



United States  
Department of  
Agriculture

July 3, 2015

Food and Nutrition  
Service

Mid-Atlantic Region

300 Corporate Blvd  
Robbinsville, NJ  
08691-1598

Dr. Unique Morris-Hughes  
Chief Operating Officer  
Office of the Chief Operating Officer  
Office of the State Superintendent of Education  
810 First Street, NW 9th Floor  
Washington, DC 20002

Dear Dr. Morris-Hughes:

This letter contains the results of our Fiscal Year 2015 Management Evaluation (ME) of your Agency's administration of the School Nutrition Programs in the District of Columbia. The ME addresses those areas of administration that we feel deserve special recognition and those that warrant additional attention.

The report recognizes your Agency's efforts in pursuing compliance with the Healthy Hunger-Free Kids Act of 2010, implementing a high-performing direct certification system and creating resources to help your schools successfully administer our programs. This year's ME report contains nine findings and twelve observations. Findings identify areas which are not in compliance with regulations and require a written response and a corrective action plan including implementation timeframes within sixty (60) calendar days of your receipt of this letter. Observations with suggestions for management improvement are non-regulatory; however we request that you respond to them within the same timeframe.

We wish to thank you and your staff for the cooperation and warm hospitality extended to Nina Catena, Michelle Frey, Roberta Hodsdon, Harvey Hoffman, Jonita Larkins and Michael Walton from our office. Please do not hesitate to contact us should you require additional information or technical assistance. We look forward to continuing our productive relationship with DC's Office of the State Superintendent of Education in providing nutritious meals to DC's schoolchildren.

Sincerely,

James E. Harmon  
Regional Director  
Special Nutrition Programs

Enclosure

**MANAGEMENT EVALUATION**

**SCHOOL NUTRITION PROGRAMS**

**DISTRICT OF COLUMBIA**

**FISCAL YEAR 2015**

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### Executive Summary

The Mid-Atlantic Regional Office of Food and Nutrition Service (FNS) conducted a Management Evaluation of the District of Columbia Office of the State Superintendent of Education's administration of the National School Lunch Program, School Breakfast Program, Special Milk Program, After School Snack Program and Fresh Fruit and Vegetable Program. The review period covered Fiscal Year (FY) 2014 and the first two quarters of FY 2015.

The purpose of the review was to assess the State agency's (SA) compliance with Federal Regulations, FNS instructions, and FNS policies pertaining to the above programs. This report is the result of the on-going exchange between FNS staff and SA personnel, as well as the on-site review of files.

This report is written on an exception basis and contains regulatory findings that require corrective action. It also contains observations and suggestions not required by regulation; however, they are offered for your consideration. We request that the SA develop and submit a written response to address the corrective actions within 60 days from the date of this final report. The response must include specific timeframes for implementing procedures to resolve the deficiencies cited.

There are three noteworthy initiatives, nine findings and twelve observations. Briefly, the findings noted are that OSSE:

1. Does not sufficiently oversee DCPS' procurement process.
2. Incorrectly rounded the CEP claiming percentages and CEP meal counts.
3. Did not ensure correct implementation of Provision 2.
4. Had errors in its Civil Rights presentation used to train SFAs.
5. Did not ensure the DCPS FSMC contract with Revolution Foods included all required provisions.
6. Must make changes to its prototype RFP and IFB.
7. Was utilizing incorrect AR procedures.
8. Is missing required provisions in its Permanent Agreement with SFAs.
9. Has a few incomplete SFA files.

