

# FOOD SERVICE MANAGEMENT COMPANY

## QUICK REFERENCE







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# HOW TO USE THIS REFERENCE



This document summarizes the procurement requirements and regulations for Texas CE that contract with FSMCs to assist with providing meals for school nutrition programs. **This is not a comprehensive guide;** CE must follow all regulations, program rules, policies, and guidance.

## POINTS OF CONTACT

### Education Service Centers (ESC)

CEs should contact their regional Education Service Center (ESC) if they are submitting FSMC renewals and/or new contracts. The ESC contact list and regions can be found on [www.SquareMeals.org/ESC](http://www.SquareMeals.org/ESC)

### Texas Department of Agriculture (TDA)

To contact the Texas Department of Agriculture (TDA) regarding questions about program applications, program operations, or financial issues, visit [www.SquareMeals.org/ContactUs](http://www.SquareMeals.org/ContactUs), to find the appropriate party.

For additional information, use one of the following to contact the Food Service Management team at TDA:



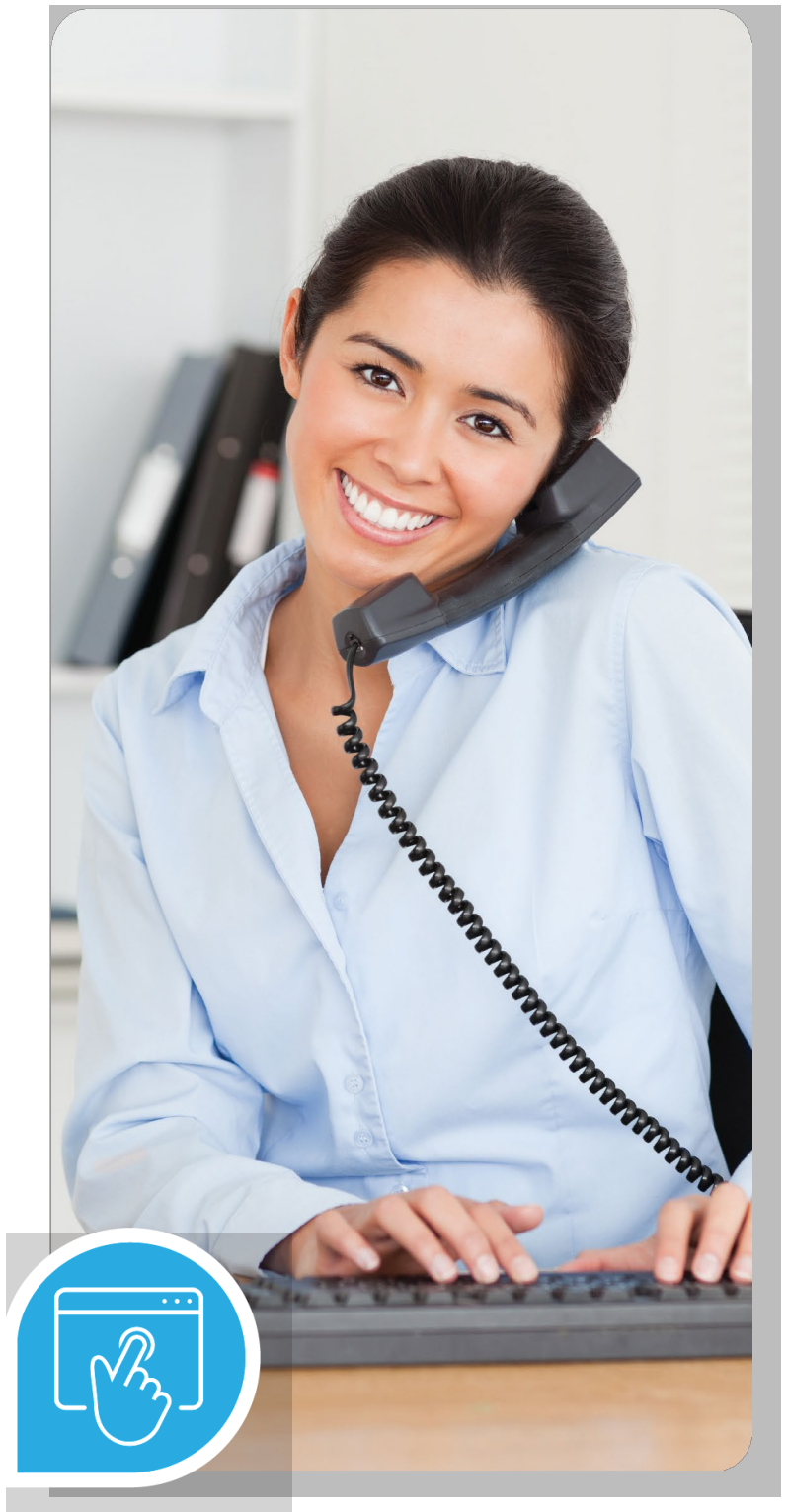
Call: (877) TEX-MEAL (839-6325);



Email to: [FSMC@TexasAgriculture.gov](mailto:FSMC@TexasAgriculture.gov)



Visit TDA's website [SquareMeals.org](http://SquareMeals.org)





# IMPORTANT INFORMATION



In response to the U.S. Department of Agriculture (USDA) requirement that the state maintain management and oversight of its school food authorities ([SFAs](#)), also known as contracting entities ([CEs](#)) regarding their procurement of food service management companies ([FSMCs](#)), the Texas Department of Agriculture ([TDA](#)) revised its FSMC request for proposal (RFP) prototype. In consultation with USDA, to address the root cause of noncompliance in the state, TDA implemented a process to transition all new solicitations to a fixed price contract billing model, effective PY2021.

