

Frequently Asked Questions

Food Service Management Companies

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TEXAS DEPARTMENT OF AGRICULTURE
COMMISSIONER SID MILLER

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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 review new RFP contract documents for the 2024-2025 school term within 30 business days of receipt. TDA will review renewal documents for the 2024-2025 school term within 30 business days of receipt. Districts may begin submitting RFP templates and renewals on October 3, 2023. All RFP documents for review are due by December 1, 2023. All renewal documents for review are due by February 1, 2024.

All new contract selections must be submitted to TDA for approval to award and execute by April 1, 2024. TDA will review and approve selected awardee contracts by May 1, 2024. Once TDA has approved the award, the SFA has until June 21, 2024 to sign and return, all executed contracts and upload to the Smartsheet link.

Refer to the FSMC page of [Squaremeals.org](https://www.squaremeals.org) for all due dates [here](#).ⁱ

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

CEs choosing to renew a contract should complete the steps outlined [here](#).ⁱⁱ

4. What Consumer Price Index (CPI) should I use for 2024-2025 FSMC contract renewals?

The FSMC must present a calculated annual CPI growth percentage based on the formula issued by the [Bureau of Labor Statistics](#). The CPI calculation must be submitted with the renewal documentation. The report is posted monthly. The latest CPI for acceptable use for 2024-2025 renewals is December 2023. The CE must



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approve the CPI increase and TDA will review the CPI presented and approve accordingly.

The methodology includes a comparison of the seasonally adjusted value of the Consumer Price Index as published by the U.S. Department of Labor, Bureau of Labor Statistics, Food Eaten Away From Home for a specific month in the prior year to the seasonally adjusted value of the CPI for the same month of the current year. The increase is then calculated on a percentage basis.

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

No. Districts may determine that an increase in the CPI is not appropriate or affordable for their program. The CE may also choose to apply a CPI increase in their annual contract renewal based on the CPI calculation (see question 4 above).

6. Will TDA permit an additional CPI increase for SY 2023-2024 based on increased vendor costs and possible supply chain disruptions beyond the annual CPI adjustment?

No. There is no provision for an additional CPI increase beyond the annual renewal process. SY 2023-2024 renewals were based on the fixed rate in the contract for SY 2022-2023 operations, including a potential CPI increase that must be calculated accordingly and presented with the renewal documents and approved by TDA. 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 continue to follow their local procedures and follow school board approval processes for renewal and initial bid documents. A district's governing body may not approve or authorize execution of any contract or renewal amendment prior to TDA's review and written approval of such documents. 7 CFR 210.19(a)(5)



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

CEs should contact their Education Service Center representative or fsmc@texasagriculture.gov for technical assistance in completing the RFP or contract renewal documents. FSMCs **cannot** assist in any manner with the RFP document.

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

Yes, a district in a current FSMC contract, regardless of whether it's cost-reimbursable or fixed-rate, may choose to rebid at any time, even if there are option renewal years remaining. Changing contract type from cost reimbursable to fixed rate is a material change which requires rebidding the contract. Additionally, only fixed price contracts are allowed.

10. What meal equivalency factor (MEF) should districts use for School Years 2022-2023 and 2023-24?

The meal equivalency factor (MEF) calculated by TDA for 2022-2023 and 2023-2024 is \$4.44. The factor is the sum of the 2022-2023 federal reimbursement rate + meal certification + USDA entitlement (\$3.93 free lunch reimbursement rate for 2022-2023 + \$.08 meal certification reimbursement rate + \$0.43 USDA Foods Assistance Rate). This factor is used to determine the number of meal equivalents (see Question 11).

The SY 2023-24 free lunch reimbursement rate determines the MEF rate accordingly for SY 2024-2025, which has been calculated as \$4.69.

11. What is the difference between a meal equivalent and the meal equivalency factor (MEF) and non-program rate?

A meal equivalent is a standard unit of measurement derived from converting non-program (à la carte, catering, concessions, adult meal) sales.



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The MEF (for 2023-2024) is the rate (\$4.44) used in the statistical formula used to convert non-program sales into meal equivalents for billing purposes for fixed contracts.

