Contracting Entity Expectations with Food Service Management Companies

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Alphabet Soup

- SFA = School Food Authority
- LEA = Local Education Agency
- 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.
FSMCs Operating in Texas
Registration is Required

- 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 yearly from July 1 to July 31st. Renewal will not be approved if there is systemic or continued non-compliance by the vendor.
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.

*See Administrative Reference Manual for a more comprehensive listing*
What Cannot Be Outsourced to an FSMC?

- On-site reviews of meal counting and claiming procedures.
- Contract review form of operations.
- Claims submissions.
- District managed food service fund for revenue and/or expenses.
- Financial reconciliation of billing.
- Advisory boards or committees.
Examples of District Responsibilities

Signature Authority

- 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?
- CE obtains a legal opinion from district counsel.
- Application in TX-UNPS.
Simplifying Contract Management

2023-2024 Fixed Meal Rate
Who Does TDA Communicate with?

District Personnel or FSMC Personnel?
All contracts end on June 30th each year.
How to find the FSMC RFP Fixed Meal Rate Template

https://squaremeals.org/FSMC

Scroll down to New Contracts, click + symbol if needed
Required FSMC RFP Meal Rate Template

Focuses on key areas for CE to provide information

Based on national standards for FSMC operation

Required for New Contract

No alterations are allowed
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 or a potential FSMC.
Full and Open Competition

- All FSMCs are on a level playing field and have the same opportunity to compete for business.
- Procurement procedures and specification requirements do not 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.
Evaluation Documentation

- CEs must provide 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 Documentation
Continued

- 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 execute the contract until it is approved by TDA.
Experience: based on the years of experience in working with CNPs.

The SFA should verify the number of years of experience the FSMC reports in the proposal. This score must be consistent.

Reference the instructional manual.

Scroll > New Contracts > Instructions for 23-24 RFP Template

https://squaremeals.org/Programs/National-School-Lunch-Program/Food-Service-Management-Companies
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.
**POS Software: Equipment Purchase Request Process**

- FSMC can only purchase Information Technology System (POS) or Point of Sale equipment on the SFA’s behalf if the SFA makes the request in the RFP. This is only if the CE does not currently have a system.

- 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.
Important Note!

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; Must Meet Timelines

School Food Authority Timelines:
• December 31 - New Contracts must be submitted to TDA for approval to publish.
• March 1 - Renewals must be submitted to TDA for approval.
• April 17 - New Contract selections must be submitted to TDA for approval to award/execute.
• June 21 - New Contracts and Renewals must be signed/executed and provided to TDA.

TDA Timelines:
• October 15 - Contract Documents available.
• February 15 - New Contracts must be approved to publish.
• May 1 - TDA to approve all FSMC New Contract and Renewal submissions.
Selecting an FSMC

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.

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

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 and before execution!
Contract Duration

- 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.
- Maximum contract period is 5 years.
- SFA may not allow FSMC to begin operations without TDA approval.
- All contracts end on June 30 each year.
Contract Management and the Renewal Process
Renewal Process Review Items

- The review of Renewal Amendment, including monitoring of USDA foods reconciliation, ensuring all rebates, credits and discounts have been provided to CE.

- Review methodology of fee increases, budgets, list of schools served, certifications and compliance assessment.

- Reference the renewal checklist that is available on squaremeals.org.

Scroll > Renewal Cost-Reimbursable > 23-24 FSMC Renewal Checklist

https://squaremeals.org/Programs/National-School-Lunch-Program/Food-Service-Management-Companies
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.
The Administrative Review

Non-compliance with state and federal requirements via mandatory contract monitoring or an administrative review, TDA may require the CE to rebid the contract.
Contract is Voided and Re-Solicitation is Required

What Happens with Non-compliance?
Annual Contract Renewals

- Contact term is July 1 – June 30.
- Renewal submission is due by March 1 at the latest.
- Changes in fees are limited to the Consumer Price Index (CPI) increase or decrease.
- An explanation of the fee change methodology is required.
- Must provide documentation for USDA Annual Reconciliation and the FSMC Contract Review Form.
- Without TDA approval, the CE cannot continue the contract.
Contract Management
Expectations and Utilizing the FSMC Contract Review Form
Food Service Management Company (FSMC) Contract Review Form

Contracting Entities (CEs) use this form to review the FSMC’s operation of the program according to the contract.

