

Chapter 14: Food Service Management Companies

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Background

School Food Authorities (SFAs) considering contracting for food service with a private “for profit” food service management company (FSMC) are required to contact the South Carolina Department of Education (SCDE) before initiating the bidding process (i.e. before posting a public solicitation). SCDE will then provide a Request for Proposal (RFP) template that all SFAs in South Carolina are required to use. In addition, SCDE will provide information explaining timeline requirements, the specific procurement guidelines and SFA responsibilities. The more restrictive of local, Federal and/or state requirements for the procurement/contract process must be followed.

Considerations in Deciding Whether to Contract for Food Service Management

When deciding whether contracting with a private company will provide the best possible food service operation, the SFA should consider all financial, administrative, and operational issues. The SFA should allow enough time to properly analyze and answer all issues. This process should ideally begin one year prior to the start of the contract with a private company. Below is a brief review of some of the issues that should be thoroughly analyzed before a decision is made.

Management

The knowledge, skills and experience of the food service director are some of the best indicators of program success. One of the main benefits offered by a FSMC is professional management. However, a SFA can also hire its own highly effective professional management.

Carefully consider the management concerns that have caused the SFA to consider using a FSMC. Does the SFA currently employ a qualified director? If so, has the food service director had the opportunity to address these concerns and present a management plan to solve the problems? If the SFA does not currently employ a qualified director, could one be employed? If the SFA is too small to employ a full-time director, could a director be shared with another SFA?

If a FSMC is used, will the SFA be able to interview the FSMC director/manager before an assignment is made? If the assigned director/manager is unacceptable, what opportunities will the SFA have for replacement? How much supervision from the parent company will be provided for local FSMC staff?

Quality

Student participation is one of the best indicators of program quality. If participation is low or declining, it may be an indicator of customer dissatisfaction with one or more aspects of the food service program. What student, parent and teacher involvement is there with the current program? Have students, parents and teachers been involved in selecting new food items and recipes, planning menus and evaluating meal acceptability, food quality and variety? Have their suggestions and ideas been used? What promotional and marketing tools have been used to attract customers? Is the food service environment pleasant for students and teachers? Do students have adequate time to enjoy eating their meals?

Costs

There are many tools that a local SFA can use to control its food service costs and operate within its budget. For example, purchasing practices can be made more competitive and cost effective. Better scheduling of employees can often save money. While a FSMC may be able to reduce costs in some areas, the SFA will be paying the company a fee to do so. Will the SFA be better off investing money in the FSMC or in the SFA's operation/personnel? It is also important to evaluate the long-term costs of doing business with a FSMC. In addition, SCDE currently provides a Key Performance Indicator (KPI) management tool to help Food Services Directors evaluate their operation. Contact your SCDE Education Associate to additional information.

On-Site Visits

Prior to selecting a FSMC, the SFA's personnel are strongly encouraged to visit one or more school sites managed by each of the FSMCs under consideration. It is important to observe the operation on a typical day. Therefore, these visits should be unannounced to the food service site manager. Evaluate the sanitation, staffing, food production, food quality and student acceptability. Compare these to the current practices in the SFA's food service program. If the FSMC operation is judged to be superior, what were the noticeable differences? What would it take to make similar changes in the SFA's current program?

SCDE can help with the decision-making process by providing assistance in evaluating the SFA's options. Contact SCDE for further information regarding contracting with the FSMC.

Process to Procure & Contract for FSMC Services

Any SFA that contracts with a FSMC must adhere to procurement standards specified in 2 CFR 200, the National School Lunch Program regulations, state regulations (R.43-169) and the procurement procedures established by SCDE. Following are the steps for procuring and contracting for FSMC services.

1. At least six months prior to the date for beginning the contract (January 1 or earlier), the SFA should request from SCDE all procedures and documents for contracting with a FSMC. This information includes:
 - *Contracting with Food Service Management Companies: Guidance for School Food Authorities (May 2016)*; and
 - SCDE's Request for Proposal and Subsequent Contract (RFP) template which includes a list of prospective offerors.
 - The current SCDE FSMC RFP Template.

The initial term of the contract must be for one year and shall begin on July 1 and end on June 30. However, conditions to extend the contract for four additional one-year periods may be included in the proposal.

