



## MEMORANDUM

To: School Food Authorities

From: Elizabeth Leach, School Programs Manager

Date: September 20, 2018

Re: Distinguishing Between a Vendor and a Food Service Management Company (FSMC)

---

State Agency Memo  
NSLP #1-19

The Office of the State Superintendent of Education (OSSE) has determined that clarification distinguishing between the terms “vendor” and “Food Service Management Company” is needed. The purpose of this memo is to provide clear guidance on whether a company is considered a vendor or a FSMC and to identify School Food Authority (SFA) responsibilities when executing and overseeing contracts.

Per [7 CFR 210.2](#) and [USDA’s Contracting with Food Service Management Companies: Guidance for School Food Authorities](#), the following definitions will be used moving forward:

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

**Food Service Management Company (FSMC):** a commercial enterprise or a nonprofit organization which is or may be contracted with by the SFA to manage any aspect of the school food service

Examples of when a company is considered a vendor may include the following (as long as these items were identified in the solicitation and contract):

- A company who sells and delivers pre-plated or bulk meals to a school
- A company who sells and delivers raw materials to a school
- A company selling or loaning equipment associated only with keeping food and beverages at the proper temperature

Examples of when a company is NOT considered a vendor, and is considered a FSMC may include (as long as these items were identified in the solicitation and contract):



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

- A company who provides on-site staff to the SFA for meal service and/or meal counting
- A company who conducts training for SFA staff
- A company selling or loaning equipment associated with taking accountability for meals served

Per [USDA's Contracting with Food Service Management Companies: Guidance for School Food Authorities](#), SFAs contracting with FSMCs have additional requirements mandated, such as periodic on-site visits. To assist SFAs in the District of Columbia who are contracting with FSMCs, OSSE has developed guidance and a checklist for SFA use, included below. This checklist is a shortened version of the monitoring and recordkeeping responsibilities of the SFA, and may not encompass all requirements. It can, however, be used to assist in assuring compliance with FSMC contracts. SFAs contracting with FSMCs should complete the checklist below annually, at minimum, and more often if needed.

OSSE will be re-reviewing all current food service contracts in place for the National School Lunch Program (NSLP) to identify if any companies currently categorized as vendors are actually operating as FSMCs. OSSE will be communicating directly with SFAs who fall into this category, with an explanation of additional requirements for the SFA.

If you have any questions pertaining to this memo, please reach out directly to your program specialist.

Thank you,

Elizabeth Leach, MPH  
School Programs Manager



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

## School Food Authority (SFA) Monitoring and Recordkeeping Responsibilities when contracting with a Food Service Management Company (FSMC)

School Food Authorities (SFAs) contracting with Food Service Management Companies (FSMCs) are responsible for remaining in compliance with [USDA's Contracting with Food Service Management Companies: Guidance for School Food Authorities](#). OSSE recommends reading through this guidance prior to entering a contract with a FSMC and referencing it as often as needed throughout contract management.

### SFA Monitoring Responsibilities

One of the general procurement standards in 2 CFR 200.318(b) includes maintaining oversight of contractors to ensure contractors perform in accordance with the terms, conditions, and specifications of their contracts and purchase orders. To ensure that the FSMC performs the contracted services in accordance with the contract, the SFA must monitor the operations of the FSMC. Contract administration of a FSMC contract is more than just a periodic on-site visit in order to ensure that the FSMC complies with the contract and any other applicable Federal, State, and local rules and regulations. The SFAs contract monitoring responsibilities include, but are not limited to, evaluating:

