

CHAPTER 12- FOOD SERVICE MANAGEMENT COMPANIES

SFAs participating in the School Nutrition Programs are responsible for complying with federal regulations for the USDA Child Nutrition Programs. To assist in carrying out this responsibility, a SFA may contract with a food service management company (FSMC) to manage its food service operations.

In contracting with an FSMC, the schools must follow federal procurement procedures set forth by USDA. Additionally, the sponsor should retain a sufficient number of knowledgeable staff to coordinate, monitor, review, and control food service operations and to perform the responsibilities that must be retained by the SFA. Please refer to the guidance manual *Contracting with Food Service Management Companies* for the steps in obtaining a food service management company. **The School Nutrition Program will provide a prototype Food Service Management Agreement, containing the federal requirements.**

- SFAs must publicly announce the solicitation for a FSMC
- The ARDHS prototype must be used for the RFP and contract
- After reviewing proposals, SFA will select a vendor based on the rating criteria.
- Prior to signature, the SFA will submit the contract to ARDHS to ensure that changes made to the contract do not conflict with federal and state requirements.
- Once ARDHS approves the agreement, the contract may be signed by both parties
- SFA will submit a signed contact and checklist to ARDHS School Nutrition Programs
- SFA will monitor the contract agreement to ensure FSMC is in compliance with contract.

RESPONSIBILITIES RETAINED BY THE SFA

Regardless of whether an FSMC is utilized, the SFA remains responsible for the overall operation and oversight of the Child Nutrition Programs in its schools. Oversight includes periodical on-site reviews to ensure that FSMC are complying with the terms of the contract.

SFAs must retain:

1. Signature authority on the agreement to participate in any Child Nutrition Program, including the sponsor's free and reduced-price statement;
2. Signature authority on the monthly reimbursement claim;
3. Development, distribution and collection of the parent letter and application for free and reduced-price meals and free milk;
4. Determination of eligibility for free and reduced-price meals and the conduct of any hearings related to such determinations;
5. Verification of applications for free and reduced-price meals;
6. Control of the school food service account and overall financial responsibility for the Child Nutrition Programs;
7. Establishment of all program and non-program meal and a la carte prices;
8. Title to United States Department of Agriculture donated foods;
9. Development of the 21-day cycle menus for the FSMC bid/proposal as well as changes to the cycle menu after the first 21 days of meal service;

10. Monitoring responsibilities under program regulations;
11. Establishment and maintenance of an advisory board composed of partners, teachers and students to assist in menu planning;
12. Maintenance of applicable health certifications and assurance that all state and local regulations are being met by an FSMC preparing or serving meals at a sponsor's facility;
13. Assurance that the maximum amount of USDA donated foods are received and utilized by the FSMC and accrue only to the benefit of the sponsor's non-profit food service account; The FSMC must credit the SDA for the value of all donated foods received for use in the meal service in the school year, in accordance with 7 CFR 250.51(a) and (b).
14. Control of the quality, extent and general nature of its food service;
15. Responsibility for all contractual agreements entered into in connection with the Child Nutrition Programs; and Responsibility for ensuring resolution of program review and audit findings.
16. Completing the School Nutrition Programs Food Service Management Company (FSMC) Checklist when initiating and renewing agreements with FSMC.

SFA-FSMC CONTRACT DOCUMENT CHECKLIST

SFAs must complete the SFA-FSMC Contract Checklist during the initial contract period and during the renewal. This checklist is based on the requirements contained in 2 CFR Part 200, 7 CFR Parts 210, 3016, 3017, 3018 and 3019. This checklist does not include the requirements applicable to those FSMCs subject to the provisions of 7 CFR 250.30, State processing of USDA donated food. For information regarding those requirements, the SFA should contact the State Administering and/or Distributing agency. The SFA must ensure that the State Distributing agency has reviewed and approved any processing agreement prior to the delivery of commodities for processing.