Acronyms

<b>Acronym</b>	<b>Definitions</b>
<b>AR</b>	Administrative Review
<b>CAP</b>	Corrective Action Plan
<b>CEP</b>	Community Eligibility Provision
<b>CFR</b>	Code of Federal Regulations
<b>CNP</b>	Child Nutrition Programs
<b>DC</b>	District of Columbia
<b>DC C&amp;P</b>	DC Contracting and Procurement
<b>DCPS</b>	District of Columbia Public Schools
<b>F&amp;RP</b>	Free and Reduced Price
<b>FDD</b>	Food Distribution Division
<b>FFVP</b>	Fresh Fruit and Vegetable Program
<b>FM</b>	Financial Management
<b>FNS</b>	Food and Nutrition Service
<b>FSMC</b>	Food Service Management Company
<b>FY</b>	Fiscal Year
<b>IFB</b>	Invitation For Bid
<b>ISP</b>	Identified Student Percentage
<b>LEA</b>	Local Education Agencies
<b>MARO</b>	USDA, FNS' Mid-Atlantic Regional Office
<b>ME</b>	Management Evaluation
<b>MWRO</b>	USDA, FNS' Midwest Regional Office
<b>NSLP</b>	National School Lunch Program
<b>OSSE</b>	Office of State Superintendent of Education
<b>RCCI</b>	Residential Child Care Institution
<b>RFP</b>	Request for Proposal
<b>SA</b>	State Agency
<b>SAE</b>	State Administrative Expense
<b>SBP</b>	School Breakfast Program
<b>SFA</b>	School Food Authority
<b>SFSP</b>	Summer Food Service Program
<b>SMP</b>	Special Milk Program
<b>SOP</b>	Standard Operating Procedure
<b>SY</b>	School Year
<b>USDA</b>	United States Department of Agriculture

Definitions

<b>Terms</b>	<b>Definitions</b>
<b>Civil Rights</b>	Implementation of federal nondiscrimination laws, rules and regulations
<b>Community Eligibility Provision</b>	The CEP allows schools that predominantly serve low-income children to offer free, nutritious school meals to all students through the NSLP and SBP. The CEP uses information from other programs, including the Supplemental Nutrition Assistance Program (SNAP) and the Temporary Assistance Program for Needy Families (TANF) instead of traditional paper applications.
<b>Complaints</b>	Process for handling administration and program access concerns reported by program
<b>Corrective Action</b>	Actions proposed or taken by an operating organization (State or local agency) to change or improve operational effectiveness
<b>Exception Basis</b>	The documentation of information only as necessary to support a noteworthy initiative, finding or required corrective action
<b>Finding</b>	Identification of non-compliance with program regulations, FNS Instructions, and policy memoranda. Each finding is associated with a required corrective action.
<b>Management Evaluation</b>	Periodic assessment of the accomplishment of program objectives and compliance assessment of State agency and local agency program operations including compliance efficiency, effectiveness, and quality of service that results in a report that indicates review findings, observations and noteworthy initiatives.
<b>Noteworthy Initiatives</b>	Projects and practices worthy of recognition and sharing with other State agencies to improve program operations.
<b>Observation</b>	Identification of a weakness involving management practices or unregulated activity. Each observation is associated with a suggestion.
<b>On-site</b>	FNS activity performed at a State's central office, local office or program operating site/location; i.e. activity not performed in FNS offices
<b>Procurement</b>	Compliance with purchasing requirements
<b>Provision 2</b>	This Provision reduces application burdens and simplifies meal counting and claiming procedures. It allows schools to establish claiming percentages and to serve all meals at no charge for a 4 year period.

<b>Required Corrective Action</b>	Statement of actions that must be taken to correct noncompliance with regulations and with established policies and procedures. These actions may be prescribed or the State may be required to determine the action(s) to be taken [associated with a finding]. Also, these actions must be validated to ensure corrective actions are successful in correcting the violations prior to closing the applicable finding(s).
<b>State Agency</b>	The State educational agency or any other State agency that has been designated by the Governor or other appropriate executive, or by the legislative authority of the State, and has been approved by the Department to administer the Programs within the State.
<b>Suggestion</b>	FNS statement of actions that would address observations made in the ME. While not required, the SA is encouraged to respond if appropriate
<b>Team Leader</b>	FNS employee who is designated as the primary contact or lead team official for a particular ME
<b>Technical Assistance</b>	Guidance and support to State agencies to achieve regulatory compliance and program improvement

FY 2015 Management Evaluation Report

Scope of the Management Evaluation

The on-site portion of the ME was conducted during the week of April 27, 2015.

The ME ascertains the SA's compliance with program administration as outlined in applicable regulations, instructions, and policies for NSLP, SBP, SMP, ASSP and FFVP. The review included an evaluation of Agreements, F&RP Policy Statements, FSMC Contracts, AR Efforts, FFVP, Grants, Provision 2, CEP, Healthy School Nutrition Environment, Local Agency Procurement, USDA Foods and Processing of USDA Foods, Claims for Reimbursement, Cash Management, SAE, Certification and Verification, Civil Rights Compliance, Food Safety, New Meal Pattern Requirements, Certification and Use of Administrative Funds, and Resolution of Previously Identified Problems and State Agency Strengths.

