TDA Webinar

A Discussion with FSMC Vendors

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ALPHABET SOUP

- **SFA** = School Food Authority
- **FSMC** = Food Service Management Company
- **CPI** = Consumer Price Index
- **CNP** = Child Nutrition Programs
- **AR** = Administrative Review of CNP
- **PR** = Procurement Review of CNP
- **RFP** = Request for Proposal
OBJECTIVES

- Understand district responsibilities if using an FSMC
- Understand delineation of roles between districts and FSMCs
- Understand expectations for vendor communication
- Understand changes to the contract and renewal processes
- Understand TDA’s position on consultant contracts
- Understand expectations during administrative reviews
WHAT IS THE DISTRICT’S PRIMARY ROLE?

The district’s primary role when using an FSMC is Contract Management and Oversight.
Districts may not award FSMC contracts to entities that are not registered and approved in Texas prior to solicitation issuance.

Registration as a Texas vendor is not permanent – vendors can be removed due to systemic or continued non-compliance.

Must be renewed every 3 years. Renewal will not be approved if there is systemic or continued non-compliance by the vendor.

The new registration and renewal process for current vendors has been modified to allow TDA to better assess compliance and fidelity.
FSMC or Self-Op?
Local Decision
RESPONSIBILITIES

What Cannot Be Outsourced?
What Cannot Be Outsourced to an FSMC?

- Oversight and performance monitoring of the contracted FSMC vendor
- Signature authority
- Annual USDA Foods Reconciliation
- Student Eligibility
  - Free and reduced-priced application processing
  - Direct certification processes
  - Data entry on student eligibility in district POS
What Cannot Be Outsourced to an FSMC?

- **On-site reviews** of meal counting and claiming procedures
- Claims submissions
- District managed food service fund for revenue and/or expenses
- Financial reconciliation of billing
- Advisory committees
Signature Authority Example – SSO 2021-22

- District decision, not FSMC decision
- District determines whether they want all kids to eat free or operate NSLP
- Does the contract support district’s decision?
- Legal Opinion - Emergency Procurement, if needed
- Application in TX-UNPS
COMMUNICATION

District Personnel or FSMC Personnel?
PROTOTYPE
TEMPLATE
REQUIREMENTS FOR CONTRACTING AN FSMC

- When procuring services, districts must ensure free and open competition.

- If an FSMC is going to submit a proposal, they cannot have ANY part in the solicitation development.

- Under no circumstances is it okay for the district to discuss the FSMC solicitation process with the current FSMC.
FULL AND OPEN COMPETITION

- All FSMCs are on a level playing field and have the same opportunity to compete.
- Procurement procedures and specification requirements do not unduly restrict or eliminate competition.
- Fairness and integrity in all aspects of the procurement process must be followed.
- The SFA must provide the RFP to all TDA registered FSMCs.
EVALUATING RFPs
EVALUATION DOCUMENTATION

Justification for Scoring

- Formula where cost is the heaviest evaluation factor.

- Scoring for objective criteria such as years of experience should be defined. For example: 1 year = 1 point; 3 years = 3 points; more than 10 years = 10 points.

- The FSMC may not charge the SFA any fee other than a meal x rate.

No additional administrative, POS, delivery, late fees, or any other fees are allowable.
Evaluation documents for awarded and non-awardees must be provided to TDA with contracts for review.

If detailed evaluation and justification information is not provided; TDA cannot approve the contract.

The SFA may not use the contract until it is approved by TDA.
GUARANTEE

**Definition:** An FSMC commitment to meet fiscal goals specified by the SFA.

- Districts set guarantees, not the vendor. Districts must make sure that any guarantees are based on realistic projections.
- A “Guarantee” is not the price of the proposal.
- If the guarantee is to be part of the evaluation, it must be defined in the solicitation as part of the pricing criteria.
EQUIPMENT PURCHASE REQUEST PROCESS

- FSMC can only purchase equipment on the SFA’s behalf if the SFA makes the request in the RFP.
- Any equipment purchases over $5,000 (per item) must be approved by TDA prior to purchase. Inclusion in the contract is not the required TDA approval.
- Procurement regulations must be followed.
- Title to all equipment must be retained by the SFA.
- Equipment expense cannot be part of the price per meal in the Fixed Price contract but must be billed as a separate line item.
FOOD TRUCK APPROVAL PROCESS
SFAs cannot request and FSMCs cannot offer “value added” incentives such as scholarships, donations, grants, free services, free equipment, etc.
SELECTING AN FSMC
SELECTING AN FSMC

01 SFA’s must award contract to the responsible FSMC whose proposal, based on scoring and ranking, is most advantageous to the SFA, with price as the primary factor and other factors considered.

02 Scoring and evaluation material must be kept on file and available for review by TDA upon request.

03 All scoring and evaluation material must be sent to TDA as part of the pre-approval process.
SELECTING AN FSMC

All initial contracts and renewal contracts must be received and approved by the State Agency BEFORE the contract period begins!
The SFA and FSMC must sign the RFP/FSMC Contract Template and all related documents by April 1.

