



STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION



TO: Sponsors of the National School Lunch and Breakfast Programs

FROM: John Frassinelli, Bureau Chief
Bureau of Health/Nutrition, Family Services and Adult Education

DATE: June 18, 2014

SUBJECT: Operational Memorandum #37-14
Food Service Management Company Information, Procurement and State Agency/School
Food Authority Oversight and Monitoring

- I. **Unallowable School Food Authority-Food Service Management Company (SFA-FSMC) Contract Document Provisions**
- II. **Contracting with a Food Management Company**
- III. **Renewal of an existing contract with a Food Management Company**
- IV. **Responsibilities of school districts**
- V. **Additional SFA-FSMC Contract Requirements**
 1. **Meal Equivalent Rate**
 2. **Recovery of Prior Year Costs**
- VI. **Informal Procurement Guidance**
- VII. **Additional Guidance**

I. Unallowable SFA-FSMC Contract Document Provisions

Sponsors that contract with a food management company must ensure that the SFA contract with the FSMC does not contain any unallowable contract document provisions. The following is the list of unallowable contract provisions:

1. **Cost Plus a Percentage of Cost/Income** – no matter how it is represented, cost plus a percentage of cost/income to the FSMC is not allowed.
2. **Duplicate Fees** – fee structures that permit a FSMC to bill management fees and charge the same costs as cost-reimbursable expenses.
3. **Purchasing** – if the SFA does the purchasing, clauses that limit the selection of vendors to only FSMC-approved vendors.
4. **Acceleration Clause** – provision (multi-year) that require full payment (e.g., program equipment purchases) if contract is not renegotiated.
5. **Interest Payments** – interest payments to the contractor, however represented, including interest payments for equipment purchases.
6. **Guaranteed Return** – “guaranteed return” provisions unless the “return” remains in the nonprofit food service account. “Returns” cannot be contingent upon multi-year contract duration.

7. **Delegation of SFA Responsibilities** – FSMC responsibility for any of the functions that must be retained by the SFA include:
 1. free and reduced price meal process;
 2. signatory authority on all required documents, including the reimbursement claims;
 3. conducting annual on-site monitoring procedures;
 4. retaining title to all United States Department of Agriculture (USDA) commodity foods;
 5. establishment and maintenance of advisory board of parents/teachers/students to assist in menu planning;
 6. ensuring the non-profit status of the food service account; and
 7. ensuring compliance with both federal and state competitive food laws.
8. **Automatic Renewal** – provisions that automatically renew the contract.
9. **Processing Contracts** – contract document language that permits the FSMC to subcontract USDA donated foods for further processing.

II. Contracting with a Food Management Company

Sponsors who plan to operate a food service program with a food management company for the **first time**, or those with **contracts that will expire** with the close of the current school year, must follow the formal bid process to determine what services will be provided for meals this fall. ***All Request for Proposals (RFP) must be reviewed and approved by the Connecticut State Department of Education (CSDE) before publication.***

In accordance with 7 CFR 210.16(d), the following requirements must be met:

1. Contract duration is limited to one year, with the effective beginning and ending dates specified in the contract.
2. Options for yearly renewals of a contract are allowed, but may not exceed four additional one-year extensions.

For **new contracts**, the following materials **must be submitted before** your program can be approved for reimbursements:

1. Copy of your RFP;
2. List of vendors requesting and receiving your RFP;
3. Copy of your newspaper ad;
4. Copies of all bids received;
5. New contract including Management Fee for 2014-15 school year (***The contract may not be signed until approval is given to the sponsor by the CSDE to sign the contract***);
6. 21-day menu (all grade levels, and breakfast and lunch);
7. Copy of Performance Bond;
8. Debarment certification;
9. Certification Regarding Lobbying (for Contracts exceeding \$150,000);
10. Disclosure of Lobbying Activities (for Contracts exceeding \$150,000);
11. Energy conservation compliance statement; and
12. Completed *Prototype SFA-FSMC Contract Document Checklist Sections A – J*. (Available at: http://www.sde.ct.gov/sde/lib/sde/pdf/deps/nutrition/FSMC/NSLP_Checklist.pdf)

13. Certification that the SFA is in compliance with the following USDA required contract clause: "The SFA shall conduct a reconciliation at least annually (and upon termination of the Agreement) to ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA's food service in the school year, including, in accordance with the requirements in 7 CFR 250.51(a), the value of donated foods contained in processed end products."