**TDA reviews the prototype and processes annually and makes updates accordingly to align with USDA procurement regulations.** The intent is to ensure that TDA meets compliance requirements, including the following:

- Collection of discounts, rebates, and applicable credits.
- Prevention of duplicative costs in contracts resulting in unallowable costs, and the elimination of duplicative costs in existing cost reimbursable contract renewal options.
- Implementation of a compliant RFP approval process to review the solicitation and ensure inclusion of all required components.
- Assurance that CEs follow State of Texas procurement standards objectively in any solicitation of a third- party entity to provide operations services.
- Providing monitoring, technical assistance, and corrective action to all CEs to ensure that they are maintaining the non-delegable tasks, such as contract management and oversight.



# CONTRACTING WITH AN FSMC UNDER TDA GUIDANCE



Under the permanent agreements with TDA, CEs operate the school nutrition programs in schools under their jurisdiction. A CE may contract with a third-party vendor, referenced as a FSMC, to manage aspects of its food service operation in one or more of the schools in a CE.

The scope of the management must be clearly specified in the competitively sourced solicitation for an FSMC and in the contract awarded to the successful FSMC. However, it is the ultimate responsibility of the CE to monitor the terms of the contract.

**The CE is ultimately responsible for any non-compliance or assessment of fiscal action resulting from the non-compliance of a FSMC operating on their behalf.**



**TDA's role is to ensure that CEs contracting with FSMCs comply with state and federal procurement standards, cost principles, and applicable federal program regulations.**



## WHAT CAN BE MANAGED BY AN FSMC?

A FSMC may manage foodservice operations at one or more of the CEs campuses. Activities may include any or all the following services:

- Menu development (with guidance from CE advisory committee)
- Compilation of data necessary for the CE to submit reimbursement claims
- Organization and maintenance of program documents (such as daily meal counts, menus, and menu production records)
- Meal preparation and service
- Purchasing services

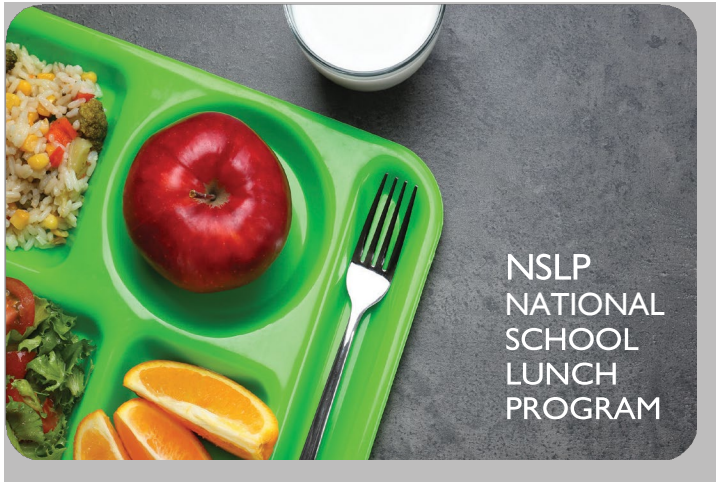
## WHAT CANNOT BE OUTSOURCED TO AN FSMC?

Certain core program functions **cannot** be delegated to a FSMC. These functions include the following:

- Monitoring and oversight of the FSMC vendor
- Oversight of the student eligibility process
- On-site reviews of meal counting and claiming procedures
- Claims submissions for payment from TDA
- CE managed food service fund for revenue and/or expenses
- Financial reconciliation of billing
- Advisory committees







## WHAT PROGRAMS AND ENTITIES CAN BE IMPACTED WHEN CONTRACTING WITH AN FSMC?

Further insight on the following program and entities can be found in the [“Acronyms and Definitions”](#) sections of this guide.

- National School Lunch Program (NSLP)
- School Breakfast Program (SBP)
- After-School and Community-Based Programs
- Beneficiaries of Programs

## REQUIREMENTS FOR CONTRACTING WITH AN FSMC

CE staff **must** ensure full and open competition in the RFP process. That includes meeting the following parameters:

- All FSMCs are on a level playing field and have the same opportunity to compete.
- The scope of work and specification requirements do not unduly restrict or eliminate competition.
- Fairness and integrity in all aspects of the procurement process must be followed.
- Unbiased parties must evaluate solicitations to prevent conflicts of interest.
- The CE must provide the RFP to all FSMC companies registered in Texas.

