

**North Carolina Department of Public Instruction
School Nutrition Services**

**Procedures for Contracting with
Food Service Management Companies (FSMC)**

(Effective April 1, 2004)

Outsourcing the nonprofit School Nutrition Program to a for-profit management company is a serious decision for any local Board of Education (BOE) and should be made in a thoughtful, strategic, and evidence-based manner. This decision should be approached with a clear understanding of the potential impact on the community and the responsibilities of the BOE and district officials for contract management and oversight. When deciding whether contracting with a management company will provide the best possible school nutrition operation, the SFA should consider all relevant financial, administrative, and operational issues. Regardless of whether the School Nutrition Program is a self-operated entity or a contract entity, the SFA and the district must maintain legal authority and financial responsibility for the School Nutrition Program at all times.

School Food Authorities (SFAs) considering contracting for food and/or management services with a private sector food service management company (FSMC) must contact the State Agency (SA) before initiating the process. Upon notification by the SFA, the SA will provide information about Federal and State regulations and will delineate requirements and responsibilities. SFAs are required to use the Request for Proposal/Contract template provided by the SA for contracting with food service management companies. Under no circumstances should district officials share information with management company representatives on a one-to-one basis as doing so may create a perceived conflict of interest within the community, with current employees, with other management companies and with Office of the Inspector General of the US Department of Agriculture.

The SFA should allow enough time to properly analyze all issues associated with contract operation of the nonprofit School Nutrition Program. This process should ideally begin one year prior to the start of a contract with a FSMC. A minimum of seven (7) months is required in order to properly solicit, negotiate and approve a Contract. A recommended timeline is included with this document.

For information regarding specific regulations and procedures for contracting food operations with food service management companies, please refer to the United States Department of Agriculture (USDA) publication entitled *Contracting with Food Service Management Companies, Guidance for SFAs*. This publication may be obtained from the SA or electronically at:

<http://www.fns.usda.gov/sites/default/files/FSMCguidance-sfa.pdf>

The attached document includes procedures with which the LEA must comply in order to contract with a FSMC. Following these procedures will ensure the LEA is in compliance with all Federal and State regulations concerning the procurement of services. Failure to comply with these regulations may result in the withholding of Federal School Nutrition funds and USDA Commodities. Using the procedures and the recommended timeline will also ensure a mutually satisfactory contractual relationship between the LEA and the service provider.

Should you have questions concerning these procedures, please contact:

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Procedures for Acquiring the Services of a Food Service Management Company to Operate the School Food Authority's Nonprofit School Nutrition Program

1. Notify the SA of the intent of the SFA to contract with a FSMC. Information will be provided to the LEA about the competitive proposal process for acquiring the services of a FSMC. The initial term of the contract must be for one (1) year and shall begin on July 1 and end on June 30 unless other periods have been pre-approved by the SA.
2. A competitive Request for Proposal (RFP) will be used to solicit and contract for nutrition and management services. The SFA is required to use an RFP/Contract template provided by the SA and may not develop and/or submit an alternative RFP or Contract. The SFA may negotiate the terminology and desirable conditions contained in the RFP/Contract to reflect the specific needs/requirements of the SFA with the SA. The SFA may also add other provisions or requirements to the RFP/Contract based on the identified needs of the SFA. A representative from the SA will meet with officials from the SFA to review the process, contents of the templates and to guide the SFA through modification and completion of the documents. Failure to use the templates provided by the SA shall result in withholding of Federal funds associated with the National School Lunch Program, School Breakfast Program and other School Nutrition Programs.
3. The SFA will complete the RFP template, providing information specific to the SFA, and will submit to the SA for approval prior to the initial advertisement.
4. The SA will review and approve the completed RFP. Upon written approval from the SA, the SFA will proceed to advertise the RFP in multiple media outlets. The RFP must be advertised for a minimum of three weeks to allow sufficient time for all potential vendors to respond. The RFP must be advertised in major media outlets.
5. The SFA must conduct a pre-proposal conference for all interested FSMCs. All respondents to the public advertisement must be invited to the pre-proposal conference. On-site visits must be conducted after the pre-proposal conference. All vendors should participate in the on-site visits at the same time. Separate meetings or discussions with individuals representing potential contractors outside the pre-proposal conference is discouraged in order to allow equal opportunities to all prospective vendors, limit the perceived conflict of interest apparent when conversations occur with a single vendor, and limit potential contract protests. All questions asked by prospective vendors at the pre-proposal conference or on-site visit must be responded to, in writing, by the SFA, with copies provided to all attending FSMCs and to the SA. Every effort must be made to ensure one vendor is not perceived as having access and/or information that has not been afforded to all potential vendors.