- **Cycle Menu** – adherence to the cycle menu and any and all deviations allowed under the contract
- **Meal Pattern** – adherence to the meal pattern requirements in [7 CFR 210](#) and / or [220](#) and all programs operated
- **Claim Documentation** – records, by school, to support the Claim for Reimbursement
- **Cost Records**
- **Meal Count Records** – for meals not covered by the claim for reimbursement
- **Revenue Records** – revenue records broken down by source, type and category of meal or food service
- **Outside Activities & Preparation Facilities** – outside food service activities and FSMC meal preparation facilities
- **USDA Foods** – that they have conducted a reconciliation at least annually (and upon termination of the contract) to ensure that the FSMC has credited it for the value of all USDA 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 USDA Foods contained in processed end products.
- **On-Site Review** - If the FSMC is in charge of the meal counting and claiming system, [7 CFR 210.8\(a\)\(1\)](#) states that every school year an SFA with more than one school must perform at least one on-site review of the lunch counting and claiming system employed by each school under its jurisdiction.



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

**EDUCATION**

The SFA must conduct on-site school reviews and must monitor through these reviews and by other means:

- **Civil Rights** – compliance with civil rights requirements. In addition, the SFA must ensure the FSMC complies with the procedures established by the SFA for referring any civil rights complaints to the SFA
- **Free and Reduced Price Policy** – adherence to the SFA’s approved free and reduced price meal policy statement
- **Offer versus Serve** – compliance with offer versus serve requirements
- **Competitive Foods** – compliance with the Smart Snacks requirements of the NSLP regulations in all schools by all parties. Reporting of non-program food and meal expenditures and revenue and the proportion of costs to revenues must also be reported by SFAs. If the FSMC is to report this information on behalf of the SFA, this must be specified in the original solicitation and contract.
- **SFA Policies** – compliance with all policies established by the SFA

#### [SFA Recordkeeping Responsibilities](#)

The SFA must maintain any books, 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 3 years plus the current year. Additionally, the SFA must ensure that the contract/solicitations for the FSMC includes a provision outlining the recordkeeping responsibilities.

#### [SFA Checklist for FSMC Monitoring and Recordkeeping](#)

To assist SFAs in the District of Columbia who are contracting with FSMCs, OSSE has developed the following checklist. This checklist is a shortened version of the monitoring and recordkeeping responsibilities of the SFA, and may not encompass all requirements. It can, however, be used to assist in assuring compliance with FSMC contracts. SFAs contracting with FSMCs should complete the checklist below annually, at minimum, and more often if needed.



## SFA Checklist for FSMC Monitoring and Recordkeeping

Name of District:		Site:		Date:	
<b>Menus and Service</b>					
<b>Question:</b>	<b>Yes</b>	<b>Needs Improvement</b>	<b>N/A</b>	<b>Notes:</b>	
Has the FSMC followed the 21-day cycle menu, as described in the contract, for the first 21 days of the contract? (first year of contract only)					
If changes were made to the menus following the first 21 days of the contract, did the SFA approve them?					
Have all menu standards been maintained as to type and quality of meal service as outlined in the contract?					
Have all menus been developed using the agreed upon menu planning system(s)?					
Is the FSMC only serving reimbursable meals that comply with the latest USDA dietary guidelines as established by USDA in Federal regulations for the NSLP, the SBP, and all other USDA contracted meal programs?					
Has the SFA retained control of the quality, extent, and general nature of its food service?					
Has the SFA made no payment to the FSMC for meals that are spoiled or unwholesome at time of delivery; or do not meet the detailed specifications, or do not otherwise meet the requirements of the contract?					
Are production records completed each day for all meals claimed for reimbursement?					
Is the FSMC following regulations concerning not selling restricted foods of minimal nutritional value in the food service areas during meal service periods?					
Are meals monitored after the last food or menu item is served/selected to ensure that only reimbursable meals are claimed?					
Do the foods purchased meet the quality specification standards indicated in the contract?					
Does the SFA evaluate the FSMCs menus for affordability, nutrition requirements, and appeal to the students?					
<b>USDA Donated Foods</b>					
<b>Question:</b>	<b>Yes</b>	<b>Needs Improvement</b>	<b>N/A</b>	<b>Notes:</b>	
Does the SFA receive credit for the value of USDA-donated foods, received during the school or fiscal year?					
Credit for the value of donated foods was received through (circle all that apply): <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <span>Invoice Reductions</span> <span>Refunds</span> </div> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <span>Discounts</span> <span>Other</span> </div>					
Does the FSMC provide clear documentation of the value received and of credit being recognized? (including processed end products)					
Does the USDA Foods billing statement detail the value of the USDA Foods received and that it was used as the value for all credits?					