The review period covered FY 2014 and the first two quarters of FY 2015.

FNS Staff Conducting the Evaluation

The findings in this report are the result of the ongoing exchange between this office and SA staff, as well as the on-site review of files.

The FNS Staff conducting the ME were:

Michelle Frey, Lead Program Specialist (ME Team Leader)  
Roberta Hodsdon, Branch Chief  
Nina Catena, Senior Program Specialist  
Jonita Larkins, Senior Program Specialist  
Michael Walton, Program Specialist  
Harvey Hoffman, Senior Program Specialist (MWRO)

Status of Findings from the FY 2009 Management Evaluation

In the FY 2009 ME, there were four findings and two observations with suggestions for management improvement. The findings and observations were adequately addressed.



## **NOTEWORTHY INITIATIVES**

### ***1 – SLED (Statewide Longitudinal Education Data System)***

The Statewide Longitudinal Education Data System, or SLED, is DC's system for tracking student enrollment, demographics, and many other critical pieces of information. OSSE used a FY 2011 Direct Certification grant to add a direct certification component to SLED. This system creates matches between various student identifiers and Supplemental Nutrition Assistance Program (SNAP) data, which automatically qualifies the student for free meals. Schools have access to real time data and updates. As a result, DC has a 96% direct certification rate with SNAP, which exceeds the national benchmark of 95%.

### ***2 – Healthy Schools Act Initiatives Team***

In addition to completing their required number of ARs, OSSE ensures ongoing SFA compliance with federal and local regulatory requirements through yearly monitoring and compliance site visits by the Healthy Schools Act Initiatives Team. Technical assistance visits are also conducted throughout the year by the Team. All areas of the Healthy Hunger-Free Kids Act are covered during site visits with particular emphasis on Smart Snacks, fundraisers, and local wellness policies.

### ***3 – Resource for School Food Authorities***

During annual training, each SFA is given a resource binder containing brochures, infographics and presentations they can use to train staff and promote school programs to the community. This is an excellent tool to assist SFAs with successfully implementing program requirements and provides the SFAs with readily available information at all times.

## **FINDINGS**

### **Finding Number One: Local Agency Procurement**

OSSE does not sufficiently oversee DCPS' procurement process.

#### Regulatory Citations/FNS Policy/FNS Instructions<sup>1</sup>:

7 CFR 210.19(a)(5)

7 CFR 210.21(c)(2)

#### Explanation:

OSSE does not appropriately oversee DCPS' procurement process since there is another DC Government agency, DC C&P, which works exclusively on DCPS procurement.

First, OSSE does not review and provide written approval for all changes made by DCPS to the prototype solicitation or contract documents prior to their issuance or execution. OSSE must have final approval of the solicitation once all modifications have been made.

Second, OSSE has been part of the bid scoring process for DCPS' procurement. However, since OSSE must review DCPS' proposed award, it cannot be part of the scoring process. As an alternative, DC C&P could be part of the scoring process.

Third, OSSE currently does not review and approve DCPS' FSMC contracts and all supporting documentation or annual renewals of such contracts prior to execution. OSSE must have final review of new FSMC contracts and annual contract renewals after the initial determination to renew has been made by DC C&P.

#### Required Correction Action:

OSSE must follow all procurement rules and regulations for DCPS as it does for all other DC SFAs. Please submit documentation, such as an SOP and documentation of approvals, showing OSSE is appropriately overseeing DCPS' solicitations, vendor selections, contracts, and renewals.

### **Finding Number Two: CEP**

OSSE incorrectly rounded CEP claiming percentages and CEP meal counts.

#### Regulatory Citations/FNS Policy/FNS Instructions:

SP 16-2015, question 50.

#### Explanation:

OSSE calculates each school's ISP and CEP claiming percentages. OSSE has been rounding the claiming percentages to whole numbers; however, the guidance states that the claiming percentage calculation should be carried to two decimal places and then rounded to one decimal place using standard rounding procedures.

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<sup>1</sup> The complete text of regulatory citations is included in Appendix B.

In addition, OSSE has not been rounding meal counts to whole numbers, but is leaving the meal counts in fractions. Meal counts should be rounded to whole numbers according to standard rounding procedures.