III. Renewal of an Existing Contract with a Food Service Management Company

Program sponsors who operate with a food management contract may renew that contract for four additional one-year extensions (amendments) beyond the initial contract year. The process for renewing a contract must occur on or prior to the expiration date of the current contract. Any provisions that represent changes from the original contract must be stated in the amendment. Substantive changes would require a sponsor to rebid the contract. ***All contract amendments must be reviewed and approved by the Connecticut State Department of Education (CSDE) before either party signs the document.***

If an amendment is being submitted for an **existing contract**, the following items **must be included**:

1. An amendment including management fee for the 2014-15 school year (***The amendment may not be signed until approval is granted to the sponsor by the CSDE to execute the amendment***);
2. Performance Bond;
3. List of advisory board members and minutes of meetings from 2013-14;
4. Annual debarment statement;
5. Certification Regarding Lobbying (for Contracts exceeding \$150,000);
6. Disclosure of Lobbying Activities (for Contracts exceeding \$150,000);
7. Energy conservation compliance statement.
8. Certification that the SFA is in compliance with the following USDA required contract clause: "The SFA shall conduct a reconciliation at least annually (and upon termination of the Agreement) to ensure that the FSMC has credited it for the value of all donated foods received for use in the SFA's food service in the school year, including, in accordance with the requirements in 7 CFR 250.51(a), the value of donated foods contained in processed end products."; and
9. The results of the reconciliation (Dollar Value of donated foods received and amount credited by the FSMC).

IV. Responsibilities of School Districts

School food authorities that contract with a food service management company are still solely responsible for the following requirements:

1. Public notification of programs;
2. Distribution of parent letters and applications;
3. Review and determination of eligibility for free and reduced benefits;
4. Notification of eligible participants;
5. Verification procedures, including notification of ineligible participants;
6. On-site school reviews that must occur annually before February 1 of each school year; and
7. Oversight of compliance with competitive foods regulations.

V. Additional SFA-FSMC Contract Requirements

1. **Meal Equivalency Rate** – The Meal Equivalency Rate must be set no lower than the sum of the current free lunch reimbursement rate plus the per meal commodity foods reimbursement rate. If the fee structure of the contract includes a flat per month or per year administrative and management fee, then, the Meal Equivalency Rate is not applicable to the contract.
2. **Recovery of Prior Year Costs** – Per USDA Northeast Regional Office (NERO) guidance, clauses that allow the recovery of prior and current year FSMC reimbursed amounts from current Food Service Program Surpluses are not allowed. “The FSMC’s recovery cannot be allowed as a nonprofit food service cost. This charge is in violation of OMB Circular A-122, ‘Cost Principles for Non-Profit Organizations,’ (Attachment A, Basic Considerations) because (1) the FSMC lost its management fee for nonperformance the prior year and (2) prior year costs cannot be recovered in a future period.”

The actual language of the clause in a SFA/FSMC contract that NERO deemed to be **unallowable** is as follows (note: the name of the FSMC has been deleted):

Current and prior years (FSMC name) reimbursed amounts may be recovered by (FSMC name) from current Food Service Program Surplus.

VI. Informal Procurement Guidance

Program sponsors that use the informal procurement process to obtain the services of a FSMC, must maintain documentation that a minimum of two, preferably three, organizations were contacted regarding the potential procurement.

VII. Additional Guidance

1. **Submission guide**
 - a. Please submit items 1 - 6 requested in **Section II** or **item 1 requested in Section III** above, as appropriate, to Andy Paul as soon as possible, but no later than **July 11, 2014**. The other items listed in section II or section III above should be submitted as soon as possible, but should not delay the submission of items 1 - 6 of section II or item 1 of section III. **If a completed FSMC File (all items in Section II or Section III) is not submitted by August 16, 2014, your district will be denied permission to claim until all documents are received.**
 - b. The submission of unsigned proposed contracts and contract addenda for approval to the CSDE is a requirement of the USDA’s final rule on procurement (Operational Memorandum #12-08). In order to expedite the review and approval process Andy Paul will e-mail approval of contracts and contract addenda or required changes to the contract or contract amendments to sponsors.
2. **State Agency Oversight and Monitoring of School Food Authority Contracts with Food Service Management Companies: USDA Guidance, April 19, 2013**
 - a. SAs are responsible for ensuring that SFAs with FSMC contracts structure and manage such contracts, as required by Federal Law, including 7 CFR Part 210.21(f)(1)(i) which requires all purchased discounts and rebates be returned to

the SFAs' nonprofit school food service account and the appropriate records necessary to ensure compliance are maintained.