In addition, any FSMC intending to submit a proposal cannot have any part in the solicitation development.

**Under no circumstances is it acceptable for the CE to discuss the FSMC solicitation process or requirements with a current or prospective FSMC.**

## CONTRACT REQUIREMENTS

- One-year contract with up to four one-year renewal options.
- Contracts begin on July 1st and end on June 30th of the following year.
- Contracts **cannot** be executed until TDA approves. Any contracts executed without TDA approval are ineligible to use federal funds. CEs must pay for such services with general operating revenue.
- If an FSMC is non-compliant with state and federal requirements via mandatory contract monitoring or an administrative review, TDA may require the CE to rebid the contract.

## CONSIDERATIONS WHEN DECIDING TO CONTRACT WITH AN FSMC

When deciding whether to operate a self-preparation food service model (CE-managed food service program) or contract with a FSMC, CEs should consider:

- Financial implications:
  - o Is the food service program currently operating with a zero or positive food service account balance?
  - o What is the cost to contract FSMC services?
  - o Is the CE willing to allow all revenue generated by food service operations to be used to pay for contracted management services to non-Texas businesses?
  - o Can the CE afford contracted FSMC services, or should revenue be utilized locally for equipment and program enhancements?
- Administrative considerations:
  - o Does the CE have a qualified food service director (qualified per USDA's [professional standards](#) criteria)?
  - o Does the CE have the infrastructure and expertise to manage a complex contract? CEs must have a designated person on staff who is knowledgeable of program rules and regulations to provide oversight of the FSMC. Note: CEs are still responsible for various duties even when contracting with a FSMC. Please refer to the "[Roles and Responsibilities](#)" section in this guide for specific.
  - o What child nutrition programs will be contracted?
  - o Is the CE prepared to be responsible for the actions, corrective and/or fiscal of a FSMC operating on its behalf?
- Operational considerations:
  - o Will the CE retain current staff as employees?
  - o Will the contracted FSMC hire current CE employees?
  - o What are the current procurement capabilities for food and supplies?
  - o What equipment needs exist and is there money for such investments?
  - o What tasks does the contracted FSMC need to complete for the CE?





# UNDERSTANDING THE FSMC PROCUREMENT PROCESS



To ensure that the contract development of all goods and services is conducted transparently, promotes integrity for all procurement actions, and allows for full and open competition, the procurement process requires adherence to federal regulations, state guidelines and requirements, program handbooks, ethics laws, and professional standards.

Strategic procurement requires accountability for the spending of federal and state funds in a manner that is justified, planned, and transparent. TDA, as the monitoring agency for the CE nutrition program that oversees federal funding use, must adhere to all federal procurement standards and cost principals.<sup>1</sup> The State of Texas and TDA must adhere to the following principles of good procurement:

**Full and Open Competition<sup>2</sup>** – All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section.

This ensures that competitive processes are fair and open to all potential participants. All vendors shall be treated in a non-discriminatory manner with contract award decisions being fair and impartial. TDA and its CEs select suppliers and contractors based on their qualifications and the merit of their offers. Price **must** be the primary consideration.<sup>3</sup>

**Value for Money** - This term describes the selection of the most advantageous offer based on price and the other evaluation criteria included in the solicitation. This process ensures CEs get the best value when all criteria are evaluated accurately and according to the solicitation.

TDA expects its CEs to adhere to the principles mentioned.



<sup>1</sup> [CFR §200](#) stipulates.

<sup>2</sup> [CFR §200.319](#) requirement.

<sup>3</sup> [CFR §200.320](#) requirement

## SNAPSHOT OF THE FSMC RFP PROCESS FOR NEW SOLICITATIONS

### Procurement Initiation

- > 1. Determination of feasibility based on cost and regulation requirements that the CE would need to follow to operate with an FSMC.
- > 2. FSMC procurement process is open September 1st through December 1st annually for CEs to submit solicitation documents/RFP via Smartsheet through link on [SquareMeals.org](https://www.squaremeals.org).

### TDA Review and Approval for Publishing

- > 3. TDA receives the RFP contract via Smartsheet and assigns staff to review it ensuring all required documents have been submitted and are correct.
- > 4. Once all corrections are completed, the CE will receive approval from TDA to publish the RFP with supporting documents.

### SFA Procurement Publishing

- > 5. CE publishes RFP according to solicitation timeline dates in the RFP.

### SFA Evaluation and Award

- > 6. RFP closes, CE conducts evaluation process on proposals received.

### TDA Procurement Review and Contact Approval

- > 7. Once the evaluation process is completed and the vendor selected, the CE must submit the awarded contract, along with the published RFP, advertisement, and evaluation documents for all responsive vendors via SmartSheets.
- > 8. TDA staff reviews the contract evaluation process to ensure the selection criteria was accurately followed to award to the vendor who best meets the selection criteria.
- > 9. If approved, TDA will issue a letter to the CE to award and execute the contract.