Once the checklist is complete, SFAs must submit the contract and the checklist to the State Agency for review. This includes the bid/proposal along with the unsigned contract prior to issuance, the signed contract, and all contract renewals. The state agency will review the documents prior to approval.

If the SFA chooses to renew the contract according to federal regulations, the SFA should include a copy of the checklist and submit with the initial contract, and a new checklist cover sheet, when submitting the extension agreement to the SA. The initial checklist should include notation(s) where changes have occurred. The basis for renewing the contract, as well as the basis for any fee increases or decreases, if applicable, should be noted on the checklist.

Though the checklist identifies certain unallowable SFA-FSMC contract document provisions and advisable contract document provisions, it is in no way inclusive of all such provisions. Careful scrutiny of the contract document(s) is required to ensure that there are no provisions that have the effect of restricting competition. Instructions for completing the SFA-FSMC Contract Documents Checklist is begin on page 3. The required checklist begins on page 5.

ARKANSAS DEPARTMENT OF HUMAN SERVICES
SCHOOL NUTRITION PROGRAMS
FOOD SERVICE MANAGEMENT COMPANY (FSMC) CHECKLIST

Prototype SFA-FSMC Contract Document Checklist: Instructions

General Information

This checklist is based on the requirements contained in 2 CFR Part 200, 7 CFR Parts 210, 3016, 3017, 3018 and 3019. This checklist does not include the requirements applicable to those FSMCs subject to the provisions of 7 CFR 250.30, State processing of USDA donated food. For information regarding those requirements, the SFA should contact the State Administering and/or Distributing agency. The SFA must ensure that the State Distributing agency has reviewed and approved any processing agreement prior to the delivery of commodities for processing.

Though the checklist identifies certain unallowable SFA-FSMC contract document provisions (page 10) and advisable contract document provisions (pages 11 and 12), it is in no way inclusive of all such provisions. The State agency (SA) must carefully examine the contract document(s) to ensure that it does not contain other unallowable contract document provisions as well as provisions that are not in the best interest of the SFA. Careful scrutiny of the contract document(s) is required to ensure that there are no provisions that have the effect of restricting competition. If States have additional contractual requirements, an addendum to the checklist may be attached.

Contract Document Review

SA reviews are required of contracts, completed IFBs/RFPs that become signed contracts, and all contract renewals. This checklist should be completed by the SFA and submitted with the reviewed document(s) to the SA within the timeframe established by the SA. SFA-FSMC contracts are also subject to review by the State Distributing agency. In the blanks provided, for each of the required provisions contained in the checklist, the page number(s) in the document(s) where the provision is contained is to be indicated.

Bid/Proposal – though not required under Federal standards, it is strongly recommended that SAs impose a pre-issuance requirement on an SFA’s solicitation for FSMC services and require that the SFA receive written approval from their SA for IFBs/RFPs prior to their issuance. Please remember that this discretionary review of solicitations is different from the *mandatory* requirement for State agencies to review all FSMC contracts and supporting documents prior to the execution of the actual contract.

Contract Renewal – if the option for the yearly renewal of a contract is exercised, the SFA should include a copy of the checklist which was submitted with the initial contract, and a new checklist cover sheet, when submitting the extension agreement to the SA. The initial checklist should include notation(s) where changes have occurred. The basis for renewing the contract, as well as the basis for any fee increases or decreases, if applicable, should be noted.