The non-program rate is the rate stated by the FSMC to charge non-program food meal equivalents.

The MEF formula provided by TDA to calculate meal equivalents is:

Non-program revenue such as a la carte, adult sales, catering, concessions, etc.	/	Meal Equivalency Factor (2023-24) \$4.44	=	Total Meal Equivalents
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To calculate your total non-program meal equivalent charges:

Non-program Rate (Exhibit G)	X	Total Meal Equivalents	=	Total non-program meal equivalent charges
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12. If there is a discrepancy in the MEF, how is it rectified?

The district must use the MEF formula provided by TDA as described in Question 11 above. If the district is not using the above MEF, the district should work with their FSMC to correct any discrepancies for the current school year (2023-2024).

CEs must ensure that the correct meal equivalency factor is used for 2023-2024. It is posted on the FSMC page on squaremeals.org.



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

Yes, all non-program costs shall be converted to meal equivalents using the MEF formula (Total non-program sales / \$4.44 meal equivalency factor) and charged the non-program fixed rate quoted by the vendor during the solicitation process.

14. What meal equivalency rate should districts use if their base year contract was prior to 2022-23?

Districts should use the meal equivalency rate as written and published in the original RFP for all renewals of contracts entered prior to 2022-2023. Contract terms will determine the rate.

15. 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 oversight of the FSMC and the child nutrition programs.

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

Yes, invoices should itemize costs and any rebates and discounts whether commercial foods or USDA Foods due to the district. 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. TDA requires reconciliation at least once a year but recommends at least monthly and applied to the FSMC invoices. This is reviewed during the administrative and procurement reviews.

17. Is a pre-proposal meeting required?

No. A pre-proposal meeting is optional but highly recommended. If the CE opts to have a pre-proposal meeting, the CE may opt to have a meeting virtually, in-person



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or through a conference call. Regardless of having a pre-proposal meeting, the CE must demonstrate that all eligible and approved Texas FSMC vendors (posted on the FSMC page of squaremeals.org) are provided the same operational information and opportunity to participate.

18. How should the CE measure evaluation criteria for compliance and audit history including past performance?

CEs should use factual and objective criteria and maintain documentation of scoring, evaluation, and award. CEs 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.

CEs also provide their protest procedures to ensure transparency in the RFP process.

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

Matters concerning the propriety of an award may be submitted to TDA. If TDA's review process determines whether a contract was awarded improperly or illegally, the SFA will be required to take remedial action as appropriate. Additionally, TDA files a report to the Office of Inspector General (OIG).

20. 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 FSMC@texasagriculture.gov.



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21. Can a district that utilized a FSMC as a consultant for assistance in RFP processes award the subsequent FSMC contract to that same FSMC?

No. A vendor, FSMC, or contractor that assists a CE with developing or drafting specifications, requirements, statement of work, or any other solicitation document must be excluded from competing for such procurements.

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

Yes, only if the required documentation 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.

Documentation outside of the prototype should not be accepted.

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

Yes, additional information on Buy American can be found [here](#).ⁱⁱⁱ

24. 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 RFP to inform the FSMC of all labor costs and ensure an accurate offer.

25. 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?

CEs retain ownership of all property and assets, including food, USDA Foods, and equipment, purchased or acquired with program funds for use in the CE's food service program. CE's are responsible for purchasing or acquiring any equipment needed to operate the program.



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26. In a fixed rate contract, can CEs procure food without involvement of the FSMC?

No. Per the RFP prototype for fixed-rate contracts, CEs may not procure food without the involvement of the FSMC.

27. Can the FSMC decline to use USDA Foods?

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

28. 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 balance to the penny. The CE is required to track monthly and be able to provide TDA the annual reconciliation during an Administrative Review and the FSMC contract renewal period.