2. The SFA should allow approximately six months to adequately develop and establish a RFP.

3. The SFA must submit any proposed changes and/or amendments to the SCDE provided RFP template to SCDE for review and approval.
4. Once SCDE has approved the RFP, the SFA must advertise the solicitation in accordance with the current state and federal regulations.
5. The SFA shall conduct a pre-proposal conference for all interested offerors. All potential offerors must be invited. All questions asked by attendees must be responded to in writing by the SFA with copies provided to all potential offerors and SCDE.
6. Federal regulations require a minimum 21 day period between the advertisement of the solicitation and the due date for responses. However, given the complexity of the process, the likelihood of questions from potential offerors, and the need for site visitations, the SFA should plan on a minimum of 60 days between the advertisement of the solicitation and the due date for responses. State law requires a minimum for 15 days between the last addenda issued by the SFA and the due date of the RFP response.
7. The SFA will establish a committee to evaluate the responses. The committee may be comprised of principals, teachers, parents, administrators, and board members or other individuals agreed upon by the committee. Due to the complexity of the process, students should not serve as a committee member. An official from SCDE may be a non-voting member of the committee.
8. The SFA will prepare the agreement between the SFA and the FSMC selected using the documents in the RFP template. Any changes or additions to the agreement must be in the form of an addendum to the agreement.
9. The SFA must submit the prepared agreement to SCDE for final review and approval prior to implementation.
10. Once the agreement with any attached addendums has been approved by SCDE and has been signed by all parties (SCDE is the last signature to the document), it becomes the final contract between the SFA and the FSMC.
11. The SFA will be notified in writing by SCDE when the contract has been approved. The contract must be signed by the SFA and FSMC by July 1.

Overview of FSMC Procurement Timetable
(All dates are approximate and represent a best case scenario)

January

Day 1: SFA considers having a FSMC operate their child nutrition program (CNP) and requests technical assistance from SCDE. SCDE and SFA review template RFP/contract and negotiate modifications as needed.

February

Day 30: SCDE approves SFA's completed/modified RFP/contract.

Day 45: SFA advertises RFP/contract in major state publications for the first time.

Day 60: SFA advertises RFP/contract in major state publications for the second time. If advertised on the State of South Carolina procurement site, only one posting is required.

March

Day 61: FSMC representatives visit schools. SFA provides tours of facilities to all potential contractors at the same time, if possible.

April

Day 95: All addenda/amendments received by FSMC. FSMCs submit proposals to SFA.

Day 105: Proposals are logged as received with one or more witnesses. (Indicate date, time and place of receipt.) Representatives from FSMCs are not required to attend.

May

Day 110: SFA analyzes proposals based on the evaluation criteria. FSMCs may be invited to give formal presentation to Evaluation Committee.

Following presentations, committee makes written, objective evaluation and recommendation to SFA administrators. Proposal/contract reviewed by SFA's attorney; attorney reviews and provides written approval.

Day 136: Draft of all **final** contract data/materials, debarment/suspension certification proposal analyses and all evaluation records submitted to SCDE for review.

June

Day 166: SFA submits final RFP/contract to SCDE for approval. (The approved RFP becomes the contract.)

Day 170: SCDE notifies the FSMC of approval of the contract.

July 1

Day 175: Official award and contract signing. (A copy of the entire approved document (RFP), agreement authorization with official signatures, and copy of school board approval minutes must be provided to SCDE immediately after contract signing.)

August

Day 205: Training if SFA CNP personnel provided by FSMC.

Day 213: First meal service

Procedures for Renewal of a FSMC Contract

SFAs have the option to renew the contract annually for an additional four years beyond the original contract year. If the SFA uses the option to renew the contract, remember the following:

1. SCDE will send the SFA written notification that the existing contract may be renewed for one additional year. SCDE will also notify the SFA of the maximum amount of increase allowed in the contract based on the *Food Away from Home Series* of the *Consumer Price Index* from March to March of the prior year. This increase is allowed, but not mandatory. The SFA, at its sole discretion, may or may not allow the increase based on justification from the FMSC.
2. The SFA and the FSMC must negotiate the renewal terms of the contract and any amendments to the contract. The term of any contract renewal must run from July 1 to June 30.
3. The SFA must send SCDE the following documents for approval:
 - A letter stating the intent of the SFA to renew the contract with the FSMC for the upcoming school year. (Note: the SFA and the FSMC must be named in the letter and the July 1 to June 30 date must be clearly stated.);
 - A copy of any amendments, subcontracts, letter of agreement, or other relevant documentation pertaining to the contract which have not previously been furnished to SCDE;
 - An amendment list of schools served, if the SFA has added/deleted schools/centers to/from the contract;
 - Documentation through cost or price analysis supporting a request for an increase in the per meal charge by the FSMC.
 - Copies of the performance bond or performance bond continuation and insurance certificates.