6. The SFA must allow a minimum of four (4) weeks for interested FSMCs to complete and return the RFP. One copy of the RFP must be submitted to the SA upon receipt. At the discretion of the SFA, one copy of the RFP may be submitted directly to the SA at the same time other copies are submitted to the SFA.
7. The SFA must establish a committee to evaluate the RFP. The committee may be comprised of principals, teachers, parents, administrators, school board members or other individuals who may have involvement with the school nutrition operation. Due to the complexity of the process, students should not serve as committee members. Any committee member should be carefully vetted to ensure there is no conflict of interest that may sway the evaluation to one vendor or another. A representative from the SA shall attend the evaluation committee meetings. The role of the SA representative is to interpret Federal and State regulations, answer questions as needed and ensure the requirement for free and open competition is achieved. Should conditions arise that limit competition or compromise the solicitation or procurement process, the SA is obliged to report such irregularities to the Office of Inspector General, US Department of Agriculture.
8. The approved RFP, with all attached appendices, attachments, exhibits and amendments, becomes the final Contract between the SFA and FSMC when signed. The Contract, with all supporting documents included, must be sent to the SA for final approval prior to obtaining signatures from both parties or from the local Board of Education. If signatures are obtained prior to receiving approval from the SA, Federal School Nutrition Funds may be in jeopardy.
9. The SFA must furnish the SA with the following documents prior to implementation of the Contract and before using Federal School Nutrition funds to pay any portion of the Contract:
 - A signed copy of the Contract between the SFA and FSMC;
 - A copy of the surety bond;
 - A copy of the School Board Minutes approving the FSMC Contract; and
 - A copy of the FSMC insurance policy with the SFA listed as additional insured.
10. The SA will notify the SFA, in writing, upon final approval of the Contract by all parties, thus signaling the authority to use Federal School Nutrition funds to pay Contract expenditures.

Procedures for Renewal of FSMC Contract after the Initial One-Year Term

1. The SFA will notify the SA that it is considering renewal of an existing contract with a FSMC and submit a document indicating whether the FSMC has complied with the regulations governing the School Nutrition Program and the degree to which the SA is satisfied with the overall performance of the FSMC in accordance with the Contract.
2. The SA will provide the SFA with any changes in regulatory requirements in the contracting process. The SA will provide to the SFA the percentage increase from the *Food Away From Home Series* of the *Consumer Price Index* or other appropriate economic indicator to determine an acceptable percentage increase allowed in the fixed, firm price per meal.
3. The SA must review and approve the Contract or Contract Amendment prior to obtaining signatures from both parties. In order to approve the Contract, the SFA must provide the following documents to the SA:
 - A letter stating the intent of the SFA to renew the Contract with the FSMC for the upcoming school year;
 - A copy of any amendments, subcontracts, letter of agreement, or other relevant documentation pertaining to the Contract which has not previously been furnished to the SA;
 - An amended list of schools served, if the SFA has added/deleted schools or 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; and a
 - Detailed written evaluation of the FSMC's Contract performance for the previous year.
4. The SA will notify the SFA, in writing, when the Contract amendment is approved.

SFA Monitoring and Oversight Responsibilities

The SFA must regularly monitor the operation of the FSMC through routine on-site visits and other periodic assessments to ensure the FSMC complies with the Contract and any applicable Federal, State, and local rules and regulations. The SFA should maintain documentation of its monitoring, any corrective action required, and whether or not corrective action was taken. The SFA must complete the SA's *On-Site Review* using forms provided by the SA at least quarterly.

The FSMC On-Site Review must be completed by the SFA for each school concurrently with the required annual program on-site review prior to February 1 of each school year.

The SFA shall monitor the Contract to ensure compliance with Federal regulations as stated in 7 CFR, Parts 210, 220, 250 and 3016. The SFA shall employ a qualified Contract Manager, with significant experience in managing School Nutrition Programs,

to monitor the contract. SFA monitoring responsibilities include, but are not limited to the following:

Cycle Menu - the meal service adheres to the cycle menu and any and all deviations allowed under the Contract.

Meal Pattern - the menu meets the meal pattern requirements specified in the contract and in 7 CFR Parts 210 and/or 220.

Offer Versus Serve - compliance with SFAs agreement with SA to provide offer versus serve option; adherence to offer versus serve regulations.

Paid Lunch Equity Requirements –increase the price of the student paid lunch annually to ensure compliance with Federal regulations

Free and Reduced - Price Policy - adherence to the SFA's approved free and reduced-price meal policy statement.

Claim Documentation - records, by school, to support the Claim for Reimbursement (meal counts and any other data obtained for the claim for which the FSMC is responsible).