29. What are the requirements for the 21-day cycle menu?

The CE must develop the 21-day cycle menu for the FSMC RFP utilizing the required advisory board/committee. The development should be based on student feedback as well as the advisory board/committee. FSMC employees may not participate in the development of the menu. The Education Service Center (ESC) representatives can provide technical assistance to the advisory board/committee for menu development for the 21-day cycle menu to ensure compliance with meal pattern requirements. The developed 21-day cycle menu will be followed by all vendors and shall include dietary standards, affordability, nutrition requirements, and appeal to the students.

A CE may not contract with an FSMC to develop their menu for the CE's solicitation if that FSMC plans to respond to the FSMC RFP, as doing so could place the FSMC at a competitive advantage. [2 CFR 200.319(a)]



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The FSMC must strictly adhere to the cycle menu for the first 21 days. FSMCs may not request CEs to change the initial 21-day cycle menu. Neither TDA nor the CE have the authority to change the initial 21-day menu. Changes thereafter may be made with the approval of the CE. [7 CFR 210.16(b) (1)]. Failure to follow through on the 21-day menu cycle will result in the disallowance of meal reimbursements for the days not followed. It is the district's discretion to recoup disallowances from the FSMC or to pay from other non-federal funds.

30. Can CEs approve modifications to the first 21-day menu cycle of the first year of the contract?

No. The current flexibilities that address school meal supply chain issues are available only during SY 2022-2023. Therefore, any substitutions after SY 2022-23 will not be allowed regardless of the reason or supporting documentation. It is expected FSMCs work to obtain the item on the menu from different manufacturers or suppliers to meet the requirements of the first 21-day menu cycle.

31. What are some areas that cause a material change and a rebid of the contract?

The following, while not an all-inclusive list, may be considered a material change and require an FSMC contract to be rebid:

- Assumptions added to the FSMC Contract
- Side contracts
- Changes of contract terms either in the base year or renewals
- Changes in programs operated, changes in the number of school days, and/or adding or subtracting schools in renewals that were not listed in the base year contract
- Changes in staffing from the base year contract
- Change of guarantee from what was requested in the base year contract
- Any change that would have caused others to respond differently to the RFP, if disclosed



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32. Can a FSMC submit, and/or a CE approve, rates for proposals or renewals over two decimal places?

Yes. There is no regulation or guidance that prohibits a FSMC from submitting, or a CE from accepting, proposed meal rates or CPI increases over two decimal places. TDA will allow up to four decimal places in the computation of rates and fees.

33. What is the process for a CE with contract issues between the CE and the FSMC?

If the CE encounters a FSMC contract issue, the CE should contact the legal representation for the district. TDA nor ESCs may provide legal advice, formal letters or legal guidance regarding a contract between a CE and a FSMC.

34. If vendor presentations are part of the pre-proposal meeting, should the evaluation of the presentations be part of the evaluation criteria?

Yes. If the CE decides to include vendor presentations as part of the pre-proposal meeting, the CE must provide parameters and expectations for the presentations to all potential proposers. Additionally, the CE must include the evaluation of the presentations in their evaluation criteria with a value of no more than 10 points.

35. Does a Student Health Advisory Committee (SHAC) meet the requirements for the FSMC Advisory Committee/Board?

No. The health advisory committees play an important role in strengthening the connection between health and learning. The role of a School Health Advisory Council (SHAC) is a group appointed by the school district to serve at the district level. Members of the SHAC come from different areas of the community and from within the school district. The majority of members must be parents who are not employed by the district. Texas law ([Texas Education Code, Title 2, Subtitle F, Chapter 28, Subchapter A, §28.004](#)) requires the establishment of a SHAC for every school district. SHACs are required to meet at least four times each year.



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The SFA must maintain an FSMC Advisory Board composed of parents, teachers and students to assist in menu planning. TDA suggests the FSMC Advisory Board meet at least twice during the program year to plan Fall/ Winter and Spring/Summer menus.

The SFA can have the FSMC serve as a member within the Advisory Board.



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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.

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ⁱ <https://squaremeals.org/Programs/National-School-Lunch-Program/Food-Service-Management-Companies>

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<https://squaremeals.org/Programs/NationalSchoolLunchProgram/FoodServiceManagementCompanies.aspx>

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



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