4. The renewal package must be approved by SCDE prior to July 1. The SFA will be notified in writing when the contract renewal has been approved (or denied).
5. If the contract is still in effect during its fifth year, a new contract must be procured (i.e. a new RFP issues) for the coming school year if the SFA wishes to continue contracting with a FSMC.

SFA's Monitoring Requirements

Regulations require that the SFA retain control of the quality, extent and general nature of the food service operation. This requires that the SFA exercise financial and operational oversight by monitoring the FSMC and the execution of the contract. The SFA shall supervise and monitor the CNP to ensure compliance with all applicable rules and regulations of SCDE and USDA.

The SFA must conduct periodic on-site visits at each school served by a FSMC. Documentation of all monitoring, any corrective actions required, and whether or not corrective action was taken must be maintained for three years. The SCDE Food Service Management Company (FSMC) Monitoring Form provided at the end of this chapter must be used to conduct and document each on-site visit. At least one visit at each site must be completed and documented prior to February 1 each year.

At a minimum, the SFA should monitor the program to evaluate the following:

- **Cycle Menu** – The FSMC has followed the cycle menu and any and all deviations allowed under the contract for the first 21 days of operation.
- **Meal Pattern** – Following the first 21 days, the menu meets the meal pattern requirements specified in the contract and in USDA regulations.
- **Production Records** – Production records are completed each day for all reimbursable meals.
- **Offer Versus Serve** – The FSMC complies with Offer versus Serve requirements.
- **“Smart Snacks” Competitive Food Guidelines** – Regulations are followed concerning the sale of competitive food and beverages (including fundraisers) sold on school campuses during the school day.
- **Food Quality** – Food quality specification standards meet those described in the contract.
- **Civil Rights** – FSMC complies with civil rights requirements, including referring any civil rights complaints to the SFA.

- **Free and Reduced-Price Policy** – FSMC adheres to the SFA’s approved free and reduced-price meal policy statement.
- **Monitoring of Meals** – Meals are monitored after last food item or menu item is served/selected to ensure that only reimbursable meals are claimed.
- **Meal Count Records** – Daily meal count records accurately reflect the counts of student and adult meals by meal type and eligibility category.
- **Claim Documentation** – Adequate records are maintained, by school, to support the Claim for Reimbursement (meal/milk counts and any other data for which the FSMC is responsible).
- **Revenue Records** – Revenue records accurately reflect the revenue received and are 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, vending machine sales, etc.)
- **Bills** – All bills are monitored prior to payment to ensure that the FSMC has not double-billed or included costs that are not allowed by the contract/
- **USDA Donated Foods** – The amount and kind of donated food offered versus accepted is documented to determine if the FSMC is accepting USDA donated foods to the maximum extent possible, in quantities that can be used and stored without waste.
- **Advisory Board** – Examine records to ensure that an advisory board consisting of parents, teachers and students exists and meets regularly to assist with menu planning.
- **Student and Parent Involvement** – Determine what activities occur and how they are documented.
- **Sanitation and Safety Standards** – Ensure that all facilities and equipment used to prepare and serve meals are adequately maintained for safety and sanitation, that employees practice safe food handling procedures, and that Department of Health and Environmental Control (DHEC) permits for all facilities are current. Observe the most recent health inspection reports, ensure they are posted in a publicly visible location and note any areas cited as critical.
- **Corrections** – Ensure that any corrections have been made as required if problems were noted during previous monitoring visits.

Overall Compliance – Ensure that the FSMC complies with all policies established by the SFA, SCDE and USDA and carries out all responsibilities as outlined in the contract between the SFA and the FSMC.

