

## **WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION**

### **DIRECT DIVERSION PROCESSING PROGRAM AGREEMENT FOR SCHOOL FOOD AUTHORITIES PARTICIPATING IN THE USDA FOODS PROGRAM**

Instructions: This document is for read-only purposes. This document describes the requirements of contracting with processors and the USDA Foods Program. SFAs will be required to login to the Wisconsin USDA Foods Ordering System and accept these terms in the Contract Form under the Application. By clicking "Accept", the SFA agrees with the following terms and conditions.

#### **I. GENERAL INFORMATION**

By checking the agree to box located at the end of the agreement, the School Food Authority (SFA) and the Wisconsin Department of Public Instruction (DPI) agree to the following terms and conditions for participation in the Direct Diversion USDA Foods Program. Furthermore, the SFA agrees it will incorporate the terms of this agreement into the agreements with all applicable party(s). The SFA agrees to administer the Food Distribution Program in accordance with federal regulations including policy and instructions issued by DPI. The applicable regulations include 7 CFR 210 (National School Lunch Program); 7 CFR 250 (Food Distribution Program) and applicable procurement regulations 2 CFR 200 (the Super-Circular).

#### **II. AGREEMENT/POLICY STATEMENT**

##### **THE WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION (DPI) AGREES TO:**

1. Order bulk USDA Foods, to the extent available and allowable, and directly divert to the processor(s) selected by the SFA covered by this Agreement.
2. Prorate SFA pound commitments up or down to meet minimum truck load requirement, where feasible, based on survey results of bulk USDA Foods commitments.
3. Provide a list of processors eligible to process in Wisconsin to all SFAs.
4. Provide commitment information (number of pounds/cases) to processor(s) selected by SFA.
5. Monitor monthly performance reports for receipt of USDA Foods and sales to eligible agencies.

##### **THE SCHOOL FOOD AUTHORITY (SFA) AGREES TO:**

1. Follow all federal (Federal Regulation 2 CFR 200, the Super-Circular), state, and local procurement requirements. The most restrictive regulation(s) prevails.
2. Procure finished products from only those processors eligible to participate in Wisconsin.
3. Follow processor(s) minimum run requirements.
4. Obtain product pricing and delivery/handling fees established with SFA's distributor through a procurement process.
5. Contract with a distributor for delivery of finished end products resulting from direct diversion. SFA should ensure that selected processor(s) have a written agreement with distributor(s) that SFA is contracting with for delivery of finished products.
6. Pay processors and/or distributors for processing and delivery fees, if applicable. Processors or distributors will invoice SFAs.

7. Pay DPI applicable administrative fees.
8. Verify the accuracy of fee for service and delivery/handling charges from processor and/or distributor and retain proof of delivery.
9. Verify receipt of USDA Foods value. Invoices must be kept as proof of receipt and payment following applicable federal, state, and local regulation for record retention.
10. Administer the approved value pass through systems in accordance with USDA regulations and DPI guidance.
11. To confirm receipt of Net Off Invoice (NOI) product and USDA Foods value.
12. Monitor and reconcile bulk inventory at the processor(s) to verify the receipt of incoming bulk USDA Foods and the inventory draw down of the USDA Foods value of the product delivered to the SFA. SFA must verify the remaining allocation (entitlement) for accuracy.
13. Conduct all problem resolution at the processor and distributor level. Product complaint issues are SFA's responsibility.
14. Comply with DPI's Inventory Sweep Policy.
15. Make all bulk commitment(s) to processor(s) via the Annual USDA Foods Order. After closure of the annual USDA Foods order period, no adjustments by the SFA are allowed. Transfer of committed bulk USDA Food(s) to another approved processor is prohibited.
16. Allow DPI to reduce or eliminate all commitments to a processor(s) who does not receive sufficient statewide commitments.
17. Include the following requirements in SFA contract with distributor(s):
  - a. Distributor will maintain a program that meets reporting/audit requirements that tracks and deducts the USDA Foods value of the product delivered to the SFA and tracks the remaining allocation.
  - b. Distributor will clarify to SFA how the sales/velocity reporting process will occur.
  - c. Distributor will provide the product specified in the SFA bid and will not substitute other brands or item codes.
  - d. Distributor will slot all items the SFA has requested for processing that meet distributor's volume requirements, keeping in mind that special order items must meet volume requirements and business practice guidelines.
  - e. Distributor will provide proof of adequate property insurance to cover product in their care and control.
  - f. Distributor will retain proof of delivery for all SFA shipments.
  - g. Distributor agrees to the following billing requirements:
    - 1) If invoicing SFA for the Fee for Service, the distributor will provide two line items on their invoice—one for the fee for service amount and the other for the handling/storage/distribution fees. If distributor only provides one line item on the invoice, distributor will break out the fee for service and the handling/storage/distribution fees as required by FD-025 (March 29, 2004) providing the information to the SFA.
    - 2) If invoicing SFA for NOI, distributor will itemize or note the value of the USDA Food(s) on each invoice. If distributor is unable to provide more than one line