Name of District:	Site:	Date:		
<b>USDA Donated Foods</b>				
Question:	Yes	Needs Improvement	N/A	Notes:
Does the SFA retain title to all USDA donated foods and ensure that all USDA donated foods are made available to the FSMC, including processed foods?				
Does the SFA/FSMC use USDA donated foods to the maximum extent in quantities that can be used and stored without waste?				
Does the FSMC use all 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 SFAs food service?				
Does the FSMC use all donated ground beef, ground pork, and all processed end products in the SFAs food service without substitution?				
Is the FSMC responsible for receiving donated foods on behalf of the SFA? If yes, is the SFA verifying delivery of donated food shipments and end products and not relying solely on the FSMC records?				
<b>Financial Accountability Procedures</b>				
Question:	Yes	Needs Improvement	N/A	Notes:
Do the food service daily meal count records accurately reflect the counts of student and adult meals by meal type and eligibility category?				
The FSMC maintains records to support the claims for reimbursement, reports claim information to the SFA promptly at the end of each month, and has meal count records for meals not covered by the claim (for example adult meals).				
Do the food service daily income records accurately reflect the revenue received by meal type (student meals, adult meals, a la carte, etc.)?				
Are allowable costs paid from the nonprofit food service account net of all discounts, rebates, and other applicable credits accruing to or received by the FSMC?				
Is the FSMC transparent in their identification of all rebates, discounts, and applicable credits, and does the FSMC provide sufficient information to permit the SFA to identify allowable and unallowable costs?				
Are all bills monitored to assure that the FSMC has not double-billed or included costs that are not allowed by the contract?				
<b>Sanitation and Safety Procedures</b>				
Question:	Yes	Needs Improvement	N/A	Notes:
Are facilities and equipment adequately maintained for safety and sanitation?				
Do employees practice safe food-handling procedures?				
Are State health licenses maintained as required by the contract? Does the SFA assure that all State and local regulations are being met by the FSMC?				



Name of District:	Site:	Date:		
<b>Other Contractual Requirements</b>				
Question:	Yes	Needs Improvement	N/A	Notes:
Has the FSMC used the advisory committee of parents, students, and teachers to assist in menu planning?				
Have all corrections been made, as required, if problems were noted during an SFA review, administrative review, or program audit?				
Does the SFA have procedures in place to monitor the FSMCs contract compliance? Is documentation of monitoring maintained?				
Has the FSMC staffing plan been approved by the SFA? Have staffing plans been followed per the contract?				
Has the SFA retained all food service responsibilities not allowed to be delegated to the FSMC? If "no", list what was delegated:				
Are FSMCs food service operations monitored by the SFA through periodic on-site visits to ensure that the food service is in compliance with program regulations and that program review and audit findings are resolved? Is documentation of monitoring maintained?				
Have all responsibilities of the sponsor and the FSMC been implemented as defined by the terms of the contract? If no, explain:				
<b>Procurement Requirements</b>				
Question:	Yes	Needs Improvement	N/A	Notes:
Did the SFA follow the appropriate procurement procedures when awarding the FSMC contract including preparing all contract documents?				
Were there an adequate number of qualified RFP responses to permit reasonable competition?				
Was the RFP publicized and any reasonable requests by other sources to compete were honored to the maximum extent practicable?				
Was the FSMC awarded the contract based on the SFA-provided mechanisms for technical evaluation of the proposals?				
Was the contract awarded to the responsible offeror whose proposal was the most advantageous to the SFA with price and other factors considered (with price as the primary factor)?				