- All renewals are for one-year terms.
- The SFA and/or FSMC can decide to not renew the contract.
- Except for the fee or price increasing by the provided CPI percentage, no other changes are allowed for an addendum.
01 Maximum contract period is 5 years.

02 SFA may not allow FSMC to begin operations without TDA approval.

03 All contracts end on June 30 each year.
CONTRACT MANAGEMENT
ANNUAL CONTRACT RENEWALS

- Contact term is July 1 – June 30.
- Renewal final information is due by April 1 each year.
- Changes in fees are limited to the Consumer Price Index (CPI) increase or decrease.
- An explanation of the fee change methodology is required.
- TDA must approve the renewal for Child Nutrition fund use.
**MATERIAL CHANGES**

**Definition:** Any change made to a contract after it has been awarded that alters the terms and conditions of that contract substantially enough that had other respondents known of these changes in advance, they could have bid differently and more competitively.
Districts may **NOT** hire an FSMC vendor as a consultant and subsequently award a contract to them.
- Unfair advantage
- Conflict of interest

Districts must disclose to TDA their use of any FSMC vendors as a consultant.

It is the district’s responsibility not to recommend award to these vendors, as related costs will be unallowable.
WHAT’S NEW FOR 21-22

- Procurement Timeline for FSMC Contracts and Renewals
- Documentation & Evaluation Required for Renewals
- Additional Training on FSMC Oversight
2020-2021 TIMELINE

April Prior Year:
- Inform TDA of FSMC interest

Dec-Jan:
- Download and review prototype

January:
- Review FSMC Guidance

Feb-March:
- Complete Prototype for Solicitation
- Schedule pre-proposal conferences. Must be 2-3 weeks after RFP is issued and 3-4 weeks before submissions are due

March-April:
- Template due date extended to February 25th or March 8th, depending on the circumstances
- RFP Openings Independent Team Evaluations

April-May:
- Submit completed contract package and evaluation documents to TDA for approval before May 1. Contracts may not be executed prior to TDA approval.

May-June:
- Meals cannot be claimed without an approved, signed contract on file by July 1

July 1:
- Template due date extended to February 25th or March 8th, depending on the circumstances

CHILD NUTRITION NATIONAL SCHOOL LUNCH PROGRAM
NEW TIMELINE (2021-2022)

**Solicitations Documents Posted for Download & Review**
- **September**
  - Review FSMC Guidance

**Complete Prototype for Solicitation & Submit for Approval**
- **October - January 15th**
  - Proposed RFP submissions may be submitted starting October 1st and no later than January 31st

**Publish RFP and Evaluate Responses**
- **January 31st**

**Meals cannot be claimed without an approved, signed contract on file by June 1.**
- **April**
  - Submit proposed awarded vendor’s RFP and all vendor evaluation documents to TDA for approval before April 1.
  - Contracts may not be executed prior to TDA approval.

**May 30th**

Use Prototype Template to Plan Proposal Steps
Submit early in case full procurement is required.

RENEWALS

September
- Review FSMC Guidance
- Renewal Documents Posted for Download & Review
- Most recent monitoring form and USDA Foods Reconciliation

October - January 1
- Submit Renewals and Documentation for Approval

February
- TDA Review

April
- All final renewal documents must be submitted to TDA by April 1
- Renewal contracts may not be executed prior to TDA approval.
REQUIRED MONITORING FORM

I. Eligibility and Verification
II. Menu Cycle/Meal Pattern
III. Competitive Foods
IV. USDA Foods
V. Inventory
VI. Meal Count System
VII. Financial Accounting
VIII. Financial Procurement
IX. Facilities
X. Wellness
XI. Staffing
XII. Record Retention

Department of Agriculture

Directions: Food Service Management Company (FSMC) Monitoring Form

Purpose
This form is intended to be used routinely to assist the CE in onsite monitoring an FSMC’s operation of the program. A CE may use this form or another form that addresses the same issues.

The monitoring reviews should be conducted by the School Nutrition Program (SNP) director or designee.

For additional guidance for the issues included in this form, see Administrator’s Reference Manual.

Directions for Completing This Form

General Information
   • Contracting Entity (CE) Name: Record the name of the CE in the designated space.
   • CE ID Number: Record the ID number of the CE in the designated space.

Use of This Form

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Routinely throughout the year.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Required</td>
<td>Use this form or a similar</td>
</tr>
<tr>
<td>Form Format</td>
<td>reporting instrument.</td>
</tr>
</tbody>
</table>

Record Retention

Completed forms kept onsite and made available on request. Public and charter schools are required to keep documentation related to school nutrition programs for 5 years. Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.
CONTRACT IS VOIDED AND RE-SOLICITATION IS REQUIRED.

WHAT HAPPENS WITH NON-COMPLIANCE?

• USDA Contracting With Food Service Management Companies: Guidance for School Food Authorities
Contracting with Food Service Management Companies:

Guidance for School Food Authorities
Changes in Proposal Processes

- Affirmations of no-communication during the RFP period
- Only documents in the proposal template will become part of the contract.
- Activities suggested beyond RFP requirements may be deemed non-responsive.
Questions?
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, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

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To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: How to File a Complaint, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

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

fax: (202) 690-7442; or email: program.intake@usda.gov. 
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