of claim for services

provided under this contract, up to and including the date of termination. The SFA shall have the right to receive services from the FSMC/SFA Consultant through the effective date of the notice of termination and may, at its election, procure such work from other contractors as may be necessary to complete the services.

- 4.4 Notwithstanding any provision to the contrary in this contract, obligations of the SFA will cease immediately without penalty of further payment being required if sufficient funds for this agreement are not appropriated by the Tennessee General Assembly or a federal funding source, or such funds are otherwise not made available to the SFA for payments in accordance with this contract.
- 4.5 Notwithstanding the notice period in paragraph 4.2, the SFA may immediately terminate the contract, in whole or in part, upon notice to the FSMC/SFA Consultant if the SFA determines that the actions, or failure to act, of the FSMC, its agents, employees, or subcontractors have caused—or reasonably could cause—jeopardy to health, safety, or property; or, if the SFA determines that the FSMC/SFA Consultant lacks the financial resources to perform under the contract.
- 4.6 If the FSMC/SFA Consultant fails to perform to the SFA’s satisfaction any material requirement of this contract or is in violation of a material provision of this contract, the SFA shall provide written notice to the FSMC/SFA Consultant requesting that the breach of noncompliance be remedied within 60 days. If the breach is not remedied by the specified period of time, the SFA may: (a) immediately terminate the contract without additional written notice; or (b) enforce the terms and conditions of the contract, and in either event seek any available legal or equitable remedies and damages. The SFA may finish the services by whatever method it may deem expedient. Any damages incurred by the SFA as a result of any FSMC/SFA Consultant default shall be borne by the FSMC/SFA Consultant at its sole cost and expense, shall not be payable as part of the contract amount, and shall be reimbursed to the SFA by the FSMC/SFA Consultant upon demand.
- 4.7 Neither the FSMC/SFA Consultant nor SFA shall be responsible for any losses resulting if the fulfillment of the terms of the contract is delayed or prevented by wars, acts of public enemies, strikes, fires, floods, or any other acts which could not have been prevented by the exercise of due diligence (“act of God”). The SFA may cancel the contract without penalty if the FSMC/SFA Consultant’s performance does not resume within 30 days of the FSMC/SFA Consultant interruption of services due to an act of God.
- 4.8 The only rates and fees that may be adjusted in subsequent contract terms are the fixed rates and fixed fees contained herein. Before any fixed rate or fee adjustments can be implemented as part of a contract renewal agreement, the FSMC/SFA Consultant shall document to the SFA, through a written financial analysis, the need for such adjustments. Adjustment of all individuals per meal fixed rates and applicable fees in subsequent contract terms must not exceed the Consumer Price Index for Urban Consumers – U.S. City average, all items less Food and Energy annual rate for December of the current school year, as compared to the rate for December of the previous year. Percentage increases cannot be applied to any previous contract term’s total estimated or actual contract cost.
- 4.9 All amendments must be documented, reviewed, and approved by the State agency prior to execution 2 CFR 210.16(a)(10). Additionally, the State agency must review and obtain awarding agency approval for all proposed contract modification changes when the scope of a contract or the change increases the contract amount by more than the Simplified Acquisition Threshold (Federal \$250,000). [2 CFR 200.324(b)(5)]