Awarded Contracts or Contract Renewals

The following sections should be completed or updated, as applicable:

- A. Cover Sheet, page 5
- B. SFA Responsibilities, pages 6 and 7
- C. FSMC Responsibilities, page 7
- D. General Terms – All SFA-FSMC Contracts, page 8

The following section(s) should be completed or updated, as applicable (in the case of a cost-reimbursable contract, the total value of the contract must reflect the management fees as well as the direct costs incurred by the FSMC which are billed to the SFA such as food and labor):

- E. SFA-FSMC Contracts in Excess of \$2,500, page 9
- F. SFA-FSMC Contracts in Excess of \$10,000, page 9
- G. SFA-FSMC Contracts - \$25,000 or More, page 10
- H. SFA-FSMC Contracts in Excess of \$150,000, page 10
- I. SFA-FSMC Contracts Involving Research, Developmental, Experimental and Demonstration Work, page 10

The following section should be completed or updated:

- J. Unallowable SFA-FSMC Contract Document Provisions, page 10

A review of the document(s) should also include Section K, Advisable Inclusions, pages 11 and 12.

Section B – SFA Responsibilities

Page No.

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- _____ 1. Provisions Under Program Agreement, §210.16(a)(2) – ensure that the food service operation is in conformance with the SFA’s agreement under the program.
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- _____ 2. Signature Authority, §210.16(a)(5) – retain signature authority on the SA-SFA agreement, free and reduced price policy statement and Claims for Reimbursement.
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3. Control of the School Food Service Account and Overall Financial Responsibility
- _____ a. §210.16(a)(4) – retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation; and
- _____ b. Retain control for the establishment of all prices, including price adjustments, for meals served under the nonprofit school food service account, e.g., pricing for reimbursable meals, a la carte service including vending machines, and adult meals.
- _____ c. Maintain responsibility for the implementation of free and reduced price policy in accordance with 7 CFR Part 245.
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4. USDA Donated Foods
- _____ a. §210.16(a)(6) – retain title to USDA donated foods; and
- _____ b. Ensure that all USDA donated foods made available to the FSMC, including processed USDA donated foods, accrue only to the benefit of the SA’s nonprofit school food service and are fully utilized therein. All refunds and rebates received from processors regarding USDA donated foods must be retained by the SFA. The SFA must ensure that the FSMC has credited it for the value of all donated foods received for use in the meal service in the school year, in accordance with 7CFR 250.51(a) and (b).
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5. Quality, Extent and General Nature of Food Service
- _____ a. §210.16(a)(4) – retain control of the quality, extent, and general nature of its food service and the prices to be charged for meals .
- _____ b. §210.16(c)(3) -- make no payment for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications or do not otherwise meet the requirements of the contract. Provide detailed specifications for each food component or menu item as specified in 7 CFR Part 210, and include these specifications in the IFBs or RFPs. Specifications must cover items such as grade, purchase units, style, condition, weight, ingredients, formulations and delivery time.

Section B – SFA Responsibilities (continued)

Page No.

- _____ 6. Health Regulations, §210.16(a)(7) – maintain all applicable health certifications and assure that all State and local regulations are being met by a FSMC preparing or serving meals at a SFA facility.
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- _____ 7. Monitoring Responsibilities, §210.16(a)(3) – monitor the food service operation through periodic on-site visits to ensure the food service is in conformance with program regulations.
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- _____ 8. Use of Advisory Board, §210.16(a)(8) -- establish and maintain an advisory board composed of parents, teachers, and students to assist in menu planning.
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- _____ 9. 21-Day Cycle Menu, §210.16(b)(1) – include a 21-day cycle menu developed in accordance with the meal pattern requirements specified in 7 CFR Part 210.
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- _____ 10. Rebates, Credits, Discounts, §210.21(f)(1)(i) – ensure that all allowable costs paid from the nonprofit school food service account to the contractor are net of all discounts, rebates and other applicable credits received by the contractor, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA.

Section C – FSMC Responsibilities

Page No.