Cost Records - cost records, including source documentation supporting charges for contractually approved costs for cost based contracts, (e.g., time and attendance records for staff hours charged).

Meal Count Records - meal count records for meals not covered by the Claim for Reimbursement, e.g., adult meals, catered meals, etc.

Revenue Records - 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, vending machine sales, etc.

USDA Foods – (formerly known as Commodities) - the amount and kind of commodities offered as opposed to the amount accepted to determine if the FSMC is accepting and utilizing USDA commodities to the maximum extent, in quantities that can be used and stored without waste.

Competitive Foods - compliance with NC General Statutes and State Board of Education Policies concerning the sale of foods that compete with the school breakfast and lunch programs.

Smart Snacks Implementation – the degree to which the SFA and district adhere to the Smart Snacks nutrition standards and procedures to monitor the district to determine the degree to which non-school nutrition personnel are abiding with the district's selected option.

Advisory Board - examine records to determine frequency of advisory board meetings and activities.

Student and Parent Involvement - determine that activities occur and are documented.

Sanitation and Safety Standards - examine facility and check recent sanitation inspection. Note any areas cited as critical.

Civil Rights - compliance with civil rights requirements. In addition to monitoring for compliance, the SFA must ensure the FSMC complies with the procedure established by the SFA for referring any civil rights complaints to the SFA.

SFA Policies - compliance with all policies established by the SFA.

The SFA shall submit a proposed organization chart and staffing plan to the SA for approval. The staffing plan should demonstrate a sufficient number of staff employed by the SFA, including a qualified Contract Manager, to perform the duties of the SFA as required in 7 CFR 210, 220, 250, 3016.

SFA Record Keeping Responsibilities

The SFA must maintain any books, documents, papers, and records directly pertinent to the solicitation, award, or extension of any given Contract and the implementation of that Contract. Such records must be maintained for a period of five (5) years. The SFA shall make all records available to the SA upon request. Periodic reviews conducted by the SFA documenting the FSMCs compliance or lack thereof with all Federal, State and local regulations must be maintained on file and accessible to the SA upon request.

Allowable/Unallowable Contract Elements

Federal regulations establish allowable and unallowable costs for FSMC Contracts. SFAs should consider the following before entering into a FSMC Contract:

Return to District - Contracts that provide for FSMC guarantees, incentives, returns, or payments of funds or other items of value back to the school district's general fund or to any agent or employee of the district are not allowed. While federally assisted programs should bear their fair share of cost, there is no provision for profit or other increments above the costs in these programs. Any revenues received from the School Nutrition Program must accrue to the benefit of the nonprofit School Nutrition Program account and be used for the operation or improvement of the program and for no other purpose.

Fixed Price Contract – A firm-fixed-price contract will be required to ensure the SFA is informed of and agrees to all fees associated with the contract prior to the initiation of the contract. The firm fixed-price contract provides for a price that is not subject to any adjustments and does not permit additional expenses that are not mutually agreed upon by both parties. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss and provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties.

Contract Oversight - Regulations require that the school district retain control of the quality, extent, and general nature of its food service and the prices to be charged for meals. As the legally responsible entity, the SFA must implement and maintain administrative, financial and operational oversight by monitoring the FSMC documenting that the contract is being executed as agreed by both parties. Given the magnitude of this responsibility and the accountability of the School Administrator to the local Board of Education and to the SA, contract monitoring and oversight shall be provided by an individual, employed by the SFA, who has three (3) or more years of experience in the direct operation of School Nutrition Programs in the school setting.

Insurance - Requirements for excessive liability insurance certification for non-food service management company-approved vendors are unwarranted and restrict competition. Requirements that the insurance certification survive the termination of the contract are beyond the scope of the agreement. These requirements could be used to limit open and free competition by serving as a barrier to entry into the public bidding process for smaller businesses and for newly created businesses. All procurement transactions must be conducted in a manner that provides maximum open and free competition.

Meal Equivalent Rate - The meal equivalent rate is a calculated rate based on the equivalent equal to one (1) reimbursable lunch. The SA will include the meal equivalency rate in the RFP template and will adjust the rate annually as needed.

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 (1) year would be beyond the scope of the contract and are not allowed.

Damages - Any provisions that require the SFA to pay the FSMC damages for FSMC employees hired by the SFA are prohibited by Federal law. Such practice restricts indemnification.

Interest on Late Charges - Any interest or late charge on amounts not paid when due are prohibited by Federal law. Interest, late charges and other financial costs are not allowable expenditures of School Nutrition Program funds.