Both of these errors have led to incorrect meal counts for CEP schools.

Required Corrective Action:

OSSE must recalculate the claims for each month for every school participating in CEP as of SY 2014-2015, which is the year CEP became available nationwide. To do this, OSSE must determine the correct claiming percentages and use correct rounding rules for meal counts. Once the corrected claims are entered into the claiming system, OSSE must revise all applicable FNS-10 and FNS-777 reports. Please work with our Financial Management Office accordingly and notify this office when the reports are submitted in FPRS.

In addition, OSSE must submit to this office the updated CEP tracking sheet that shows the free claiming percentages for all CEP schools and must submit the claim backup spreadsheets for DCPS and one other CEP SFA for one month during SY 2015-2016.

**Finding Number Three: Provision 2**

OSSE did not ensure correct implementation of Provision 2.

Regulatory Citations/FNS Policy/FNS Instructions:

7CFR 245.9(b)(3)

7CFR 245.12(h)

Explanation:

Prior to SY 2013-2014, DCPS had many schools operating under Provision 2. During SY 2013-2014, all of these schools moved to CEP, except Columbia Heights. Therefore, Columbia Heights established its Provision 2 base year during SY 2013-2014 by collecting applications and conducting direct certification. However, during its base year, Columbia Heights claimed meals according to previous Provision 2 claiming percentages and it did not calculate new claiming percentages for use in the current Provision 2 cycle.

While the SA did appropriately conduct an AR during the base year, it did not ensure that Columbia Heights was properly implementing Provision 2. As a result, Columbia Heights used incorrect claiming procedures for SY 2013-2014 and SY 2014-2015.

Required Corrective Action:

OSSE must ensure that Columbia Heights establishes accurate claiming percentages, as outlined in 7CFR 245.9(b)(3). In addition, OSSE must determine what the claims should have been for Columbia Heights in SY 2013-2014 and SY 2014-2015.

Please submit the following items:

- A detailed explanation of OSSE's plan to establish correct claiming percentages for Columbia Heights for the current Provision 2 cycle;
- An assessment of the value of overclaims or underclaims from SY 2013-2014 and SY 2014-2015;
- DCPS' claim backup spreadsheets from September 2015 and October 2015 showing the correct percentages are being used for Columbia Heights; and
- Policy for handling Provision 2 schools.

In addition, once the corrected claims are entered into the claiming system, OSSE must revise all applicable FNS-10 and FNS-777 reports. Please work with our Financial Management Office accordingly and notify this office when the reports are submitted in FPRS.

**Finding Number Four: Civil Rights**

OSSE had errors in the Civil Rights presentation used to train SFAs.

**Regulatory Citations/FNS Policy/FNS Instructions:**

FNS 113-1, Sections IX Public Notification and XI Civil Rights Training

**Explanation:**

Although OSSE's Civil Rights presentation is extremely thorough, the review revealed that slide 20 featured an outdated Civil Rights nondiscrimination statement. In addition, the complaint procedures on slide 30 must be updated to reflect the complaint procedure link referenced in the current nondiscrimination statement.

- The current nondiscrimination statement is:

The U.S Department of Agriculture prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at [program.intake@usda.gov](mailto:program.intake@usda.gov).

Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish).

USDA is an equal opportunity provider and employer.

- The current complaint procedure link for slide 30 is:

[http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html)

**Required Correction Action:**

OSSE must update the training module with the current non-discrimination statement and complaint filing procedures. Please submit the revised presentation to our office.

**Finding Number Five: FSMC**

The DCPS FSMC contract with Revolution Foods is missing required provisions.

**Regulatory Citations/FNS Policy/FNS Instructions:**

7 CFR 210.16(a)(8)

7 CFR Part 3016.36(i)(2)

7 CFR Part 210.16(d)

2 CFR Part 180.300

7 CFR Part 3018.110(d)

**Explanation:**

The following provisions were not found in the DCPS, SY 2014-2015 Revolution Foods Contract for FSMC:

- Use of Advisory Board
- Termination clause for convenience
- Termination clause for cause with 60-day notification
- Debarment, Suspension, Ineligibility and Voluntary Exclusion Clause [3 options]
- Certification Regarding Lobbying

**Required Corrective Action:**

Submit the DCPS contract with the required corrections included in the contract or as amendments.

**Finding Number Six: FSMC**

OSSE must make changes to its prototype RFP and IFB.