Purpose
The CE is responsible for ensuring the FSMC operates the program according to the contract and in compliance with all regulations and guidance. Contracting with an FSMC does not release the CE from any responsibilities for the Child Nutrition Programs (7 CFR 210.16).

This form must be used quarterly as a contract management tool for reviewing the FSMC’s operation of the program according to the contract. A CE may use local contract management tools in addition to this form.

The review must be conducted by the district employee responsible for oversight of the FMSC contract or district-employed designee.

For additional FSMC guidance, see Administrator’s Reference Manual Section 18.

Frequency
This form must be completed each quarter for one site and be available for review by TDA upon request. The CE must review a different site type (Elementary School, Middle School, High School, etc.) each quarter.
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. Local Wellness Policy
XI. Staffing.
XII. Record Retention
XIII. General Terms of the Contract.
Contract Management

FSMC Contract Review Form.

• Ensure program compliance.
• Used Quarterly.
• Conducted by District/CE.
• Available for review by TDA. upon request.
• 13 sections for review.
• Opportunity for program. integrity and checks/balances.
Contract Management

Section I – Eligibility and Verification.
- Application process involvement.
- Verification process.

Section II – Menu Cycle/Meal Pattern.
- Following 21-day menu cycle.
- Meeting specifications.
- Obtaining approval for menu changes; establish advisory board.
- Serving reimbursable meals.
- Meal accommodations.
Section III – Competitive Foods.
- Smart Snack guidelines.
- Compliant with fundraising policies.

Section IV – USDA Foods.
- Managing USDA Foods received.
- Receiving proper credit for value.
- Inventory management.
- Retain ownership of foods.
- Use to maximum extent possible.
Section IV – USDA Foods con’t.
- Use of donated commodities.
- Copies of invoices/reports.

Section V – Inventory.
- Organized method.
- Meeting health and safety rules.

Section VI – Meal Count System.
- Using Point of Service system
- Back-up system.
- Maintain and provide accurate records.
Contract Management

◆ Section VII – Financial, Accounting.
  • Daily income reflective of revenue
  • Review of allowable costs.
  • Process to determine accurate invoices.

◆ Section VIII – Financial, Procurement.
  • Procure foods in compliance with Buy American provision.
  • Sufficient documentation to determine proper procurement practices.
Contract Management

◆ Section IX – Facilities.
  • Health inspections conducted. consistent with contract clauses.

◆ Section X – Local Wellness Policy.
  • Compliant with Local Wellness Policy.

◆ Section XI – Staffing.
  • Approved staffing plan.
    • Director, full and part-time staff.
  • Required training plan.
  • Meeting professional standards.
Section XII – Record Retention.
- System to transfer records for long-term storage.
- Provide all documentation to meet compliance.

Section XIII – General Terms of the Contract
- Compliant with Terms.

Section XIV – Results of Review.

Section XV – Corrective Action.

Section XVI – Attestation and Signatures.
Section XVI – Results of Review.
- Corrective action needed.
- Follow-up review required.

Section XV – Corrective Action.
- Another review needed in 45 days?
- Date of new review

Section XVI – Signatures.
- Verify review and obtain signatures.
Changes in Proposal Processes

1. Affirmations of no-communication during the RFP period.
2. Only documents in proposal will become part of the contract.
3. Activities suggested beyond RFP requirements may be deemed non-responsive.
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Read the instructions and follow the checklists

1. Become very familiar with the FSMC page on squaremeals.org.
2. Read instructions and follow checklists.
3. Read and follow the templates before submission.
4. Attend FSMC webinars.
Presentation Supporting Resource

NSLP / FSMC Resources


2. USDA Contracting With Food Service Management Companies: Guidance for School Food Authorities.

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   1400 Independence Avenue, SW
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2. **fax:**
   (833) 256-1665 or (202) 690-7442; or

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   program.intake@usda.gov

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