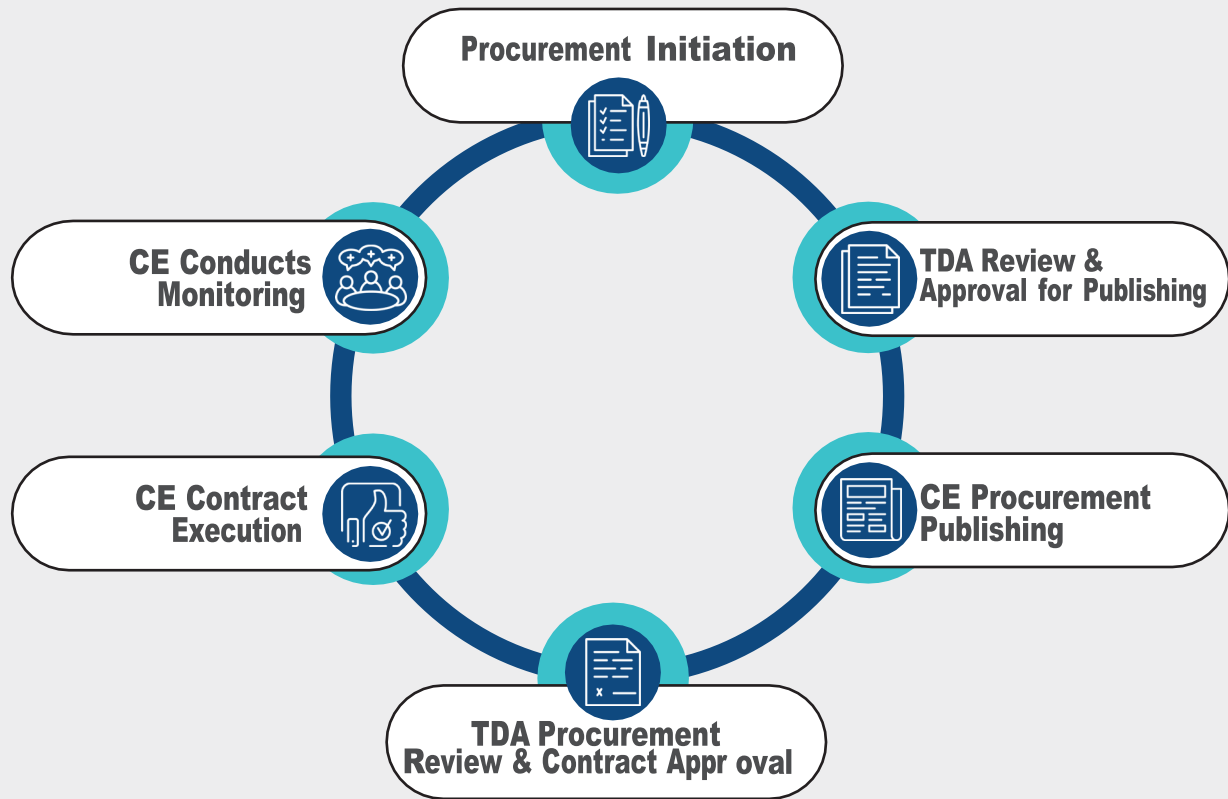
### SFA Contract Execution

- > 10. The contract is effective on July 1st of the current year vendor who meets the selection criteria.



## SNAPSHOT OF PROCUREMENT PROCESS STEPS (FIGURE 1)

The below diagram shows a series of steps that define the procurement process.



## CONTRACTING/RENEWING A CONTRACT WITH AN FSMC

All FSMCs **must** be registered to do business in Texas at the time of solicitation and **must** maintain registration to provide services in Texas.

The Texas FSMC vendor registration period is from July 1st to July 31st annually. **All vendors are required to renew applications each year.**

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



**FSMC Vendor Eligibility Notice** – At the time of application (and while listed on the TDA-approved FSMC Vendor List) businesses must be registered to do business in the State of Texas and remain in good standing with the Texas Secretary of State (SOS) as well as the Office of the Comptroller (OTC). The legal name of the organization as it is listed by the SOS and the OTC must match the legal name as noted on the application.

## EVALUATING RFPS

Program integrity is paramount when evaluating proposals received through formal procurement. The following stipulations are required to ensure program integrity:

- RFPs must be evaluated and independently scored by more than one person.
- Evaluators cannot include CE staff with conflicts of interest, such as personnel who work daily with the FSMC or have personal relationships with FSMC staff.
- Scores must only be given to each evaluation criteria listed in the RFP and not based on personal bias, or anything unrelated to the RFP criteria. Value adds may not be considered.
- There must be transparency in the FSMC award process.
- The process must be able to withstand public scrutiny and protest.

Everyone reviewing the FSMC proposals should arrive at a conclusion that can be justified in writing on the evaluation documents. Evaluators must fully justify any decreases in scoring from the maximum allowed. There must be clear and verifiable explanations of variances in scoring.

Evaluation documents for awardees and non-awardees **must** be provided to TDA with contracts for review. **If detailed evaluation and justification information is not provided, TDA cannot review and approve the recommended contract.** The CE may not expend any federal funds on a contract until it is approved by TDA. CEs must pay for these contracts with local general revenue funds.