**Regulatory Citations/FNS Policy/FNS Instructions:**

1. 7 CFR 210.16(a)

2. 7 CFR 210.16(a)(4)

3. 7 CFR 210.16(a)(5)

4. 7 CFR 210.16(a)(8)
5. 7 CFR 210.16(b)(1)
6. 7 CFR 210.16(c)(1)
7. 7 CFR 210.21(g)(1)  
SP 03-2013
8. 7 CFR 250.51(a)  
7 CFR 250.52(c)  
Policy Memorandum FD 080
9. 7 CFR 3016.36(b)(12)
10. 7 CFR 210.2
11. 2 CFR Part 180
12. 7 CFR 3016.36(i)(6)
13. 7 CFR Part 3018.110(d)

Explanation:

Several clauses in the SA prototype RFP and IFB need to be added or changed.

1. The SA prototype RFP and IFB must state that 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.
2. The SA prototype RFP and IFB must state that the SFA retains control of the school food service account and overall financial responsibility for the nonprofit food service account. In particular, the prototype must state that the SFA shall retain control of the nonprofit food service account and the establishment of all prices, as well as maintaining responsibility for the implementation of the free and reduced price policy.
3. The SA prototype RFP and IFB must state that the SFA retain signature authority on the SA-SFA agreement, free and reduced price policy statement and claims for reimbursement.
4. The SA prototype RFP and IFB must include the use of an advisory board.
5. The SA prototype RFP and IFB, Attachment E: 21 Day Sample Menu states that “All Bidders are required to submit a 21 day sample menu for each feeding program...” However, the RFP must instruct each SFA to develop its own 21 day menu cycle and include that as a part of its solicitation, so that all bidders bid on the same menu cycle.

Instructions in the prototype RFP and IFB should also state that if the SFA does not believe it is capable of preparing the 21 day menu cycle, it should instead request the SA’s approval to amend its solicitation so that bidders are instructed to submit a 21 day menu cycle that conforms with all the menu pattern requirements for each meal type with its bid. The instructions must also state that if an SFA adopts this alternative, it

needs to amend the scoring criteria section of its solicitation to include a category where each bidder's menu will be scored.

Lastly, the prototype RFP and IFB must also include language stating that the FSMC must adhere to the 21-day cycle menu for the first 21 days of the meal service unless changes are approved by the SFA.

6. The SA prototype RFP and IFB must state that the FSMC shall, at a minimum, report the claim information to the SFA promptly at the end of each month.
7. In the SA prototype RFP and IFB, Section B.3 for both fruits and vegetables states that "Preference will be given to vendors who can provide locally grown or processed fruits [and vegetables] (from Delaware, D.C., Maryland, New Jersey, North Carolina, Pennsylvania, Virginia or West Virginia)". In Section B.4, Definitions, locally grown is defined to mean "from a grower in Delaware, the District of Columbia, Maryland, New Jersey, North Carolina, Pennsylvania, Virginia and West Virginia."

However, only the SFA, or State agency (SA) making purchases on behalf of the SFA, can determine if geographic preference will be used and the definition of local. Thus, any attempted restriction to make decisions regarding geographic preference and how to define local for purposes of the geographic preference procurement option would be inconsistent with Federal law and unallowable. The SA could include an optional clause in the prototype such as "OPTIONAL CLAUSE: Preference will be given to vendors who can provide locally grown or processed agricultural products, where local means [SFA defined]."

8. Section C: Specifications/Work Statement, C.1. Scope 6. states that "In the event a vendor has not fully utilized the commodities by the end of the school year the vendor may carry the balance over to the next year provided that a contract with the school is in effect for the next school year or in the process of renewal." However, crediting for the value of unused USDA Foods must take place by the end of the SY in which the USDA Foods were received.

Section C: Specifications/Work Statement, C.1. Scope 6, also states that if the contract is not renewed, the vendor will, at the SA's discretion, pay the value of the remaining donated foods or return the unopened cases for the benefit of the school. However, the FSMC cannot pay the SFA for any unused beef, pork or processed products, but instead must return these to the SFA.

9. The prototype RFP and IFB must include appeal rights.
10. Section B.4. The definition of FSMC as used for school nutrition programs is incorrect. The definition should be "Food Service Management Company means a commercial enterprise or a nonprofit organization which is or may be contracted with by the school food authority to manage any aspect of the school food service."

