

Frequently Asked Questions

Food Service Management Companies

TABLE OF CONTENTS

1. What is the link to USDA's Contracting with Food Service Management Companies (FSMC): Guidance for School Food Authorities handbook?
2. When will TDA have new contract and renewal approvals completed?
3. What is the renewal process for an existing contract with option years remaining?
4. What Consumer Price Index (CPI) should I use for 2023-2024 FSMC contract renewals?
5. Are districts required to permit an additional CPI increase for their FSMC?
6. Must districts add the 7.56% flexibility for SY 2022-2023 to contract renewals for SY 2023-2024?
7. Do school boards have to approve renewals after TDA approves them?
8. Who can assist my CE with questions on completing the RFP or contract?
9. What is the process to get Texas Department of Agriculture's (TDA) approval for equipment purchases?
10. If I am in the first year of a cost-reimbursable contract, can I switch to the fixed-rate contract, even if I still have renewable years left?
11. When calculating the meal equivalency factor SY 2022-2023, what do I enter for the USDA Entitlement Value?
12. In a fixed-rate contract, must all non-program costs, including catering, be billed with the meal equivalency factor?
13. Is the name requested in the TX-UNPS system as the food service director meant to be the FSMC director or a district employee?
14. Are vendor rebates required to be itemized in addition to USDA Foods values?
15. Is a pre-bid meeting required?



Frequently Asked Questions

Food Service Management Companies

16. Must a CE disclose to prospective FSMCs its scoring and evaluation criteria for awarding or deducting points for past performance?
17. If a district has awarded its solicitation to a vendor where there is evidence of collusion or unfair procurement practices, how is this addressed?
18. How does an FSMC vendor resolve perceived unfair procurement practices?
19. Can a district that utilized a FSMC as a consultant be awarded the subsequent Request for Proposal (RFP)?
20. Can a chart be added to the RFP template?
21. Does the Buy American provision only apply to food items in child nutrition programs?
22. May the FSMC bill the CE for new employees hired or transferred from the CE?
23. Are products such as food and equipment purchased by the FSMC to run a CE's food service program owned by the FSMC or the CE?
24. When in a fixed rate contract, can CEs procure food without involvement of the FSMC?
25. In the event that the CE conducts its own procurement of USDA Foods and/or supplies, can the FSMC decline to use those products?
26. Does the required annual USDA foods reconciliation need to balance to allocated or received value?
27. How should the CE measure evaluation criteria for compliance and audit history?



Frequently Asked Questions

Food Service Management Companies

1. **What is the link to USDA's Contracting with Food Service Management Companies (FSMC): Guidance for School Food Authorities handbook?**

<https://www.fns.usda.gov/cn/updated-guidance-contracting-food-service-management>

2. **When will TDA have new contract and renewal approvals completed?**

TDA will provide approvals by May 1, 2023, for districts that submitted documents within the posted deadlines. Documents received late may not be processed by May 1, 2023, but TDA will do everything possible to expedite approvals.

3. **What is the renewal process for an existing contract with option years remaining?**

Districts choosing to renew a contract should complete the steps outlined at the link: <https://squaremeals.org/Programs/NationalSchoolLunchProgram/FoodServiceManagementCompanies.aspx>

4. **What Consumer Price Index (CPI) should I use for 2023-2024 FSMC contract renewals?**

The FSMC contract renewal rates shall not be increased higher than the CPI yearly percentage index published in December 2022.

5. **Are districts required to permit an additional CPI increase for their FSMC?**

No. Districts may determine the amount, if any, to be permitted by the FSMC. Any changes to the current pricing must utilize the amendment provided by TDA and available on the SquareMeals web page.



Frequently Asked Questions

Food Service Management Companies

6. Must districts add the 7.56% flexibility for SY 2022-2023 to contract renewals for SY 2023-2024?

No. SY 2023-2024 renewals should be based on the base cost in the contract for SY 2022-2023 operations. There is no provision for an additional amount beyond the annual CPI permitted. Districts should work with FSMCs to ensure that standard practices are utilized to determine new pricing structures for renewals.

7. Do school boards have to approve renewals after TDA approves them?

Districts should follow their local procedures. However, historically, TDA has found that all school boards expect to approve the renewal and initial bid documents. TDA should approve prior to board approval to ensure that a compliant contract is executed.

8. Who can assist my CE with questions on completing the RFP or contract?

CEs should contact either fsmc@texasagriculture.gov or their Education Service Center representative for technical assistance on completing the RFP or contract. The FSMC staff or legal counsel **cannot** assist in any manner with the RFP template document.

9. What is the process to get Texas Department of Agriculture's (TDA) approval for equipment purchases?

All equipment purchases above \$5,000 require the submittal of a capital expenditure request. Capital expenditures for equipment must be charged in the period in which the expenditure is incurred unless TDA approves a payment structure that spans multiple funding years. Capital expenditures for equipment must be coded as a direct cost.

To request approval for a capital expenditure, CEs must complete the capital expenditure form located in TX-UNPS under the Applications tab, Capital Expenditure Request hyperlink. Requests for capital expenditures must be made by location/site. For each cost item, provide the type of item, age, quantity, cost per item, total cost, and percentage paid by child nutrition funds. Use the Comment field to describe how the item will be used and why it is a necessary purchase.



Frequently Asked Questions

Food Service Management Companies

Approval is granted on a case-by-case basis. Approval or disapproval for the request will be indicated in TX-UNPS. If a CE incurs and pays for the cost of a capital expenditure without the required approval, the cost is unallowable.