Section 5: General Contract Terms

- 5.1 The SFA, Tennessee Department of Education, Comptroller General, and USDA or their duly authorized representatives, may perform on-site reviews of FSMC/SFA consultant, including the review of records, to ensure compliance with the requirements of this contract and federal regulations.
- 5.2 No provision of this contract shall be assigned or subcontracted without prior written consent of the SFA.
- 5.3 This solicitation/contract, exhibits, and attachments constitute the entire agreement between the SFA and the FSMC/SFA Consultant and may not be changed, extended orally, or altered by course of conduct. No other contracts will be signed by the SFA.
- 5.4 Each party to this contract represents and warrants to the other that: (a) it has the right, power, and authority to enter into and perform its obligations under this contract; (b) it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery, and performance of this contract; and (c) this contract constitutes a legal, valid, and binding obligation upon itself in accordance with its terms.
- 5.5 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 all materials, workmanship, and services rendered shall be of a quality that would normally be specified by the SFA.
- 5.6 No course of dealing or failure of the SFA to enforce strictly any term, right, or condition of this contract shall be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this contract shall operate as a waiver of any other term, right, or condition.
- 5.7 Payments on any claim shall not prevent the SFA from making claims for adjustment on any item found not to have been in accordance with the provisions of this contract.
- 5.8 It is further agreed between the SFA and FSMC/SFA Consultant that the exhibits, attachments, and clauses attached and designated are hereby in all respects made a part of this contract.
- 5.9 The FSMC/SFA Consultant is subject to the provisions of Section 2209d of Title 7 of the United States Code due to the use of federal funds for the food service program. All announcements and other materials publicizing this program must include statements as to the amount and proportion of federal funding involved.
- 5.10 The Tennessee Department of Education and the USDA are not parties to this contract and are not obligated, liable, or responsible for any action or inaction by the SFA or the FSMC/SFA Consultant. The SFA has full responsibility for ensuring the terms of the contract are fulfilled.
- 5.11 To the fullest extent permitted by law, the FSMC/SFA Consultant agrees to indemnify, defend, and hold harmless the SFA and its respective agents, officers, and employees from and against any and all claims, demands, suits, liabilities, injuries (personal or bodily), property damage, causes of action, losses, costs, expenses, damages, or penalties, including, without limitation,

reasonable defense costs, and reasonable legal fees arising or resulting from, occasioned by, or in connection with: (i) any bodily injury or property damage resulting or arising from any act or omission to act (whether negligent, willful, wrongful, or otherwise) by the FSMC/SFA Consultant, its subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable; (ii) failure by the FSMC/SFA Consultant or its subcontractors to comply with any laws applicable to the performance of the services; (iii) any breach of this contract, including, without limitation, any representation or warranty provided by the FSMC/SFA Consultant herein; (iv) any employment actions of any nature or kind, including but not limited to workers compensation or labor action brought by the FSMC/SFA Consultant's employees; or (v) any identity breach or infringement of any copyright, trademark, patent, or other intellectual property right.

- 5.12 In order for the SFA to respond timely and appropriately to the requirements of the Tennessee Freedom of Information Act (FOIA), the FSMC must review all documents required to be provided under this contract and the exemptions for release under FOIA and, if exemptions are allowed, provide the SFA a redacted copy for release under FOIA, along with the original. The redacted copy shall be marked as "redacted," and the FSMC shall reference the specific grounds under FOIA or other law or rule supporting the specific redaction request to exempt certain information. Notwithstanding the foregoing, the SFA may not necessarily be allowed to release *just* the redacted versions. Redactions based on personal privacy and preliminary drafts, by law, must be sent to the state of Tennessee public access counselor before a denial to a FOIA request can be made. The SFA will abide by the decisions of the public access counselor.
- 5.13 Each party, including its agents and subcontractors, to this contract may have or gain access to confidential and proprietary data or information of the other party including, without limitation, other technical information (including functional and technical specifications, designs, drawings, analysis, research, processes, computer programs, methods, ideas, "know how," etc.), business information (sales and marketing research, materials, plans, accounting and financial information, personnel records, etc.), all student data and information, and other information designated as confidential expressly or by the circumstances in which it is provided (confidential information). No confidential information collected, maintained, or used in the course of performance of the contract shall be disseminated except as authorized by law and with the written consent of the disclosing party, either during the term of the contract or thereafter. The recipient must return any and all confidential information used in the course of the performance of the contract, in whatever form it is maintained, promptly upon termination of the contract, or earlier at the request of the disclosing party, or notify the disclosing party in writing of its destruction, if destruction is permitted by the disclosing party. Confidential information does not include data or information lawfully in the recipient's possession prior to its acquisition from the disclosing party; received by the recipient from a third party who was free to disclose it; publicly known through no breach of confidentiality obligation by the recipient; or independently developed by the recipient without the use or benefit of the disclosing party's confidential information.
- 5.14 The FSMC/SFA Consultant will comply with the relevant requirements of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) regarding the confidentiality of student education records as defined in FERPA. Any use of information contained in student education records to be released must be approved by the SFA. To protect the confidentiality of student education records, the FSMC/SFA Consultant will limit access to student education records to those employees who reasonably need access to them in order to perform their responsibilities under this contract. Any student records in the FSMC/SFA Consultant's possession shall be returned to the SFA when no longer needed for the purposes for which they were provided or, at the SFA's written request, they shall be permanently destroyed and the