All CEs with noncompliance relating to a material change will be required to re-bid their FSMC contract.

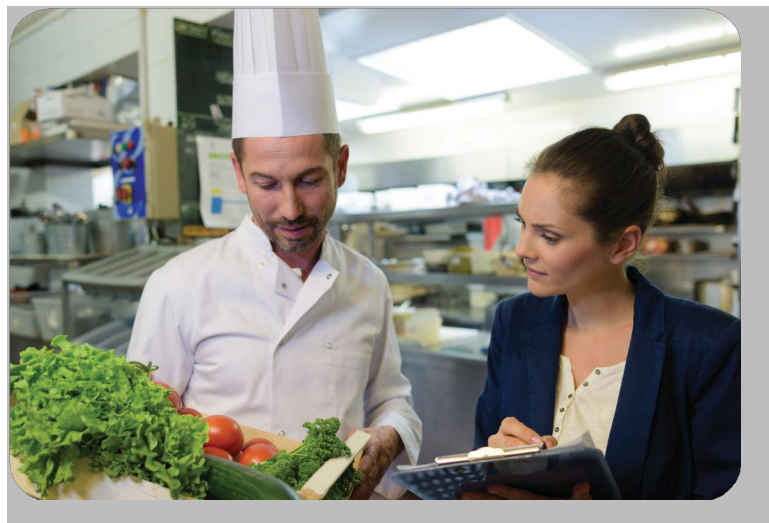
**Material changes** - any changes made to a contract after it has been awarded that alter the terms and conditions of that contract to the degree that had other respondents known of these changes in advance, they could have bid differently and more competitively.

## IMPORTANT NOTES REGARDING CONTRACTS:

CEs cannot request and FSMCs cannot offer “value added” incentives such as scholarships, donations, grants, free services, golfing expeditions, employee prizes, free equipment, etc.

CEs may **NOT** hire an FSMC vendor as a consultant and subsequently award a contract to them. This is considered a conflict of interest as it provides the consulting FSMC with an unfair advantage.

- CEs must disclose to TDA their use of any FSMC vendors as consultants. It is the CEs responsibility not to recommend awarding the contract to these FSMC vendors, as related costs will be unallowable.



### SCORING RFPS

RFPs must use a formula where **price** is the heaviest weighted evaluation criteria. 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. Price evaluations must follow a mathematical formula that scores according to the difference in the price.

It's important to note that the FSMC may not charge the CE any fee that does not equal a meal multiplied by the rate unless specified for equipment.



## RENEWING CONTRACTS

**All renewals are for one-year terms.** The CE must submit the FSMC renewal documents for approval between September 1st to February 1st each year for the following school year contract start date of July 1st.

However, either the CE and/or FSMC can decide not to renew the contract. If renewed, except for the fee or price increasing or decreasing by the provided Consumer Price Index (CPI) percentage, no other changes are allowed for a contract renewal amendment. An explanation of the fee change methodology is required.

Renewal requests require the submission of required oversight and monitoring forms and USDA foods annual reconciliation document validating that the CE received the full credit for the value of the donated food received for the program year.

**TDA must approve the contract renewal amendment before the renewal can be executed.**



## EQUIPMENT PURCHASING

Procurement regulations must be followed and the title to all equipment must be retained by the CE.

Any equipment purchases over \$5,000 (per item) **must** be approved by TDA prior to purchase via the capital expenditure process in the Texas Unified Nutrition Program System (TX-UNPS).

CEs must purchase its own equipment through regular procurement practices.



# MANAGING THE FSMC CONTRACT



**The CE's primary role when using an FSMC is contract management and oversight.** Contracting with an FSMC does not release the CE from any and all responsibilities for child nutrition program operations. In fact, the CE should have a knowledgeable and experienced individual that understands child nutrition regulations on staff to ensure that the required monitoring and oversight occurs. This should not be an ancillary employee without program knowledge and oversight authority.

FSMC contract management should include the following questions as part of the contract management process:

- Is the 21-day cycle menu followed with no substitutions?
- Are changes to the menu cycle pre-approved by the advisory board and only requested after the 21-day cycle menu has been served?
- Does the cycle menu meet regulatory requirements?
- Are food production records completed properly?
- Do food quality standards match those outlined in the contract?
- Are Smart Snack guidelines followed?
- Is the child nutrition program compliant with the Local Wellness Policy?
- Are the required health inspections conducted and recorded?
- Do invoices properly reflect allowable costs under the contract and comply with federal regulations?
- Are additional administrative costs rejected as they are not permitted in contracts?
- For fixed rate contracts, do invoices reflect only the number of meals multiplied by the contract rate with other sales designated separately based on meal equivalencies?
- For cost reimbursable contracts, are duplicative costs researched and additional administrative fees rejected as unallowable costs?
- Are 100% of USDA Foods discounts, rebates, and credits returned to the CE?
- Am I prepared to be audited by TDA more frequently? Federal regulations require CEs contracting with FSMCs to be reviewed every three years. Self-operated CEs are reviewed less frequently.