11. Attachment D. The web site address for checking for debarment and suspensions is now [www.sam.gov](http://www.sam.gov), not the Excluded Parties List System. Also, the Certification form included in the RFP is no longer active. OSSE should develop its own form, which can use the same language.
12. The RFP and IFB must include language on Contract Work Hours and Safety Standards Act.
13. The prototype RFP and IFB must include certification regarding and disclosure of lobbying activities.

**Required Corrective Action**

Submit a revised prototype RFP and IFB that includes the required language described above. Also, please send documentation showing these revised prototypes have been shared with applicable SFAs.

**Finding Number Seven: School Meals AR**

OSSE was utilizing incorrect AR procedures.

**Regulatory Citations/FNS Policy/FNS Instructions:**

1. 210.18(m)(2)
2. Administrative Review Manual, September 2014, Pg.27
3. FNS Instruction 113-1, Sections XI (Training) and XIII (Compliance Reviews)

**Explanation:**

During the evaluation of the AR process, several areas of noncompliance were identified. First, fiscal action was incorrectly assessed against Cesar Chavez SFA for the following violations during an initial review: quantity violations, missing milk type and missing vegetable subgroups; these violations only warrant fiscal action if found during a repeat violation.

Second, during the AR at Briya Public Charter School SFA, which is a partial CEP district, OSSE selected the wrong site for review. OSSE selected the CEP school but should have selected the non-CEP school for the full AR and completed an abbreviated review at one of the CEP schools.

Third, OSSE did not cite the lack of Civil Rights training for cafeteria staff at Caesar Chavez and Thurgood Marshall SFAs as a finding. Notes from the AR indicated neither school had conducted Civil Rights training since 2013.

**Required Corrective Action:**

First, the SA must reassess fiscal action for Cesar Chavez SFA to exclude the errors related to quantity violations, missing milk type and missing vegetable subgroups. OSSE must refund the difference to the SFA. Submit to this office the amount to be returned and a copy of the correspondence to the sponsor.



Second, OSSE must conduct the Performance Standard 1 portion of the review for the non-CEP school in Briya Public Charter SFA. This includes the sections on certification and benefit issuance, verification and meal counting and claiming. Please send us the completed review forms. In addition, if there are any SFAs partially electing CEP that will be reviewed in SY 2015-2016, please send your site selection.

Third, by January 1, 2016, OSSE must obtain documentation, such as sign-in sheets and agendas, from Cesar Chavez and Thurgood Marshall SFAs showing that civil rights training was conducted for all required staff. Please forward these materials to this office.

**Finding Number Eight: F&RP Policy Statement/Permanent Agreement**  
OSSE's Permanent Agreements with SFAs are missing required provisions.

Regulatory Citations/FNS Policy/FNS Instructions:

- 7 CFR 210.9(b)(4)
- 7 CFR 210.9(b)(5)
- 7 CFR 210.9(b)(13)
- 7 CFR 210.9(b)(14)
- 7 CFR 210.9(b)(21)

Explanation

Each SFA approved to participate in the program shall enter into a written agreement with the State agency. The agreement shall provide that each SFA meet certain requirements. FNS' review of OSSE's Permanent Agreement identified the following areas of non-compliance:

- If a single SA administers any combination of the CNPs, that SA shall provide each SFA with a single agreement. FNS reviewers noted that a different application/agreement is used for SMP sponsors than is used for sponsors of the NSLP and SBP.
- Proof that the Agreement contained the following statements could not be provided during the review:
  - Comply with the requirements of the Department's regulations regarding financial management;
  - Serve lunches, during the lunch period, which meet the minimum requirements prescribed in 7 CFR 210.10;
  - Enter into an agreement to receive donated foods as required by 7 CFR part 250;
  - Comply with the food safety requirements of 7 CFR 210.13; and;
  - No later than March 1, 1997, and no later than December 31 of each year thereafter, provide the SA with a list of all schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day the preceding October. The SA may designate a month other than October for

the collection of this information, in which case the list must be provided to the SA within 60 calendar days following the end of the month designated by the SA. In addition, each school food authority shall provide, when available for the schools under its jurisdiction, and upon the request of a sponsoring organization of day care homes of the Child and Adult Care Food Program, information on the boundaries of the attendance areas for the schools identified as having 50 percent or more of enrolled children certified eligible for free or reduced price meals.