- _____ 1. Health Certification, §210.16(c)(2) – maintain all applicable State and/or local health certification(s) for the duration of the contract for any facility outside the school in which it proposes to prepare meals. The FSMC must meet all applicable State and local health regulations in preparing and serving meals at the SFA facility.
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- _____ 2. 21-Day Cycle Menu, §210.16(b)(1) -- adhere to the 21-day cycle menu which was included in the IFB or RFP for the first 21 days of meal service. Changes thereafter may only be made with the approval of the SFA.
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- _____ 3. Provision of Free and Reduced Price Meals, §210.16(a) – in order to offer a la carte food service, the FSMC must also offer free, reduced price and paid reimbursable meals to all eligible children.
- _____ 4. USDA Donated Foods, §210.16(a)(6) – to the maximum extent possible, utilize USDA donated foods made available by the SFA solely for the purpose of

providing benefits for the SFA's food service operation. The FSMC must credit the SDA for the value of all donated foods received for use in the meal service in the school year, in accordance with 7 CFR 250.51(a) and (b).

____ 5. Recordkeeping, 7 CFR Part 3016.42 and Part 3019.53 and 210.16(c)(1) --maintain records to support the SFA's Claim for Reimbursement; make all records available to the SFA upon request; and retain all records for a period of three (3) years after the SFA submits the final Claim for Reimbursement for the fiscal year for inspection and audit by representatives of the SFA, SA, USDA and Comptroller General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the 3-year period until resolution of the issues raised by the audit.

____ 6. Reporting, §210.16(c)(1) – report the claim information to the SFA promptly at the end of each month or more frequently as specified by the SFA.

____ 7. Rebates, Credits, Discounts, §210.21(f)(1)(i)(A) – provide sufficient information to permit the SFA to identify allowable and unallowable costs and the amount of all such discounts, rebates and applicable credits on invoices and bills presented for payment to the SFA.

Section D – General Terms – All SFA-FSMC Contracts

Page No.

1. Contract Duration

____ a. §210.16(d) -- contracts must be of a duration no longer than one (1) year.

____ b. §210.16(d) – options for the yearly renewal of a contract may not exceed four (4) additional one-year extensions.

____ 2. Energy Policy and Conservation Act, Part 3016.36(i)

____ 3. Termination Clause, §210.16(d) – either party may cancel for cause with 60-day notification.

____ 4. Nonperformance Sanctions – Part 3016.36(i) provisions allowing for administrative, contractual, or legal remedies in instances where the FSMC violates or breaches contract terms, and providing for such sanctions and penalties as may be appropriate. (exception: small purchases)

Section E – SFA-FSMC Contracts in Excess of \$2,500 Involving Food Service Workers Whose Duties are Manual or Physical in Nature

Indicate with a check mark (√) in the block if the following provision is not applicable.
Page No. _____

Contract Work Hours and Safety Standards Act, Part 3016.36(i)(6) Non-construction contracts over \$2,500 must include provisions binding the contractor to comply with certain sections of the Contract Work Hours and Safety Standards Act. However, a non-construction contract is covered only if it involves “the employment of mechanics or laborers”.

Section F – SFA-FSMC Contracts in Excess of \$10,000

Indicate with a check mark (√) in the block if the following provisions are not applicable.
Page No. _____

_____ 1. Termination Clause – Part 3016.36 (i)(2).

_____ 2. Equal Employment Opportunity – Part 3016.36(i).

Section G – SFA-FSMC Contracts -- \$25,000 or More

Indicate with a check mark (√) in the block if the following provision is not applicable.

Date Signed: _____

_____ Debarment, Suspension, Ineligibility and Voluntary Exclusion, 7 CFR 3017.300 – The SFA must check the Excluded Parties List System (EPLS), collect a certification, or include a clause in the contract.

Section H – SFA-FSMC Contracts in Excess of \$100,000

Indicate with a check mark (√) in the block if the following provision is not applicable.

Date Signed: _____

_____ Certification Regarding Lobbying, 7 CFR Part 3018 – a new certification is also required for each renewal period.

Indicate with a check mark (√) in the block if the following provision is not applicable.

Date Signed: _____

_____ Disclosure of Lobbying Activities, 7 CFR Part 3018 – lobbying activities in connection with school nutrition programs must be disclosed. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis. (Only required if money is spent on lobbying activities)

Indicate with a check mark (√) in the block if the following provision is not applicable.