## FSMC Contracts

All contracts are for one-year terms. The fully executed contract (signed by both parties) must be sent to TDA before June 21st of each year.

However, either the CE and/or FSMC can decline to renew the contract.

No changes or addendums may be added to the contract, except for the fee or price increasing or decreasing by the provided Consumer Price Index (CPI) percentage. An explanation of the fee change methodology is required.

TDA must approve the FSMC contracts and renewals before the execution of the contract.



## Resolution: Contract Management Oversight Improvements

Texas has implemented a phased-in approach to allow CEs to move from the complex cost reimbursable pricing model to a fixed meal rate pricing model. This move was made to protect CEs from financial loss due to the widespread improper contracting and oversight in the state. TDA allowed the transition to occur through attrition as contracts expired if CEs demonstrated compliant operations. The shift to a fixed meal rate pricing model does not reduce any of the flexibilities available to CEs to address unique needs and preferences in the solicitation process. CEs still have total control of the criteria required for respondents. The benefits of a fixed meal rate include, but are not limited to the following:

- Reduces the complexity of the local administrative oversight required to manage FSMC vendor contracts.
- Transparency in costs charged to the CE.
- Eliminates duplicative costs thereby decreasing the potential for the CE to repay unallowed costs.
- Helps school CEs clearly identify vendors that to CEs to address unique needs and preferences in the solicitation process. CEs still have total control of the criteria required for respondents.



# ROLES AND RESPONSIBILITIES

## TEXAS DEPARTMENT OF AGRICULTURE

### (State Agency)

- Maintain oversight and management of the federal programs in its purview.
- Provide program and procurement guidance.
- Process approvals for FSMCs to operate in Texas.
- Create and maintain FSMC tools and templates.
- Provide training:
  - Procurement
  - Contract development
  - Program requirements
- Provide technical assistance (TDA staff/ESCs).
- Provide publication and award/executions approvals.
- Maintain record retention requirements.
- Conduct periodic reviews (administrative/procurement).
  - Review FSMC contracts.

## CONTRACTING ENTITY

### (School Food Authority)

- Ensure qualified staffing and expertise levels to monitor and maintain program oversight. Oversight entity shall meet professional standards for the role as deemed by USDA guidance.
- Maintain oversight and management of the program(s) and the contracted FSMC operating delegated aspects of the program.
- Develop a procurement and oversight code of conduct.
- Ongoing monitoring of the contracted FSMC activities
- Retain control and overall fiscal responsibility of the nonprofit food service account,
- Discounts, rebates, credits
  - Ensure discounts, rebates, and credits for USDA Foods are credited back to the CE monthly.
  - Ensure full use of USDA foods entitlement.
  - Ensure that annual reconciliation is accurate and clearly reflects CE savings.

## FOOD SERVICE MANAGEMENT COMPANY

### (Contracted Third-Party Vendor)

- Adheres to all terms defined in the RFP and resulting contract.
- Return applicable discounts, rebates, and credits to the CE.
- Record retention<sup>4</sup> - The FSMC shall maintain such records as the SFA will need to support its claim for reimbursement under this part, and shall, at a minimum, report claim information to the SFA promptly at the end of each month. Such records shall be made available to the SFA, upon request, and shall be retained.<sup>5</sup>
- Health certification<sup>6</sup> - The FSMC shall have state or local health certification for any facility outside the school in which it proposes to prepare meals and the FSMC shall maintain this health certification for the duration of the contract.
- Meal compliance<sup>7</sup> - No payment is to be made for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications as developed by the SFA for each food component,<sup>8</sup> or do not otherwise meet the requirements of the contract. Specifications shall cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.
- Procuring goods and services under the proposed contract, if applicable.



<sup>4</sup>in accordance with [,CFR §210.23\(c\)](#)

<sup>5</sup>in accordance with [,CFR §210.23\(c\)](#)

<sup>6</sup> [,CFR §210.16\(c\)\(2\)](#)

<sup>7</sup> [,CFR §210.16\(c\)\(3\)](#)

<sup>8</sup> [,CFR §210.10](#)



# FEDERAL REGULATIONS



## CODE OF FEDERAL REGULATIONS

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards<sup>9</sup>
- Procurement standards<sup>10</sup>
- National School Lunch Program (NSLP)<sup>11</sup>
- Food Service Management Companies<sup>12</sup>
- Procurement<sup>13</sup>
- School Breakfast Program (SBP)<sup>14</sup>
- Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction<sup>15</sup>

## USDA GUIDANCE

- Handbook – [Contracting with FSMCs: Guidance for SFAs](#)<sup>16</sup>



## USDA MEMORANDUMS

- [SP 40-2016 Contracting with Food Service Management Companies](#)<sup>17</sup>
  - Includes information on appropriate procurement methods, the process of evaluating and scoring criteria for contract award, and monitoring responsibilities.
- [FD-080 Guidance in Crediting for, and use of, Donated Foods in Contracts with Food Service Management Companies](#)<sup>18</sup>
  - Provides guidance in ensuring compliance with requirements with respect to crediting for, and use of donated foods in contracts with FSMCs.<sup>19</sup>
- [FD-110 Further Clarification in Crediting for, and Use of, Donated Foods in Contracts with FSMCs](#)<sup>20</sup>
  - Clarifies the requirements in crediting for, and use of, USDA donated foods in contracts with FSMCs, and to provide guidance to ensure compliance with such requirements in the first and final years of such contracts.