- b. Monitoring and oversight of SFA contracts throughout the school year are also essential to ensure SFAs receive full value of purchase discounts and rebates and are in compliance with Federal Law. Failure by a State Agency and SFA to undertake necessary oversight and monitoring puts Federal funds at risk for both affected SFAs and the SA. SFAs potentially would not receive the full value of purchase discounts and rebates and FNS could withhold funds from SAs for failing to enforce these requirements.
- c. Please review attachment, FMSC Best Practice Addendum.

Questions regarding food management company contracts may be directed to Andy Paul at 860-807-2048 or andrew.paul@ct.gov.

JF:app

Attachment

Important: This is a numbered Operational Memorandum that contains important program information. Please read carefully and retain in a binder for your future reference. Operational Memoranda are also posted on the Child Nutrition website: <http://www.sde.ct.gov/sde/cwp/view.asp?a=2626&q=320676>

BEST PRACTICES

Introduction

A RESOURCE FOR SCHOOL FOOD AUTHORITIES

Monitoring Cost Reimbursable Contracts for Rebates, Discounts, and Applicable Credits

Federal regulations require School Food Authorities (SFAs) that have cost reimbursable contracts with Food Service Management Companies (FSMCs) receive the full value of any discounts, rebates and applicable credits (credits) that accrue as a result of purchases made by FSMCs for the SFA.

These regulations for cost reimbursable contracts are in place to make the identification of credits more transparent to SFAs and to maximize Federal funds for the service of healthy and nutritious meals to students through the School Meal Programs. These best practices are intended to assist SFAs with meeting this requirement.

Executing the Contract

An important first step in complying with these requirements is to ensure that your contracts include all necessary provisions. **Cost reimbursable contracts** must include the following provisions [7 CFR Part 210.21 (f)(1)(i),(iv),(v),(vi)]:

- ✚ The mandatory return of all credits to the SFA's nonprofit food service account.
- ✚ The frequency and the method FSMCs will use for reporting credits on invoices and billing statements (e.g., monthly, quarterly, annually).
- ✚ All credits must be clearly identified on billing statements and invoices submitted by FSMCs to the SFA.
- ✚ All records of credits must be maintained by FSMCs, and made available to SFAs and State agencies upon request.
- ✚ The reporting of credits by FSMCs is required no less frequently than annually; however, State agencies may approve more frequent reporting. FNS encourages monthly reporting to facilitate SFA monitoring of the credits.

Helpful Tip

SFAs must obtain documentation from the FSMC to allow for the identification of allowable and unallowable costs, and reconciliation of all rebates, discounts and applicable credits.



Monitoring the Contract

The SFA's responsibilities do not end when the contract is signed. Monitoring the contract throughout the year is essential to ensure the SFA receives the full value of credits and is in compliance with Federal regulations. Monitoring activities may include the following best practices:

- ✚ Begin the process of monitoring the contract immediately by identifying the person or persons within the SFA who will be responsible for oversight.
- ✚ Designate the position that will monitor the credits (e.g., school food service director, school business or procurement official or other SFA-designated employee).
- ✚ Examine the invoices and other documentation provided by the FSMC as agreed to in the contract. Remember, it is important to maintain this documentation as support for credits and for review by the State agency.
- ✚ Determine the percentage of credits reported in relation to the value of food purchased early in the contract year as a benchmark for future comparison.
- ✚ Calculate the average credit-purchase proportion received (see example on the left). The industry average is between 10 to 15 percent.
- ✚ Examine products to ensure that to the maximum extent practicable, domestic commodities are purchased. Visit storage facilities (freezers, refrigerators, and dry storage) to observe the origin of purchased food printed on food labels and case units.

Helpful Tip

Credit-Purchase Proportion equals

Value of Credit Reported
divided by
Value of Purchased Food

$$CPP = VCR \div VPF$$

Additional Resources

Policy Memorandum
SP-23-2013

USDA State Agency Guidance to
Procurement Web-Based
training:

<http://nfsmi.org/Templates/TemplateDefault.aspx?qs=cEIEPTIzOA>

Contact your State agency for
additional assistance and
support.

Questioning Discrepancies

If you notice potential discrepancies during monitoring activities, follow up with the FSMC to resolve the issues. If necessary, request additional documentation from the FSMC to substantiate these discrepancies. Potential discrepancies to consider may include:

- ✚ Frequency of reporting that does not agree with contract provision.
- ✚ Labels identifying countries other than the U.S. may serve as a red flag that the FSMC is not complying with contractual provisions regarding "Buy American", possibly resulting in lower credits.
- ✚ Credit-purchase proportions that fall below the average credit-purchase proportion established early in the year.

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