on their invoice, they will provide a summary report of pricing noting the gross price and the value of the USDA Food(s).

- h. Distributor will provide a usage/velocity report to the processor with products and cases delivered to the SFA in a timely basis, weekly preferred.

- 18. If SFA (prep school) prepares meals for another SFA (joint school), SFA will include a statement in the joint agreement(s) contract(s) to indicate that the joint agreement agency(s) understands and agrees to have their USDA Foods directly diverted to a processor(s) for further processing. Joint school must complete the DPI-SFA Direct Diversion Agreement.

Based on actual bulk USDA Foods received, it may be necessary for the prep school to make an adjustment for the USDA Foods value contained in all processed products to the joint school at the end of the school year. The joint SFA is responsible for assuring adjustment is made.

- 19. If SFA contracts with a Food Vendor for their meal service, SFA must ensure that the USDA Foods value contained in all processed products accrues to the SFA. Based on actual bulk USDA Foods received, it may be necessary for the Food Vendor to make an adjustment to the SFA at the end of the school year. SFA is responsible for assuring adjustment is made. SFA must receive all discounts or rebates for USDA Foods purchases made on its behalf.

Food Vendor is prohibited from entering into any processing contracts utilizing USDA donated food on behalf of the SFA. The Food Vendor cannot enter into subcontracts for further processing of USDA-donated foods.

- 20. If SFA contracts with a Food Service Management Company (FSMC) for their meal service, SFA must ensure that the USDA Foods value contained in all processed products accrues to the SFA. The FSMC must credit the SFA for the value of all USDA Foods received for use in the school food service in the school year received, whether the USDA Foods are used in that year or not. USDA foods are considered "received" when the foods arrive at the school kitchen, SFA storage facility, or FSMC storage facility in either raw form or in processed end products. Based on actual bulk USDA Foods received, it may be necessary for the FSMC to make an adjustment to the SFA at the end of the school year. SFA is responsible for assuring adjustment is made. SFA must receive all discounts or rebates for USDA Food purchases made on its behalf.

FSMC crediting for USDA Foods in processed end products must be at the processing agreement value (250.36(g)), in accordance with the distributing agency's State Participation Agreement.

The FSMC must use all USDA Foods ground beef products, ground pork products and all processed end products without substitution in the SFA's food service.

FSMC is prohibited from entering into any processing contracts utilizing USDA Foods on behalf of the SFA. The FSMC cannot enter into subcontracts for further processing of USDA Foods.

- 21. In accordance with Federal civil rights and law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, include the required Nondiscrimination Statement (verbatim as listed below signature block) in all applicable contracts.
- 22. Party(s) shall comply with all applicable Federal, State and local laws and regulations pertaining to wages, hours and conditions of employment.
- 23. Be responsible for verification of required certifications and licenses.

24. Comply with 7 CFR Part 3017, Subparts A-E, Government wide Debarment and Suspension (Nonprocurement). The SFA will not enter into contracts in excess of \$25,000 with debarred suspended or voluntarily excluded entities until such time as the debarment, suspension or voluntarily exclusion is lifted. The SFA agrees to use Form AD-1048 (1/92) or an equivalent form in their bidding process for all contracts in excess of \$25,000. By signing the certification statement on the form, the bidder certifies that neither it nor any of its principals (e.g., key employees) have been proposed for debarment, debarred, or suspended by a federal agency.

### **Assurance of Civil Rights Compliance**

The SFA hereby agrees that it will comply with:

- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
- ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
- 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 et seq.);
- 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.

By incorporating this assurance into this Agreement, the SFA agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel 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 SFA, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA.

### **Nondiscrimination Statement**

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. mail:  
U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410; or

2. fax:  
(833) 256-1665 or (202) 690-7442; or

3. email:  
[program.intake@usda.gov](mailto:program.intake@usda.gov)

This institution is an equal opportunity provider.