



**United States  
Department of  
Agriculture**

Food and  
Nutrition  
Service

# Contracting with Food Service Management Companies

## Guidance for State Agencies

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## Contents

<b>Introduction</b> .....	I-1
<b>Chapter 1 - Overview of SA Responsibilities</b> .....	1-1
<b>Chapter 2 - FSMC Registration</b> .....	2-1
General .....	2-1
Timing.....	2-1
Profile Information.....	2-2
<b>Chapter 3 - Review Activities</b> .....	3-1
Contract Review .....	3-1
Evaluation of Contract.....	3-3
Contract Renewals .....	3-4
On-Site Review.....	3-4
Timing of Review.....	3-4
SFA Responsibilities .....	3-5
FSMC Responsibilities .....	3-11
<b>Chapter 4 - Technical Assistance and Training</b> .....	4-1
Technical Assistance.....	4-1
Training .....	4-1
<b>Glossary of Terms</b> .....	G-1
<b>Appendix</b>	
New Jersey Registration Form	

## **Introduction**

Under their agreements with a State agency (SA), school food authorities (SFAs) are responsible for operating the school nutrition programs in schools under their jurisdiction. These programs include the National School Lunch Program (NSLP), the School Breakfast Program (SBP), and the Special Milk Program for Children (SMP). To assist in carrying out this responsibility, a SFA may contract with a food service management company (FSMC) to manage its food service operation involving these programs in one or more of their schools. SAs are required to ensure that participating SFAs entering into contracts with FSMCs comply with State and Federal cost and procurement standards and applicable Federal regulations.

The purpose of this guidance is to provide SAs with the actions appropriate to ensure compliance with both program regulations and Federal cost and procurement standards. The NSLP regulations appear at 7 CFR Part 210, the SBP regulations appear at 7 CFR Part 220 and the SMP regulations appear at 7 CFR Part 215. As provided in 7 CFR 210.19(e), SAs may impose additional requirements which meet or exceed the required Federal standards. Additionally, the guidance identifies areas of technical assistance in which SAs may aid SFAs in strengthening contracts with FSMCs.

## Chapter 1:

### Overview of SA Responsibilities

Effective SA oversight of SFAs entering into contracts with FSMCs requires expertise in contracts and procurement, attention to detail, an understanding of program operations, and a commitment to ensuring that program benefits are delivered efficiently in the manner Congress intended under the National School Lunch Act and the Child Nutrition Act of 1966.

Due to the technical nature of these responsibilities, a SA should seek out and utilize sources of expertise in the areas of contracts and procurement. This might be accomplished by using the services of a contract specialist within the SA or from another State government organization. Assistance from sources such as the Food and Nutrition Service Regional Office, the SA's general counsel and internal audit group, the State Attorney General's Office, and the State procurement office, is available and would provide SAs with additional knowledge and experience. When a large number of FSMCs and resources are available, the SA should consider having a full-time contract specialist on staff.

The SA responsibilities relating to SFAs entering into contracts with FSMCs are set forth in the NSLP regulations at 7 CFR 210.19.

Program regulations at 7 CFR 210.19(a)(6) require SAs to:

- Annually review each contract (including all supporting documentation) between any SFA and FSMC to ensure compliance with all the provisions and standards set forth in this part prior to execution of the contract by either party. As part of this review, SAs must ensure that SFAs include the following provision, or language that is tantamount to this provision, in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts: Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority.
- Ensure that SA approved FSMC prototype contracts used by SFAs meet the provisions of the governing regulations and that all changes made to the prototype contract are reviewed and approved annually by the SA and prior to execution of the contract
- Conduct an **on-site review of each contracting SFA** at least once during each 5-year period. Such reviews must include an assessment of the SFA's compliance with 7 CFR

210.19(a)(6) and with 210.16. The State agency is encouraged to conduct such a review when performing reviews in accordance with 210.18.

- Provide technical assistance to participating SFAs.

In addition to the regulatory requirements regarding SA oversight, the SA may require an FSMC to register with the SA as a condition for consideration of an invitation for bid (IFB) or request for proposal (RFP) issued by any SFA under the SA's oversight.

This guidance addresses FSMC registration, the review of the contract, on-site review activities, and training and technical assistance.

## Chapter 2:

### FSMC Registration

#### General

Please see your own State agency for their specific guidelines and policies.

Program regulations at 7 CFR 210.19(a)(6) state: “The State agency may require that all food service management companies that wish to contract for food service with any school food authority in the State register with the State agency.”

Formal registration offers SAs an opportunity to identify all FSMCs operating in their State and allows SAs to develop a profile of those FSMCs. This information will prove useful in the SA's monitoring activities. Registration also enables the SA to provide interested SFAs with information on specific companies as well as with the names of SFAs that have used specific FSMCs.