<sup>9</sup> ,CFR §200

<sup>10</sup> ,CFR §210.317-2 CFR §210.327

<sup>11</sup> ,CFR §210

<sup>12</sup> ,CFR §210.16

<sup>13</sup> ,CFR §210.21

<sup>14</sup> ,CFR §220.7

<sup>15</sup> ,CFR §250

<sup>16</sup> [https://fns-prod.azureedge.us/sites/default/files/cn/SP40\\_CACFP12\\_SFSP14-2016a2.pdf](https://fns-prod.azureedge.us/sites/default/files/cn/SP40_CACFP12_SFSP14-2016a2.pdf)

<sup>17</sup> <https://www.fns.usda.gov/cn/updated-guidance-contracting-food-service-management>

<sup>18</sup> <https://squaremeals.org/Portals/8/files/FSMC/2022/FD-80.pdf>

<sup>19</sup> Subpart D of ,CFR Part 250

<sup>20</sup> [https://squaremeals.org/Portals/8/files/FSMC/FSMC\\_Policy%20Memo%20FD-110.pdf](https://squaremeals.org/Portals/8/files/FSMC/FSMC_Policy%20Memo%20FD-110.pdf)

# CRITICAL GOVERNING CITATIONS



## State of Texas Guidelines and Requirements

- [State of Texas Procurement and Contract Guide](#)

## Program Handbook References

- [Administrator's Reference Manual \(ARM\)](#):
  - o Section 14, USDA Foods
  - o Section 14a, USDA Foods Processing
  - o Section 15, Program Integrity
  - o Section 16, Financial System
  - o Section 16a, Contract Management
  - o Section 17, Procurement
  - o Section 17a, Procurement Procedures
  - o Section 17b, Buy American
  - o Section 17c Cooperative Purchasing
  - o Section 18, Food Service Contracts

## Code of Conduct<sup>21</sup>

- School food authority procedures must include a written code of standards of conduct meeting the minimum standards<sup>22</sup>, as applicable.

## Conflicts of Interest<sup>23</sup>

- The non-federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-federal entity.

<sup>21</sup> [,CFR §210.21\(c\)](#)

<sup>22</sup> [,CFR §200.218](#)

## Delegation of Authority<sup>24</sup>

- General. Any school food authority (including a state agency acting in the capacity of a school food authority) may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school or school food authority may contract with a food service management company to operate an à la carte food service unless the company agrees to offer free, reduced price and paid reimbursable lunches to all eligible children.

## Recordkeeping Summary<sup>25</sup>

- To participate in the Program, a CE, as applicable, must maintain records to demonstrate compliance with Program requirements.

## Ethics and Professional Standards

- Public procurement professionals are the gatekeepers for the proper expenditure of the government's limited financial resources. TDA entrusts these individuals to uphold the highest ethical standards and be good stewards of public funds with every purchasing decision they make. Ethical behavior and integrity are fundamental tenets of the public procurement profession that derive from values like "fairness," "honesty," and "accountability." Any erosion of public trust or perception of impropriety is detrimental to the integrity of the procurement process; therefore, all state employees involved in procurement activities must act in an ethical, impartial, transparent, and professional manner.

<sup>23</sup> [,CFR §200.318\(c\)\(1\)](#)

<sup>24</sup> [,CFR §210.16\(a\)](#)

<sup>25</sup> [,CFR §210.15\(b\)](#)

## Monitoring

- [SP 23-2013 Requirement that SAs and SFA Review FSMC Cost Reimbursable Contracts and Contracts Associated with USDA Foods](#)
  - Clarifies the requirement to oversee and monitor SFA contracts with FSMC and to ensure ongoing technical assistance and training provided by state agencies includes this information.
  - Clarifies the requirements of state agencies to periodically review FSMC supporting documentation for all rebate credits received and ensure the value of USDA Foods provided to FSMCs are properly accounted for and credited to the SFA on the FSMC invoice.

## Reconciliation<sup>26</sup>

- The recipient agency is an organization within a State eligible to receive USDA Foods. They must also conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the food service management company has credited it for the value of all donated foods received for use in the recipient agency's food service in the school or fiscal year, including the value of donated foods contained in processed end products.<sup>27</sup>