- FSMC/SFA Consultant shall provide written confirmation to the SFA upon the destruction of student records.
- 5.15 The SFA and FSMC will keep all original documents. The FSMC/SFA Consultant will only have copies of documents.
- 5.16 Upon expiration or termination of the contract, the FSMC/SFA Consultant shall surrender all records as noted above relating to the initial contract and all subsequent renewal terms, if applicable, to the SFA within 30 days of the contract expiration or termination. SFA can request access to all records at any time should the need arise.
- 5.17 The SFA shall retain all records relating to the initial contract and all subsequent contract renewal terms for a period of three years, beginning from the date the final contract renewal term has expired, the receipt of final payment under the contract is recorded, or after the SFA submits the final "Monthly Claim for Reimbursement" for the final fiscal year of the contract, whichever occurs last.
- 5.18 FSMC/SFA Consultant will return all records at renewal time from the previous year.
- 5.19 "Cost-plus- a- percentage of cost and cost-plus-a percentage of income contracts are prohibited. [2 CFR 200.323(d)]"
- 5.20 The Selected FSMC/SFA Consultant shall comply with 2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. Compliance with this regulation requires the selected FSMC/SFA Consultant and SFA to do the following with contracting:
- a. The Selected FSMC/SFA Consultant and SFA must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
 - b. Affirmative steps must include:
 - 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - 3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - 6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.
 - 7) The Selected FSMC/SFA Consultant and SFA agree to comply.
- 5.21 If this contract is in excess of \$100,000, the SFA and FSMC/SFA consultant shall comply with all applicable standards, orders, and regulations, including but not limited to:

- The Clean Air Act (42 U.S.C. § 7401 et seq.), the Clean Water Act (33 U.S.C. § 1311–1330, § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 C.F.R. § 1.1 et seq.);
- “Certificate Regarding Lobbying” pursuant to 31 U.S.C. 1352 (Appendix A: 7 C.F.R. Part 3018);
- “Bid-Rigging Certification” pursuant to Section 33E-3 or Section 33E-4 of the Tennessee Criminal code, contained in Chapter 38 of the Tennessee Revised Statutes;
- “Certificate of Independent Price Determination;”
- “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions” pursuant to Executive Orders 12549 and 12689 (7 CFR 3017 Subpart C); and
- “Disclosure of Lobbying Activities” pursuant to 31 U.S.C. 1352 (Appendix A: 7 CFR Part 3018).

5.22 The FSMC/SFA Consultant certifies compliance with:

- Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871);
- The Department of Labor regulations (29 C.F.R. Part 5);
- Executive Order 11246, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 and Department of Labor Regulation (41 C.F.R. Chapter 60);
- Contract Work Hours/Safety Standards Act (40 U.S.C. 3701-3708) (for contracts in excess of \$2,500);
- Rights to Inventions Made Under a Contract or Agreement (Appendix II to 2 CFR 200/7 CFR 3019.48);
- Davis Bacon Act (for construction contracts in excess of \$2,000) (Appendix II to 2 CFR 200/7 CFR 3019.48); and
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (Appendix II to 2 CFR Part 200 (j) (for contracts worth \$100,000 or more).

Exhibit A: Site Data Form—FSMC/SFA Consultant Contract

Site Name, Address, and Phone Number	Contact Person	Current Enrollment	Breakfast		Lunch	
			Annual Number of Serving Days	Average Daily Participation	Annual Number of Serving Days	Average Daily Participation
TBD	Erin Bowman		180	TBD	180	TBD

Exhibit B: Eligibility Data and Projected Enrollments

Site Name	October 2024-2025 Eligibility Data		Projected Enrollments				
	Free	Reduced price	2024-25	2025-26	2026-27	2027-28	2028-29
Empower Academy	TDB	TBD	255	285	315	800	800

Proposer Name

Exhibit to Contract: By indication of the authorized signature below, the Proposer does hereby make certification and assurance of the Proposer's compliance with:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d etseq.);
- ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 etseq.);
- iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);
- iv. Age Discrimination Act of 1975 (42 U.S.C. 6101 etseq.);
- v. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
- vi. Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000);
- vii. All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
- viii. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3);
- ix. Food and Nutrition Service (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 the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.
- x. The USDA non-discrimination statement that in accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

Proposer Signature and Date