Page No.

_____ Clean Air Act, Clean Water Act, and Environmental Protection Agency Regulations,
Part 3016.36(i)

Section I – SFA-FSMC Contracts Involving Research, Developmental, Experimental and Demonstration Work

Indicate with a check mark (√) in the block if the following provision is not applicable.

Page No.

_____ USDA Rights to Copyrights Part 3016.34

Section J – Unallowable SFA-FSMC Contract Document Provisions

The following indicate problem areas that have been identified in SFA-FSMC contract documents. The contract documents must be thoroughly checked, regardless of the procurement method used, to ensure that these areas have not been included, in any form. Indicate with a check mark (√) in each block that the review of the document(s) indicates that there are no such provisions in the reviewed document(s), unless specified below.

Check (√) as described above.

- 1. Cost Plus a Percentage of Cost/Income – cost plus a percentage of cost/income to the FSMC, however represented.
- 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 – provisions (multi-year) that require full payment (e.g. program equipment purchases) if the contract is not renegotiated.
- 5. Guaranteed Return – “guaranteed return” provisions, unless the “return” remains in the nonprofit food service account. “Returns” cannot be contingent upon multi-year contract duration.
- 6. Delegation of SFA Responsibilities – FSMC responsibility for any of the functions that must be retained by the SFA.
- 7. Automatic Renewal – provisions which automatically renew the contract.
- 8. Processing Contracts – contract document language that permits the FSMC to subcontract USDA donated foods for further processing.
- 9. Credits, Rebates, and Discounts - to the FSMC, however represented.

For the item(s) above not checked (√), indicate item number(s) with corresponding page number(s) of document(s) where provision(s) appears.

Item Number(s) Page Number(s)

Section K – Advisable Inclusions

Though the items below are not regulatory in nature, they have been included to offer technical assistance to the SFA in developing contractual language that will ensure that the best interest of the SFA is served by the contract.

Page No.

_____ 1. Compliance with Program Regulations – requirement that the FSMC conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 245 and 250; and FNS instructions and policy.

2. USDA Donated Foods

_____ a. Method which delineates how the FSMC will pass the value of USDA donated foods used to the SFA.

_____ b. Specific statement that USDA donated foods are not to be used for special functions conducted outside the nonprofit school food service (e.g., catered meals).

_____ 3. Special Functions – method which delineates the cost allocation for special functions conducted outside the nonprofit school food service. The method should demonstrate that labor costs are not being double billed for program meals and special function meals.

4. Fee Structure

_____ a. In a cost-reimbursable contract, requirement for breakdown of administrative and management fees in order to prevent double billing.

_____ b. Basis for fee adjustments.

5. Purchasing

_____ a. In a cost-reimbursable contract, if the FSMC makes purchases, the prices charged the SFA must be reasonable and necessary.

_____ b. A provision stating that any silence, absence or omission from the contract document specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.

**Section K – Advisable Inclusions
(continued)**

Page No.

_____ 6. Certification of Independent Price Determination – certification regarding non-collusion. This certification may be met through the use of the Certification of Independent Price Determination form (Appendix D).

_____ 7. Civil Rights Compliance – assurance that the FSMC will conform with all civil rights requirements applicable to the SFA.

_____ 8. Buy American Provision – compliance with the Buy American provision under 7 CFR Part 250.

9. Claim Liability

_____ a. The FSMC accepts liability caused by FSMC negligence for claims assessed as a result of Federal/State reviews/audits, corresponding with the SFA's period of liability.

_____ b. The FSMC accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA donated foods.

_____ 10. Location of Records – all FSMC records pertaining to the SFA should be maintained at the SFA while the contract is in effect, and preferably for the required retention period.

_____ 11. Nutrition Education – FSMC responsibility for nutrition education activities, as applicable.