10. If I am in the first year of a cost-reimbursable contract, can I switch to the fixed-rate contract, even if I still have renewable years left?

Districts may choose to rebid at any time, even if there are option years remaining. All contracts are executed in one-year increments.

11. When calculating the meal equivalency factor SY 2022-2023, what do I enter for the USDA Entitlement Value?

The published School Year 2022-2023 USDA Entitlement Value used for calculating the meal equivalency rate is \$0.43 cents. The previous school year 2021-2022 USDA Entitlement Valued used for calculating the meal equivalency factor was \$.3975.

12. In a fixed-rate contract, must all non-program costs, including catering, be billed with the meal equivalency factor?

Yes, all non-program costs shall be converted to meal equivalents (meal counts) using the meal equivalence factor and charged the lunch price fixed rate.

Example: $\$5000 \text{ bill} / (\text{USDA foods assistance rate} + \text{meal certification } \$0.08 \text{ reimbursement rate} + \text{free reimbursement rate}) \times \text{vendor contracted lunch price}$.

13. Is the name requested in the TX-UNPS system as the food service director meant to be the FSMC director or a district employee?

District decisions may not be made by FSMC employees. Therefore, the contact in TX-UNPS needs to be the district staff person responsible for decisions and program oversight.



Frequently Asked Questions

Food Service Management Companies

14. Are vendor rebates required to be itemized in addition to USDA Foods values?

Yes, invoices should itemize costs and any rebates and discounts due to the district for reconciliation. USDA Foods values must also be returned to the district and should be able to be reconciled to the values on the TX-UNPS Commodity Bulletin allocations.

15. Is a pre-bid meeting required?

Yes, but the CE may opt to have a meeting virtually or through a conference call. The CE must demonstrate that all eligible FSMC vendors are provided the same operational information and opportunity to participate.

16. Must a CE disclose to prospective FSMCs its scoring and evaluation criteria for awarding or deducting points for past performance?

Yes. TDA will also use a CE's audit history to confirm that any past good or poor performance by an incumbent CE is reflected in the score based on the criteria determined by the CE. CEs will also be required to state their protest procedure in the New Contract process.

17. If a district has awarded its solicitation to a vendor where there is evidence of collusion or unfair procurement practices, how is this addressed?

If TDA is made aware of unfair procurement practices and affirms that the activities resulted in an improper vendor award, the district will be required to re-solicit an FSMC vendor or utilize local funds for the improper contract.

18. How does an FSMC vendor resolve perceived unfair procurement practices?

FSMCs should resolve procurement concerns at the local level through district appeal/dispute processes. Vendors may also report information to TDA at squaremeals@texasagriculture.gov or FNCollaboration@texasagriculture.gov.



Frequently Asked Questions

Food Service Management Companies

19. Can a district that utilized a FSMC as a consultant be awarded the subsequent Request for Proposal (RFP)?

If a CE contracted with a FSMC vendor to manage operation of its food service program, that vendor is not permitted to be awarded a contract as it gained knowledge and perspective that other vendors would not have outside the scope of the RFP. However, if a vendor were contracted to provide menu or signage recommendations without managing any aspect of the program, they would be able to respond to the solicitation.

20. Can a chart be added to the RFP template?

If the required data does not easily fit into the template, the district may include the information in a separate document and/or chart that clearly defines where it fits into the prototype.

21. Does the Buy American provision only apply to food items in child nutrition programs?

Yes, additional information on Buy American can be found at the following link:

https://fns-prod.azureedge.net/sites/default/files/resource-files/FactSheet_BuyAmerican.pdf

22. May the FSMC bill the CE for new employees hired or transferred from the CE?

No. The FSMC can only charge the fixed meal rate, which should account for all costs of doing business with the CE. If the CE has elected to retain some of their staff or transfer staff to the FSMC, this must be outlined in the first year of the contract according to the RFP to inform the FSMC of all labor costs and ensure an accurate offer.



Frequently Asked Questions

Food Service Management Companies

23. Are products such as food and equipment purchased by the FSMC to run a CE's food service program owned by the FSMC or the CE?

The CE retains ownership of all food and equipment purchased by the FSMC to operate the food service program.

24. When in a fixed rate contract, can CEs procure food without involvement of the FSMC?

Yes, but CEs may only procure USDA Foods in this situation, either directly or through a co-op.

25. In the event that the CE conducts its own procurement of USDA Foods and/or supplies, can the FSMC decline to use those products?

No. All food and supplies have monetary value, and it is not a prudent use of federal funds to permit the waste or discard of allowable CE purchases.

26. Does the required annual USDA foods reconciliation need to balance to allocated or received value?

The received value. Due to USDA value changes, the reconciliation may not reconcile to the penny. The requirement is the CE is tracking monthly and able to provide TDA the annual reconciliation during an Administrative Review and the FSMC contract renewal period.

27. How should the CE measure evaluation criteria for compliance and audit history?

CEs must set the criteria in the RFP and evaluate consistently based on the defined parameters. The CE must request information demonstrating the vendor's performance with administrative, procurement reviews, and other compliance efforts on behalf of the CE. Points shall be deducted for findings on state reviews. In instances where fiscal action is taken or disregarded, the vendor shall receive zero points in this area.



Frequently Asked Questions

Food Service Management Companies

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/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.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.

This institution is an equal opportunity provider.