Record Keeping Responsibilities

The SFA must maintain all procurement documentation directly related to the solicitation, award, contract and associated renewals, and any other required supporting records for a period of three years plus the current operating year.

FSMC Contracts

USDA has reviewed several contracts between SFAs and FSMCs to ensure compliance with federal regulations. Before entering into a contract with a FSMC, SFAs should be aware of and consider the following issues:

- **Accounting Practices** – Any accounting period referenced in a contract between a SFA and a FSMC must be defined and utilized in a way that will provide monthly and yearly fiscal integrity for claims submitted to SCDE. A clear audit trail must be maintained with supporting documentation between the FSMC billings and the expenditure of child nutrition program/school food service account funds. It is the responsibility of the SFA to ensure that the accounting system used by the FSMC is adequate and that adequate data is provided. Language designating these responsibilities should be included in all contracts.
- **Amortization of Expense** – Amortization of expenses can occur only for the one-year period of the contract. Interest charges placed on amortized expenses are prohibited. Amortization of expenses for longer than one year would be beyond the scope of the contract and are not allowed. All non-expendable equipment (>\$5,000) shall be purchased by the SFA.
- **Breach of Contract** – Any contract must indicate nonperformance violations and specified sanctions defining breach of contract terms by the FSMC. The violations defined and the sanctions specified must also be included in the contract. These sanctions must be addressed in accordance with federal and state procurement provisions.
- **Commodity Utilization** – The contract must state that donated USDA Foods will be “fully utilized in the SFA’s nonprofit CNP.” The federal reimbursement rates and commodity values included in the contract must be current for the school year to which the contract pertains. FSMC must credit the SFA for the full dollar amount of commodities received and stored at the warehouse at the end of each one bid year.
- **Damages** – Any provisions that require the SFA to pay the FSMC damages for any FSMC employees hired by the SFA are prohibited by federal law which restricts indemnification.
- **Health Certification** – All contracts must require the SFA to maintain applicable health certification and ensure that all state and local regulations are met by the FSMC personnel preparing and serving meals at the school facility.

- **Insurance** – Minimum commercial insurance coverage must be provided that meets state and SFA policy requirements. In addition, a performance bond is required by USDA guidelines, equal to ten (10) percent of the annual contract value.
- **Meal Equivalent Rate** – The meal equivalent rate is the adult lunch charge as established yearly by SCDE. The adult lunch charge is based on the free meal reimbursement rate (to include USDA six cents performance funding), the per meal value of commodities, plus state sales tax.
- **Oversight** – Regulations require that the SFA retain control of the quality, extent, and general nature of its food service and the prices to be charged for meals. This requires the SFA to exercise financial and operational oversight by monitoring the FSMC and the execution of the contract.
- **Percentage Assessments** – Percentage assessments against total goods purchased or sold and labor or salaries are not allowed. These charges constitute cost-plus-percentage-of-cost income assessments that are prohibited. Salaries and benefits are an allowable cost but must be expressed as actual costs rather than a cost-plus-percentage-of-cost. Any charges for procurement of goods naming the FSMC as procurement agent are prohibited.
- **Product Identifications** – The contract between the SFA and the FSMC must require the FSMC to furnish detailed identifications for each food component included in the RFP. Identifications must include items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.
- **Rebates** - USDA has determined that all rebates accrued by the FSMC for food and supplies in the form of cash discounts, label allowances, group allowances, promotion allowances, “bill- backs,” or other rebates purchased for the SFA must accrue to the SFA. In addition, all non-profit organization allowances must also accrue to the SFA.
- **Guarantees** - Contracts that provide for FSMC guarantees, returns, or payments of funds back to the SFA’s general fund are not allowed. Any revenues received from the child nutrition program operation must accrue to the benefit of the nonprofit school food service account and be used only for the operation or improvement of such food service.

Question and Answers

Q1: How can I learn more about the specific regulations and procedures for contracting food service operations with a private food service management company?

A1: Visit the United States Department of Agriculture’s website for the publication entitled, “*Contracting with Food Service Management Companies; Guidance for SFAs*. (May 2016)”

Q2: Can the FSMC bill the SFA for large equipment purchased for use in the school food service operation?

A2: No. Regulations state that all non-expendable equipment (per unit price of \$4,999.00 or more) shall be purchased by the SFA.