#### Timing

In order to effect this requirement, SAs must ensure that SFAs and FSMCs are given proper notice of the registration requirement. SAs should issue a public announcement, prior to the registration period, of the registration requirement. The announcement should include all the information necessary to apply for registration. A public meeting, held prior to the registration deadline, would offer FSMCs an opportunity to obtain further clarification of the SA requirements.

Additionally, SFAs should be notified that a provision regarding the registration requirement should be included in the IFB/RFP. When preparing specifications for IFBs and RFPs, SFAs should include language addressing the registration requirement as a **condition for considering a bid or proposal**.

Inclusion of this provision provides adequate notification to any interested bidder/offeror, thus ensuring that no respondent is excluded from bidding or offering on a contract.

Shortly after the registration deadline, the SA may want to consider notifying SFAs of the FSMCs that have been registered. SFAs can refer to this official list of FSMCs that are allowed to enter into school food service contracts in the State.

## **Profile Information**

SAs may want to consider obtaining the following information in their registration process:

- Name and address of the FSMC.
- Contact person.
- Corporate profile, e.g., whether the company is incorporated; other names the company is using or has used; if the company participated in SFA contracts, the number of contracts awarded/terminated; any type of citation the company received for health, safety or sanitation violations; and whether the company is providing meals in the Child and Adult Care Food Program and/or the Summer Food Service Program.
- Personnel profile, e.g., names and titles of individuals from the company authorized to sign contracts; all individuals who are owners, officers, local area representatives, or consultants; and any individuals with at least five percent financial interest in the FSMC.

In addition, SAs may want to consider requiring the FSMC to submit a certification regarding debarment and suspension, together with the registration form. School districts entering into procurement contracts for goods or services must obtain assurance that potential bidders/offerors have not been suspended, debarred, or proposed for suspension or debarment. Regulations in 7 CFR Part 3017.300 provide grantees with three options for obtaining satisfaction that prospective contractors are not suspended, debarred, or disqualified, including: (a) Checking the Excluded Parties List System (EPLS) (<http://epls.arnet.gov>). When



exercising this option, school districts should ensure they document that the bidder/offeror was checked against the system; or (b) Collecting a certification from that person if allowed by this rule; or (c) Adding a clause or condition to the covered transaction with that person.

For a sample debarment and suspension certification form, see the appendix of the companion guidance, **Contracting with Food Service Management Companies: Guidance for School Food Authorities**. Submission of this certification to the SA does not, however, relieve the FSMC of its responsibility to submit a **current** certification to each SFA with which it wishes to do business. This is especially important in that a certification furnished to the SA may become outdated by the time the FSMC approaches the SFA or responds to their solicitations; a pending debarment or suspension action may have become effective

Please note: The New Jersey registration form appears in this Appendix as a sample form.

## Chapter 3:

### Review Activities

#### Contract Review

The contract between a SFA and a FSMC is a major factor in assuring a meal service that not only meets the best interest of the SFA but also conforms to USDA, State, and local requirements in a cost-effective manner. The contract is the basis for successful and appropriate oversight by the SFA. The SA must ensure that the SFA-FSMC contract includes all required provisions and does not contain any unallowable provisions.

Section 210.19(a)(6) requires each SA to annually review each contract (including all supporting documentation) between any SFA and FSMC to ensure compliance with all the provisions and standards set forth in this part before execution of the contract by either party. When the SA develops a prototype contract for use by the SFA that meets the required provisions and standards, this annual review may be limited to changes made to that contract. Each SA shall review each contract amendment between a SFA and FSMC to ensure compliance with all provisions and standards set forth in this part before execution of the amended contract by either party. The SA may establish due dates for the submission of the contract or contract amendment documents.

New regulations governing procurement requirements in the NSLP, SBP, and SMP, issued on October 31, 2007 made a small but important modification to the requirements found at 7 CFR 210.19. As previously worded, the regulations permitted State agencies to make their first review of such contracts at any time during the first year of the contract. As noted above, the regulations now require SAs to review contracts (and supporting documentation) prior to the execution (i.e. prior to signature) of the contract. This change is meant to ensure that contracts containing unallowable terms and conditions are corrected prior to the contract being executed.

Another important change made by the procurement regulation is that all contracts must contain a provision clearly requiring that all costs to the program be net of applicable discounts, rebates, and credits. SAs must ensure that SFAs include the following provisions in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts: Allowable costs will be paid from the nonprofit school food service

account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority [210.21(f)(1)(i)].

Additionally, this rule requires contractors to provide sufficient information to permit the school food authority to identify allowable and unallowable costs and the amount of all such discounts, rebates, and credits on invoices and bills presented for payment to the school food authority [210.21(f)(1)(ii)(A)]. It is important to note that the contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars [(210.21(f)(1)(iii)].

