

CONNECTICUT STATE DEPARTMENT OF EDUCATION
Division of Teaching and Learning Programs and Services
Bureau of Health and Nutrition Services and Child/Family/School Partnerships
25 Industrial Park Road
Middletown, Connecticut 06457-1543

OPERATIONAL MEMORANDUM

TO: Sponsors of Child Nutrition Programs

FROM: Maureen B. Staggenborg, Director
Child Nutrition Programs

DATE: July 7, 2005

SUBJECT: **Operational Memorandum #15-05**

- I. Unallowable SFA-FSMC Contract Document Provisions - Section J of FSMC Guidance for SFAs – June 1995**
- II. Contracting with a Food Management Company**
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I. Unallowable SFA-FSMC Contract Document Provisions

Sponsors that contract with a food management company must ensure that the School Food Authority's (SFA) contract with the Food Service Management Company (FSMC) does not contain any unallowable contract document provisions. The following is the list of unallowable contract provisions:

1. **Cost Plus a Percentage of Cost/Income** – 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** – provision (multi-year) that require full payment (e.g., program equipment purchases) if contract is not renegotiated.
5. **Interest Payments** – interest payments to the contractor, however represented, including interest payments for equipment purchases.

6. **Guaranteed Return** – “guaranteed return” provisions unless the “return” remains in the nonprofit food service account. “Returns” cannot be contingent upon multi-year contract duration.
7. **Delegation of SFA Responsibilities** – FSMC responsibility for any of the functions that must be retained by the SFA.
 1. All phases of the free/reduced application determination process, including verification.
 2. Signatory authority on all required documents, including the reimbursement claims.
 3. Conducting annual on-site monitoring procedures.
 4. Retaining title to all USDA commodity foods.
 5. Establishment and maintenance of advisory board of parents/teachers/students to assist in menu planning.
 6. Ensuring the non-profit status of the food service account.
 7. Ensuring compliance with both federal and state competitive food laws.
8. **Automatic Renewal** – provisions that automatically renew the contract.
9. **Processing Contracts** – contract document language that permits the FSMC to subcontract USDA donated foods for further processing.

II. Contracting with a Food Management Company

Sponsors who plan to operate a food service program with a food management company for the first time, or those with contracts that have expired with the close of the past school year, must conduct a formal bid process to determine what services will be provided for meals this fall.

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

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

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

1. Copy of your RFP;
2. List of vendors requesting and receiving your RFP;
3. Copy of your newspaper ad;
4. Specifications for your RFP;
5. Copies of all bids received;
6. New contract for 2005-2006 school year (unless previously submitted);
7. 21-day menu (all levels, breakfast and lunch);
8. Management fee;

9. Debarment certification;
10. Certification Regarding Lobbying (for Contracts exceeding 100,000);
11. Disclosure of Lobbying Activities (for Contracts exceeding 100,000);
12. Energy conservation compliance statement; and
13. Completed *Prototype SFA-FSMC Contract Document Checklist Sections A – J*.

III. Renewal of an existing contract with a Food Management Company

Program sponsors who operate with a food management contract may renew that contract for four additional one-year extensions beyond the initial grant year. The process for renewing a contract must occur on or prior to the expiration date of the current contract. Any provisions that represent changes from the original contract must be stated in the amendment. Substantive changes would require a sponsor to rebid the contract.

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

1. An addendum for the 2005-2006 school year signed by the school food authority and management company officials (unless Previously submitted);
2. Management fee;
3. Menus for September, 2005;
4. List of advisory board members, and minutes of meetings, from 2004-2005;
5. Annual debarment statement;
6. Certification Regarding Lobbying (for Contracts exceeding 100,000);
7. Disclosure of Lobbying Activities (for Contracts exceeding 100,000); and
8. Energy conservation compliance statement.

IV. Responsibilities of school districts

School food authorities that contract out their food service management are still solely responsible for the following activities:

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

V. Additional SFA-FSMC Contract Requirements

- A. **Meal Equivalency Rate** – The Meal Equivalency Rate must be set no lower than the current free lunch reimbursement rate + the per meal commodity foods reimbursement.

- B. **Recovery of Prior Year Costs** – Per recent USDA New England Regional Office (NERO) guidance clauses that allow the recovery of prior and current year FSMC reimbursed amounts from current Food Service Program Surpluses are not allowed. “The FSMC’s recovery cannot be allowed as a nonprofit food service cost. This charge is in violation of OMB Circular A-122, “Cost Principles for Non-Profit Organizations”, (Attachment A, Basic Considerations) because (1) the FSMC lost its management fee for nonperformance the prior year and (2) prior year costs cannot be recovered in a future period.”

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

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

VI. Informal Procurement Guidance

Program sponsors that use the informal procurement process to obtain the services of a FSMC must maintain documentation that a minimum of two organizations were contacted regarding the potential procurement, three organizations should be contacted if at all possible. Call Robert Zwack at (860) 807-2081 for guidance prior to using this method.

Please submit the material requested in section II or section III above, as appropriate, as soon as possible, but no later than October 15, 2005.

Questions regarding food management company contracts may be directed to Bob Zwack (860-807-2081).