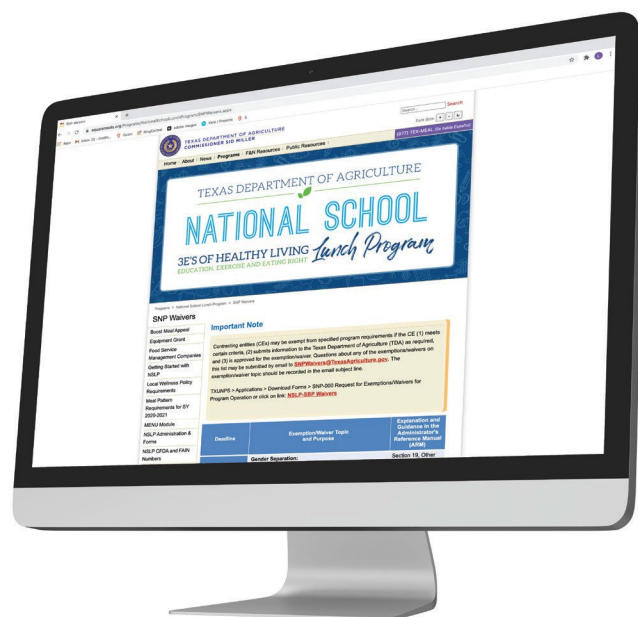
## Review of Contracts<sup>28</sup>

- Each State agency **shall annually review** each **contract** (including all supporting documentation) between any SFA and the food service management company (FSMC) to ensure compliance with all the provisions and standards set forth in this part before execution of the contract by either party.
  - Each State agency **shall review** each **contract amendment** between SFA and FSMC to ensure compliance with all the provisions and standards set forth in this part before execution of the amended contract by either party.

## USDA Foods<sup>29</sup>

- In both fixed price and cost reimbursable contracts, the FSMC must credit the recipient agency for the value of all donated food received for use in the recipient agency's meal service in a school year or fiscal year (including both entitlement and bonus foods).

**TRAINING (REQUIRED)**  
FSMC required trainings can be found on  
[\*\*www.SquareMeals.org/FSMC\*\*](http://www.SquareMeals.org/FSMC)



<sup>26</sup> ,CFR §250.54(c)

<sup>27</sup>in accordance with the requirements in ,CFR §250.51(a)

<sup>28</sup> ,CFR §210.19(a)(5)

<sup>29</sup> ,CFR §250.51(a)



# ACRONYMS AND DEFINITIONS

**After-School and Community-Based Programs** are school or community-based programs offer enrichment activities in the hours that follow the school day and provide reimbursement for nutritious meals or snacks served to eligible children.

**Beneficiaries of the Programs** means the programs provide supplemental reimbursement for nutritious meals or snacks served to eligible children at public, charter, and nonprofit private schools as well as residential childcare institutions.

**Code of Federal Regulations (CFR)** is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

**Contracting Entity (CE)** is an eligible organization that signs a contract (referred to as the permanent agreement) with TDA that outlines an operator's responsibilities. *In the State of Texas, CEs are also referred to as SFAs.*

**Education Service Center (ESC)** regionally based service centers that provide the NSLP organizations with training and technical assistance. TDA maintains a contract with ESCs to provide these support services at no cost to the NSLP organizations. *See the resources section at the end of this reference for more information about how to find an ESC.*

**Food and Nutrition (F&N)** administers U.S. Department of Agriculture (USDA) nutrition programs in Texas. It partners with organizations across the state to ensure eligible Texans in need have access to nutritious meals through 12 USDA nutrition programs.

**Food Service Management Company (FSMC)** is a third-party vendor (commercial enterprise, nonprofit organization, or for-profit companies) that may be procured to assist the CE in managing and operating the

program on behalf of the CE, school or nutrition program sponsor. An SFA may contract with an FSMC to manage its foodservice operation in one or more of its schools. Any SFA that employs an FSMC in the operation of its nonprofit school food service shall comply with the requirements.<sup>30</sup>

**National School Lunch Program (NSLP)** is a federally assisted meal program operating in public and nonprofit private schools and residential childcare institutions. It provides nutritionally balanced, low-cost, or free lunches to more than 30 million children nationwide each school day.

**School Breakfast Program (SBP)** is a federally assisted meal program operating in public and nonprofit private schools and residential childcare institutions.

**School Food Authority (SFA)** is the governing body that is responsible for the administration of one or more schools and has the legal authority to execute the program therein or be otherwise approved by the USDA Food and Nutrition Service to operate the program. *In the State of Texas, SFAs are also referred to as CEs and/or school CEs.* Please reference Contracting Entities (CEs) within this document "Acronyms and Definitions" section to see term utilized in this document.

**State Agency (SA)** is responsible for the administration of child nutrition programs. State agencies are the link between USDA Food and Nutrition Service and local program operators, ensuring the programs are managed according to the federal requirements. *See definition of Texas Department of Agriculture.*

**Texas Department of Agriculture (TDA)** promotes production agriculture, consumer protection, economic development, and healthy living. *In the State of Texas, TDA is the state agency.*

**Texas Unified Nutrition Program System (TX-UNPS)** is a single integrated web-based application that provides administrators, state users, and Contracting Entities (CEs) with efficient and immediate access to applications, claims, and related nutrition program functions and serves all nutrition programs.

<sup>30</sup> [,CFR §210.16](#) (NSLP) or [,CFR §220.7\(d\)](#) (SBP)

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](mailto:program.intake@usda.gov)

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Food and Nutrition Division  
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