It is also important that the SA ensures that the SFA's contract contains this requirement so that the contractor is transparent in their identification of these rebates, discounts, and credits [210.21(f)(1)(iii),(iv),(v),(vi)].

If, when reviewing the SFA's contract, the SA notes the SFA is not using a prototype contract, the SA should ensure that the contract documents have been drafted or developed by the SFA and not the FSMC competing for the procurement. This regulation exists to ensure contractor performance and eliminate unfair competitive advantage [3016.60(b)].

The SA must also ensure that SA approved FSMC prototype contracts used by SFAs meet the provisions of the governing regulations and that all changes made to the prototype contract are reviewed and approved annually by the SA and prior to execution of the contract [210.16(a)(10)].

The SA must make certain that the SFA's contract with a food service management company include all of the provisions listed in 7 CFR 250.53, as applicable. In accordance with 7 CFR 250.50(c), the SA must ensure that the SFA's procurement documents include any donated food activities that a food service management company is to perform, such as those activities listed in 7 CFR 250.50(d), and all contract requirements for conducting such activities, as listed in 7 CFR 250.53. The procurement must specify the method used to determine the donated food values to be used in crediting, or the actual values assigned, in accordance with 7 CFR 250.51. The method used to determine the donated food values may not be established through a post-award negotiation, or by any other method that may directly or indirectly alter the terms and conditions of the procurement or contract.

SAs are reminded that:

**Competitive Sealed Bid**—if the competitive sealed bid method is used, the SA should review the contract documents prior to issuance of the Invitation for Bid (IFB), as all variables, including a precise description of the menu, are defined by the IFB.

**Competitive Negotiation**—if the competitive negotiation method is used, the Request for Proposal (RFP) describes desired outcomes and the weighted criteria that will be used to evaluate the proposal. SA review of the RFP is beneficial when such a review occurs prior to the publication of the RFP.

**Proposed Contract**—Under the new procurement regulations, SAs are required to review and approve all SFA contracts and contract amendments between SFAs and FSMCs prior to contract execution.

## Evaluation of Contract

SAs must carefully examine the terms of a contract to ensure that:

**SFA Responsibilities**—the SFA does not delegate those responsibilities with which they are assigned by regulations.

**Required Provisions**—all required provisions are included.

**FSMC Responsibilities**—all goods and service to be provided by the FSMC, as well as all duties, responsibilities, and obligations of the FSMC, are clearly defined.

**Financial Terms**—the financial terms and conditions of the contract are in place.

**Performance**—specific language about performance is provided, including identifying the minimum level that the contractor must meet or exceed.

**Nonperformance**—all contracts, including small purchase acquisition contracts, should provide for legal and financial remedies for nonperformance.

**Unacceptable Provisions**—provisions are not included that are not in

the best interest of the SFA, e.g., a time limit for liability for meals not meeting the meal pattern requirements.

**Supplementary Documents**—supplementary contract documents have been completed (e.g., Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions; Certification Regarding Lobbying; etc.).

**Duration**—the duration of the contract is no longer than one year and options for yearly renewal do not exceed four additional years.

## **Contract Renewals**

In the case of renewals, the SA should require the SFA to submit with the renewal documents a copy of the initial contract checklist with notations where changes have occurred and an indication of the basis for the renewal. Such changes to the contract cannot result in a material change.

## **On-Site Review**

The most effective means of determining whether the SFA is meeting its responsibilities in the management of the program and if the FSMC is adhering to the terms and conditions of the contract is to assess program operations. Evaluating program operations allows the SA to ensure that the SFA and the FSMC are complying with the contract and all other applicable Federal, State and local rules and regulations.

SAs are required to perform an on-site review of each SFA contracting with a FSMC at least once during each five-year period. Such reviews must include an assessment of the SFA's compliance with 7 CFR 210.19. Specifically, the SA must determine whether:

**SFA Responsibilities**—the SFA is meeting its responsibilities in the management of the program [210.19 and 210.21].

**FSMC Responsibilities**—the FSMC is adhering to the terms and conditions of the contract.

## **Timing**

SAs are encouraged to conduct the SFA/FSMC review in conjunction with a Coordinated Review as addressed in section 210.18. If the review is conducted independently, it is recommended that a civil rights review also be included.

It is also strongly suggested that, regardless of the Coordinated Review cycle, SAs formally or informally review each SFA that has contracted with a FSMC during the first year of the contract.