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 the North Carolina Department of Public Instruction. A clear audit trail must be maintained with supporting documentation between FSMC billings and the expenditure of School Nutrition Program account funds. It is the responsibility of the SFA to ensure that the accounting system used by the FSMC is compatible with all other school food service data management software and that adequate cost data are provided. Proprietary software for accounting purposes is not allowed. Software used for the SFA's nonprofit school food service program must be compatible with software used in the SFA so the SFA may continue to operate the program/accounting system in the event the Contract is terminated prior to June 30. Any billings from the FSMC to the SFA must be

accompanied by specific supporting documentation representing actual number of allowable meals charged; catered meals may not be included in the per meal cost to the SFA.

USDA Foods Utilization - The Contract must state that USDA foods (formerly known as commodities) received by the SFA and made available to the FSMC shall be utilized solely for the purpose of providing benefits to the SFA'S non-profit School Nutrition Program and will be fully utilized in the SFA's School Nutrition Program. The SFA must retain the title to the USDA foods; FSMCs are not allowed to engage in processing contracts using USDA foods on behalf of the SFA. The FSMC must report the value of USDA foods, based on the value as derived by the NC Department of Agriculture, to the SFA monthly. The FSMC must credit the SFA for the value of USDA foods (including processed commodities) monthly and annually. The FSMC must credit the SFA for all discounts, rebates and credits related to commodity processing to the SFA's School Nutrition Program; these processing incentives must be clearly recorded on the monthly invoice, along with the value of commodities that should be reported as a credit to the SFA's School Nutrition Program. The Federal reimbursement rates and commodity values included in the Contract must be current for the school year to which the Contract pertains.

Health Certification - All Contracts must require the SFA to maintain applicable health certification and assure that all State and local regulations are met by FSMC personnel preparing and serving meals at the district facility.

Breach of Contract - Any Request for Proposal/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.

Statement of Conflict of Interest

The SFA's officers, employees or agents shall neither solicit nor accept gratuities, favors, trips, meals or anything of monetary value from contractors nor potential contractors. To the extent permissible under State law, rules or regulations, such standards shall provide for appropriate penalties, sanctions or other disciplinary actions to be applied for violations of such standards. All procurements for goods or services that are supported in whole or in part with Federal funds are required to comply with 7 CFR 3016 and Uniform Grant Guidance as shown in 2 CFR 220.

Timeline for Contracting with a Food Service Management Company

Day 1	SFA elects to consider proposals from FSMC to operate SFA's school food service program. SFA notifies SA of intent and requests Technical Assistance to review State and Federal regulations, delineating requirements and SFA responsibilities. SA sends SFA required proposal/contract template.
Days 20 – 40	SA representative(s) meets with SFA representatives to discuss required solicitation, negotiation and contract approval process and establishes a schedule for future meetings. SA provides Request for Proposal (RFP) template to SFA. SFA completes template documents and submits to SA for approval. SA provides written approval or denial of SFAs completed RFP/Contract when completed.
Day 45	SFA advertises in major state publications for the first time.
Day 52	SFA advertises in major state publications a second time.
Day 60	Pre-proposal conference is conducted. Representatives from each FSMC submitting proposals are required to attend. (All amendments to and interpretations of this RFP solicitation shall be in writing.) The SFA must notify the SA of this meeting in order to ensure a member of the SA is present for the conference.
Day 61 – 81	FSMC representatives survey schools accompanied by SFA staff. SFA provides tours of facilities to all potential contractors at the same time, if possible. A member of the SA should be present.
Day 95	All addenda/amendments to the RFP are received by potential vendors. FSMCs submit proposals to SFA following all procedures outlined in the RFP.
Day 105	Proposal openings with one or more witnesses. (Indicate date, time and place of opening.) Representatives from FSMCs are not required to attend. Evaluation Committee selected and trained in evaluation process.
Day 110 – 135	Analyses of proposals based on RFP criteria. Evaluation Committee makes written, objective evaluation and recommendation to SFA Administration. A minimum of two (2) top FSMC candidates may be invited to give formal presentations to Evaluation Committee; presentations conducted (a representative of the SA must be present for presentations). Selection made based on pre-approved criteria. Proposal/Contract reviewed by SFA's attorney; attorney reviews and provides written approval.
Day 136	Draft of all final Contract data, materials, required forms, certifications and proposal analyses and all evaluation records submitted to SA for final review and approval.
Day 166	Submit final RFP/Contract to State Agency for approval prior to obtaining signatures from both parties. Note: SA must approve the contract prior to obtaining signatures from both parties.
Day 170	SA notifies SFA of approval of Contract.
Day 175	Official award and Contract signing. A copy of the entire approved RFP/Contract document, agreement authorization with official signatures, and copy of school board approval minutes must be provided the SA immediately after Contract signing.
Day 205	Training of school district's School Nutrition personnel provided by FSMC.
Day 213	First meal service.