## **SFA Responsibilities**

To test compliance with 7 CFR 210.19, SAs must evaluate, by the most appropriate means possible, whether the SFA is meeting its responsibilities in the areas identified below:

**Contract Documents**—the SFA retains the responsibility for preparing all contract documents. These documents include, but are not limited to, bid specifications, the IFB, the RFP, the contract, and any contract amendments. This includes ensuring that all cost-reimbursable contract documents contain the required provisions from the final procurement rule, including a provision ensuring the return of rebates, discounts, and applicable credits to the SFA.

NOTE: FSMC-developed contracts are not allowed, since they would compromise open and free competition [3016.60(b)]. While not recommended, a SFA may invite the successful offeror under a RFP to assist in finalizing the contract provisions after the successful offeror has been identified. Such changes cannot result in a material change to either the solicitation or contract.

**FSMC Selection**—the SA must look closely at the SFA's procedure for soliciting and selecting the FSMC. NOTE: The SA must evaluate whether the SFA complied with 7 CFR 210.21 in the selection of a FSMC, i.e., review the SFA's procurement practices to ensure that they are adequate and in conformance with the provisions of 7 CFR Part 3016 or 3019, respectively.

If the competitive sealed bid method was used, the SA must ensure that:

**Number of Bids Solicited**—the SFA solicited bids from an adequate number of known suppliers, the IFB was publicly advertised, and sufficient time was provided prior to the date set for opening of bids.

**Clearly Defined Services**—the IFB, including specifications and pertinent attachments, clearly defined the goods or services needed.

**Public Opening**—all bids were opened publicly at the time and place

stated in the IFB. If a pre-bid meeting was held, all prospective bidders were so informed, and information provided by the SFA at the meeting was provided to all FSMCs that received the IFB.

**Sealed Bids**—only sealed bids were accepted. If the SA is not present at bid opening, the SA must establish whether safeguards exist to protect bids prior to bid opening.

**Unresponsive Bids Rejected**—all unresponsive or unsealed bids were rejected. Documentation must exist for the rejection of any bids that were considered unresponsive or inadequate.

**Contract Award**—a firm fixed-price award was made to the responsible bidder whose bid, conforming to the IFB, was lowest, unless there are sound documented business reasons to reject a bid in the best interest of the program. Unsuccessful bidders were notified promptly.

If competitive negotiation was used, the SA must ensure that:

**Number of Proposals Solicited**—proposals were solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The RFP identified all significant evaluation factors, including price or cost where required and their relative importance. The RFP was publicized and reasonable requests by other sources to compete were honored to the maximum extent practicable.

**Technical Evaluation**—the SFA provided mechanisms for technical evaluation of the proposals received. Negotiations with the top ranking offerors were conducted.

**Awards**—award was made to the responsible offeror whose proposal was most advantageous to the SFA, price and other factors considered. Unsuccessful offerors were notified promptly.

**Conformance with Agreement**—the SFA ensures that the food service is operated in conformance with the SFA's agreement under the program and that responsibility for all contractual agreements entered into in connection with the school nutrition programs rests with the SFA.

**Monitoring Responsibilities**—the SFA monitors the food service operation through periodic on-site visits to ensure that the food service is in conformance with program regulations, and program review and audit findings are resolved.

The SFA has procedures in place to monitor the FSMC's compliance with the contract and the SFA maintains documentation of its monitoring, any corrective action required, and whether corrective action was implemented.

**Control of Food Service**—while the SFA may want to consider FSMC recommendations, the SFA retains control of the quality, extent and general nature of its food service and the prices to be charged to the children for meals, i.e.:

- The SFA retains control of the nonprofit school food service account and overall financial responsibility for the school nutrition programs.
- The SFA establishes prices for all meals served under the nonprofit school food service account (e.g., pricing for reimbursable meals, a la carte food service including vending machine items, and adult meals, as applicable).
- The SFA develops the 21-day cycle menu in accordance with the meal pattern requirements specified in 7 CFR Part 210. If the SFA is unable to develop a cycle menu, the SA may develop the cycle menu or allow the FSMC to develop the cycle menu as long as doing so was a requirement of the solicitation up front. The SA should ensure that the SFA's solicitation contains information on how the SFA will be evaluating the FSMC's menu, such as affordability, nutrition requirements, and appeal to the students. The solicitation must also identify whether the SFA will be providing food specifications, or whether the FSMC will be developing the specifications. In the first scenario, the FSMC must respond directly to the food specifications provided by the SFA in the solicitation. In those cases where the SFA has not supplied specifications, the FSMC must identify the food products that will be served via the menu using specifications like grading, weight, item labels, nutritional qualities, etc., to allow the SFA to fairly evaluate all bids. Whether the specifications are provided by the SFA or the FSMC, they must be clearly identified and described in



the solicitation or the proposal.

- The SFA conveys menu adjustment requirements to the FSMC and monitors implementation of those adjustments (e.g., meal pattern changes issued by USDA).

**Signature Authority**—the SFA retains signature authority on the agreement to participate in the NSLP, the SBP, and the SMP, including the SFA's free and reduced price policy statement and the monthly Claim for Reimbursement.

**Free and Reduced Price Meal Process**—the SFA is responsible for implementation of free and reduced price policy in accordance with 7 CFR Part 245. Such responsibilities include the conduct of any hearings related to such determinations and verification of applications for free and reduced price meals. An employee of the food service management company may perform for the SFA in various aspects of the application, certification, and verification process of eligibility for school meals programs. The company's employee must comply with all requirements for these processes, including limited disclosure of individual eligibility information. However, the SFA is ultimately responsible for ensuring that all requirements are being met and the information on the application remains the property of the SFA.

**USDA Donated Foods**—the SFA retains title to USDA donated foods. The SFA ensures that all USDA donated foods received by the SFA and made available to the FSMC, including processed USDA donated foods, accrue only to the benefit of the SFA's nonprofit school food service and are fully utilized therein. This provision also applies to any refunds received from processors. Specifically, the SA should:

- Evaluate the amount and kind of donated food offered versus accepted to determine if the SFA/FSMC is using USDA donated foods to the maximum extent in quantities that can be used and stored without waste.
- Evaluate the utilization of the USDA donated food by the FSMC. Under cost-based contracts, this may include a review of production records and food cost documentation.
- Determine the existence of the proper value-pass-through for

USDA entitlement and bonus donated foods, including processed end products made from USDA donated foods, e.g., credits or reductions on the invoice in the month of utilization. The State Distributing agency will be able to provide information on the value of USDA donated foods, including those contained in end products obtained through State processing agreements.

- Ensure that, in accordance with 7 CFR 250.51(a), the FSMC credits the SFA for the value of all donated foods received for use in the SFA's meal service in the school year or fiscal year. Such requirement includes crediting for the value of donated foods contained in processed end products if the FSMC, in accordance with its contract, procures such end products on behalf of the SFA, or acts as an intermediary in passing the donated food value in such end products on to the SFA.
- Also ensure that, in accordance with 7 CFR 250.51(b), the FSMC credits the SFA for the value of all donated foods received for use in the SFA's meal service at least on an annual basis. All forms of crediting must include clear documentation of the value received from the donated foods. In cost-reimbursable contracts, crediting may be performed by disclosure; i.e., the FSMC credits the SFA for the value of donated foods by disclosing, in its billing for food costs submitted to the SFA, the savings resulting from the receipt of donated foods for the billing period.
- In accordance with 7 CFR 250.51(c), ensure that, in crediting the SFA for the value of donated foods, the FSMC uses the donated food values determined by the distributing agency, in accordance with 7 CFR 250.58(e), or, if approved by the State distributing agency, donated food values determined by an alternate means of the SFA's choosing.
- Guarantee that, in accordance with 7 CFR 250.51(d), the FSMC must use all donated ground beef, donated ground pork, and all processed end products, in the SFA's food service, and must use all other donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the SFA's food service (unless the contract specifically stipulates that the donated foods, and not such commercial substitutes, must be used).

- Instruct the SFA and FSMC to maintain records of receipt of donated foods and processed end products, of crediting for the value of donated foods, and other records relating to donated foods, in accordance with 7 CFR 250.54. The SA must ensure that the SFA conduct a reconciliation at least annually (and upon termination of the contract) 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 requirements in 7 CFR 250.51(a), the value of donated foods contained in processed end products.
- In accordance with 7 CFR 250.52(c), when a contract terminates, and is not extended or renewed, instruct the SA to ensure that the FSMC return all unused donated ground beef, donated ground pork, and processed end products. Additionally, the FSMC must, at the SFA's discretion, return other unused donated foods.
- That the SFA checks 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.
- Check that the FSMC meets the general requirements for the storage and inventory management of donated foods in 7 CFR 250.14(b). In accordance with 7 CFR 250.52(a), the FSMC may store and inventory donated foods together with foods it has purchased commercially for the SFA's use, unless this is specifically prohibited in its contract. It may store and inventory such foods together with other commercially purchased foods only to the extent that such a system ensures compliance with the requirements for the use of donated foods in 7 CFR 250.51(d). Additionally, under cost-reimbursable contracts, the FSMC must ensure that its system of inventory management does not result in the SFA being charged for donated foods.

**Health Certification**—the SFA maintains applicable health certifications and assures that all State and local regulations are being met by a FSMC preparing or serving meals at a SFA facility.

**Advisory Board**—the SFA establishes and operates an advisory board composed of parents, teachers and students to assist in menu planning.

**21-Day Cycle Menu**—the SFA develops the 21-day cycle menu for the FSMC bid/proposal. If the SFA is unable to develop a cycle menu, the SA may develop the cycle menu or allow the FSMC to develop the cycle menu as long as doing so was a requirement of the solicitation up front. The SA should ensure that the SFA’s solicitation contains information on how the SFA will be evaluating the FSMC’s menu, such as affordability, nutrition requirements, and appeal to the students. The solicitation must also identify whether the SFA will be providing food specifications, or whether the FSMC will be developing the specifications. In the first scenario, the FSMC must respond directly to the food specifications provided by the SFA in the solicitation. In those cases where the SFA has not supplied specifications, the FSMC must identify the food products that will be served via the menu using specifications like grading, weight, item labels, nutritional qualities, etc., to allow the SFA to fairly evaluate all bids. Whether the specifications are provided by the SFA or the FSMC, they must be clearly identified and described in the solicitation or the proposal.

However, FSMC-developed cycle menus are only appropriate to use under the competitive negotiation method of procurement, since under the competitive sealed bid method, the SFA must review each bid for responsiveness to the bid requirements. Moreover, an SFA may not contract an FSMC to develop their menu for use in the SFA’s solicitation if the FSMC plans to respond to the solicitation at hand, as doing so could place them at a competitive advantage. The SFA must approve any changes to the cycle menu after the first 21 days of meal service. Such changes should include foods of cost and quality equivalent to the first 21 days of meal service.

**Internal Controls**—the SFA conducts the monthly Claim for Reimbursement internal controls required under 7 CFR 210.8(a).

**Reports**—the SFA completes all reports, as required by the SA.

## **FSMC Responsibilities**

SAs must evaluate whether the FSMC meets the terms and conditions of the contract, and complies with the FSMC-specific provisions of 7 CFR 210.16.

The FSMC-specific provisions of 7 CFR 210.16 are:

**Meal Pattern**—the FSMC adheres to the cycle menu for the first 21 days of meal service and receives SFA approval for any changes to the cycle menu made thereafter [210.16(b)(1)].

**Reports and Records**—the FSMC maintains records to support the Claim for Reimbursement and reports claim information to the SFA promptly at the end of each month [210.16(c)(1)]. The FSMC must also retain:

- Cost records, including but not limited to source documentation, supporting charges for contractually approved costs (i.e., reasonable and necessary) for cost-based contracts; cost breakdown of management and administrative fees, if applicable, to demonstrate there is no double billing of charges; time and attendance records for labor costs billed, if applicable; and breakdown of special function costs, if applicable.
- Meal count records for meals not covered by the Claim for Reimbursement, e.g., adult meals.
- Revenue records broken down by source, type and category of meal or food service, e.g., a la carte sales, reduced price and full price NSLP and SBP meals.
- The FSMC must have and maintain State or local health certification for any facility outside the school in which it proposes to prepare meals for the duration of the contract.

## Chapter 4:

### Technical Assistance and Training

#### Technical Assistance

Technical assistance relating to FSMCs must be provided by the SA to any SFA upon request. Such assistance may include, but is not limited to:

**Visits to Schools**—school visits offer SA personnel an informal opportunity to provide training, offer suggestions, and provide clarification of program requirements.

**Prototype Contracts**—a prototype contract developed and issued by the SA maximizes the efficiency in the SA's contract review efforts. SAs, in conjunction with their legal counsel, may want to consider developing standard prototype contracts and IFBs or RFPs for all SFAs. These documents could be mandated for all SFAs contracting with FSMCs.

**Core Prototype Provisions**—in lieu of a SA-developed prototype contract, SAs may want to develop core contract provisions or require all SFAs to develop core contract provisions. Once approved, only changes to the core contract provisions (plus all non-core provisions) would need to be reviewed in subsequent years.

**SA Contract Guidelines**—if the SA does not develop a prototype contract, SFAs should be encouraged to develop their own standard contracts following SA guidelines.

**Specification Development**—the SA should be able to assist in specification development, either by prototype specifications or guidelines. The SA should review specifications when requested by the SFA.

#### Training

The SA should conduct training sessions on a regular basis to ensure that local personnel and FSMC representatives are provided with up-to-date information regarding program changes and/or changes in the contracting process, e.g., when a new provision is included in the prototype contract. Such training sessions will provide participating personnel with the opportunity to share information and insight.

## Glossary of Terms

For the purposes of this guidance, the term:

**Bid** means an offer to perform, in accordance with the specifications and conditions, for a stipulated price.

**Code of Federal Regulations (CFR)** means the codification of the general and permanent rules published in the *Federal Register* by the Executive departments and agencies of the Federal government.

**Competitive Proposals (previously known as Competitive Negotiation), i.e. a request for proposal**, means a method of procurement whereby a technical proposal is solicited that explains how the prospective contractor will meet the objectives of the solicitation and a cost element that identifies the costs to accomplish the technical proposal. While price alone is not the sole basis for award, price remains the primary consideration when awarding a contract under the competitive proposal method.

**Competitive Sealed Bids** means a formal method of procurement in which sealed bids are publicly solicited, i.e. through an invitation for bid, resulting in the award of a firm-fixed price contract to the responsible bidder whose bid is responsive to the IFB, conforms with all the material terms and conditions of the invitation for bids, and is lowest in price. In this case, the IFB must be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them with sufficient time to respond prior to the date set for opening the bids.

**Contract** means a formal, legally enforceable agreement between a buyer (client) and a seller (contractor) that establishes a legally binding obligation for the seller to furnish goods and/or services and for the buyer to compensate the seller. A contract must clearly and accurately describe the goods and/or services to be delivered or performed and the terms and conditions of the agreement. In the case of school meals programs, a contract is executed by the authorized representatives of the SFA and the contractor that calls for the provision of services, materials, supplies or equipment by the contractor in accordance with all conditions and specifications in the bid/proposal documents, for a price to be paid by the SFA prior to execution.

**Contract Documents** means the bid specifications, requirements, the IFB, the RFP and the contract, as applicable.

**Donated Foods** means foods donated, or available for donation, by United States Department of Agriculture.

**FNS** means the Food and Nutrition Service of the United States Department of Agriculture. FNS administers the nutrition assistance programs of USDA. The mission of FNS is to provide children and needy families with better access to food and a more healthful diet through its food assistance programs and comprehensive nutrition education efforts.

**Fixed-price** means price that is fixed at the inception of a contract and is guaranteed for a specific period of time.

**Food Service Management Company (FSMC)** means a commercial enterprise or a nonprofit organization that is or may be contracted with by the SFA to manage any aspect of the school food service. An FSMC is a company that is acting on behalf of a school food authority by actually being in charge of or directing any aspect of the food service, and must meet applicable program requirements.

**Invitation for Bid (IFB)** means a type of solicitation document used in competitive sealed bidding, where the primary consideration is cost and the expectation is that competitive bids will be received and an acceptance (award) will be made to the responsive and responsible bidder whose bid is lowest in price. An IFB is a formal method of procurement that uses sealed bidding and results in a fixed price contract with or without adjustment factors. The IFB must be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them with sufficient time to respond prior to the date set for opening the bids. Also, the IFB should describe the minimum standards expected of a responsible bidder in measurable terms.

**Nonprofit School Food Service** means all food service operations conducted by the SFA principally for the benefit of schoolchildren, all of the revenue from which is used solely for the operation or improvement of such food services.

**Processor** means, as defined in 7 CFR 250.3, "... any commercial facility which processes or repackages donated foods. However, commercial enterprises which handle, prepare and/or serve products or meals



containing donated foods on-site solely for the individual recipient agency under contract are exempt under this definition."

**Procurement** means the process of obtaining goods and/or services in accordance with applicable rules and regulations.

**Request for Proposal (RFP)** means a type of solicitation document used for the formal procurement method of competitive proposals. The RFP identifies the goods and services needed and all significant evaluation factors. The RFP is publicized and is used to solicit proposals from a number of sources. Negotiations are conducted with more than one of the sources submitting proposals, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive proposals may be used if conditions are not appropriate for the use of competitive sealed bids.

**Responsible Bidder/Offeror** means a bidder/offeror who is capable of performing successfully under the terms and conditions of the contract.

**Responsive Bidder/Offeror** means a bidder/offeror whose bid/offer conforms with all the material terms and conditions of the solicitation.

**7 CFR Part 3015** means the USDA's regulations regarding the administration of grants. Subpart S sets forth the procurement provisions and Subpart T sets forth the cost principles.

**Vendor** means a merchandiser of complete meals, meal components, or raw materials.

**Appendix:**

**New Jersey Registration Form**

**FSMC REGISTRATION COVER SHEET**  
**SCHOOL YEAR 2007 - 2008**

**PACKET MUST BE RECEIVED BY THE STATE AGENCY**  
**ON/OR BEFORE NOVEMBER 20, 2006**

**INSTRUCTIONS:** These forms can not be handwritten. Submit **TWO SETS** of original documents and retain one copy for your records.

**FOOD SERVICE MANAGEMENT  
 COMPANY NAME:**

Appendix A- FSMC Application For Registration (Form #139)

Food Service Management Company Sample Core Contract

Appendix B- FSMC Contract Required Language Checklist (Form #17)

Food Service Management Company Sample Core Addendum \*

Appendix C - FSMC Addendum Required Language Checklist \* (Form #18)

Appendix D - Debarment Certificate (Form #130)

Appendix E - Certificate of Independent Price Determination (Form #131)

Appendix F - Certificate Regarding Lobbying (Form #133)

Appendix G - Disclosure of Lobbying Activities (Form #132)

**\* NOT APPLICABLE FOR FSMC(S ) THAT DID NOT EXECUTE A BASE YEAR CONTRACT IN NEW JERSEY FOR SCHOOL YEAR 2005-2006.**



**II - CORPORATE PROFILE**

3. IS THE COMPANY INCORPORATED?

NO       YES (If YES, give month, year and state incorporated in.)


4. LIST OTHER NAMES YOUR COMPANY IS PRESENTLY USING OR HAS USED IN THE PAST TWENTY-FOUR MONTHS.


5. IS THE FSMC CURRENTLY PROVIDING OR HAS THE FSMC EVER PROVIDED MEALS TO THE FOLLOWING PROGRAMS?

Child Care Food Programs	<input type="checkbox"/> NO	<input type="checkbox"/> YES
Adult Care Food Programs	<input type="checkbox"/> NO	<input type="checkbox"/> YES
Summer Food Service Programs	<input type="checkbox"/> NO	<input type="checkbox"/> YES

If yes, and if in New Jersey, complete the next section. Use additional pages if needed.

PROGRAM	SPONSOR NAME	ADDRESS	PHONE

**III - PERSONNEL PROFILE**

6. LIST NAME AND TITLE OF INDIVIDUALS FROM THE COMPANY AUTHORIZED TO SIGN CONTRACTS.

NAME	TITLE


7. LIST ALL INDIVIDUALS WHO ARE OWNERS, OFFICERS, LOCAL AREA REPRESENTATIVES, CONSULTANTS AND ANY INDIVIDUALS WITH AT LEAST 5 PERCENT FINANCIAL INTEREST IN THE FSMC, AND PROVIDE THE FOLLOWING INFORMATION FOR EACH: *(Attach additional pages if needed.)*

NAME	OFFICER/TITLE

**IV - ADDITIONAL INFORMATION**

**THE FOLLOWING INFORMATION WILL BE USED BY THE LEA (Local Education Agency) WHEN SOLICITING QUOTES OR BIDS.**

8. We **CURRENTLY** provide service to LEA(s) in the following counties (check all that apply):

Atlantic (001) <input type="checkbox"/>	Gloucester (015) <input type="checkbox"/>	Ocean (029) <input type="checkbox"/>
Bergen (003) <input type="checkbox"/>	Hudson (017) <input type="checkbox"/>	Passaic (031) <input type="checkbox"/>
Burlington (005) <input type="checkbox"/>	Hunterdon (019) <input type="checkbox"/>	Salem (033) <input type="checkbox"/>
Camden (007) <input type="checkbox"/>	Mercer (021) <input type="checkbox"/>	Somerset (035) <input type="checkbox"/>
Cape May (009) <input type="checkbox"/>	Middlesex (023) <input type="checkbox"/>	Sussex (037) <input type="checkbox"/>
Cumberland (011) <input type="checkbox"/>	Monmouth (025) <input type="checkbox"/>	Union (039) <input type="checkbox"/>
Essex (013) <input type="checkbox"/>	Morris (027) <input type="checkbox"/>	Warren (041) <input type="checkbox"/>

9. List the names of LEA(s) that have current food service management contracts with your company but **DO NOT** participate in the National School Lunch Program. *(Attach additional pages, if needed.)*



**Food service management companies who state they WILL do business in all counties with no minimum conditions will be expected to respond to all LEA requests with a proposal or explanation as to why the FSMC did not submit a proposal.**

12. List the names of all LEA(s) that had consulting contracts with your company in the last two years:

YEAR	LOCAL EDUCATION AGENCY	COUNTY

**V - CERTIFICATION**

I CERTIFY that the information supplied on this application is true, complete and correct to the best of my knowledge. Any false statement or misrepresentation may be punishable by law (18 U.S.C. 1001.)

13. NAME OF PERSON TO **NOTIFY** IF REGISTRATION DOCUMENTS ARE INCOMPLETE OR INCORRECT

PRINT NAME:	
PHONE #:	(   )
FAX #:	(   )
E-MAIL:	

14. NAME OF FSMC OFFICIAL **SUBMITTING** REGISTRATION DOCUMENTS



PRINT NAME:	
SIGNATURE:	
DATE:	

PHONE #:	( )
FAX #:	( )
E-MAIL:	

15. The list of LEA's that are in the fifth year of a FSMC contract for the 07-08 school year will be e-mailed in January..

NAME OF FSMC OFFICIAL **DESIGNATED TO RECEIVE THE FIFTH YEAR LIST OF LEA'S.**

PRINT NAME:	
SIGNATURE:	

PHONE #:	( )
FAX #:	( )
E-MAIL:	