Required Corrective Action

Revise the current School Programs Agreement to include all programs administered by OSSE and to include the missing requirements in 7 CFR 210.9(b). Submit a copy of the updated Agreement to FNS. In addition, have all SFAs sign the updated Agreement and send documentation to FNS indicating that OSSE has received signed copies back from all SFAs.

**Finding Number Nine: F&RP Policy Statements**

A few of OSSE's SFA files are incomplete.

Regulatory Citations/FNS Policy/FNS Instructions:

- 7 CFR Part 245.10(a)(1-5) and 245.10(b)
- 7 CFR 245.12(a) and 245.12(b)
- 7 CFR 245.6(f-k)
- Eligibility Manual for School Meals, Part 1, Section C and Appendix A

Explanation:

In some of the files reviewed, the following required information was missing:

- The school name, the programs the school participates in, and the contact person responsible for staff training (name/title) were missing from some applications.
- No Public Notification or Policy Statement was submitted by Lee Montessori School.
- The prototype free and reduced price policy statement did not contain:
  - An explanation that households with children who are categorically eligible under Other Source Categorically Eligible Programs should contact the school for assistance in receiving benefits and mark the relevant box on the application to indicate their status;
  - A statement that SAs and LEAs will ensure there are no barriers for participation in our Programs for Limited English Proficient (LEP) families and that SAs and LEAs are required to communicate with parents and guardians in a language they can understand throughout the certification and verification processes;
  - A statement of the measures the LEA has taken to prevent disclosure of confidential free and reduced price eligibility information.

Required Corrective Action

- Implement a file review process that will help ensure all required documents have been fully completed and are included in each SFA's file. The process could include having two staff members work on each SFA application, having each sign off on the file indicating that all required information has been completed and is filed properly. A form to document that all required information was received, reviewed, and filed could also be developed. Please provide documentation of your revised process.
- Obtain Public Notification and Policy Statement for Lee Montessori School and provide copies to this office.
- Provide either 1) a copy of the current F&RP policy statement highlighting the information which could not be provided during the review or 2) a revised F&RP policy statement that includes the missing information.

## **OBSERVATIONS**

### **Observation Number One: The State Director position has been vacant since September 2014.**

OSSE's State Director departed in September 2014 and the position has not been filled to date. The absence of a State Director has contributed to inconsistent coordination between the Office of Wellness and Nutrition managers. Also, these program managers have assumed many of the State Director's responsibilities, in addition to their normal duties, for a significant amount of time. Many findings and observations in this report can be attributed to the lack of centralized management and oversight.

#### **Suggestion for Management Improvement:**

Fill the State Director vacancy by September 30, 2015.

### **Observation Number Two: OSSE's claim system is at risk for error.**

NSACPS, the application and claiming system used by OSSE for NSLP, SBP, SMP and FFVP, is manual and at high risk for error. Sponsor applications and claims are manually entered into the system. The program manager and claims specialist carefully process claims and manage the data; however, the spreadsheets supporting the claiming system are extremely complex and leave a significant amount of room for error.

#### **Suggestion for Management Improvement:**

OSSE has submitted and been approved for \$1,050,000 in FY 2015 SAE reallocation to replace their NSACPS system with a system through which sponsors can submit their annual applications and monthly claim forms. Please provide us with the expected implementation date of the new claims system.

### **Observation Number Three: OSSE returned a significant amount of FFVP funds.**

OSSE has returned \$1,192,728 of \$4,347,367 (24%) in FFVP funding over the last three years. The review found that although School Program staff monitors each SFA's expenditures closely, errors in funding information shared between Program and Fiscal staff resulted in allocation calculation errors; SFAs were allocated less funding than was available.

#### **Suggestion for Management Improvement:**

OSSE should improve coordination between School Programs and Fiscal to ensure all FFVP funds are available for expenditure by the SFAs. Please provide us with your plans to address this observation

### **Observation Number Four: A few areas of OSSE's AR process could use improvement.**

During the evaluation of the AR process, there were several areas identified that could use improvement. First, for the DCPS AR, the length of time between the exit conference and final report was eight months. Per the AR manual, FNS expects SAs to issue their reports within 60 calendar days of the exit conference.

Second, there were inconsistencies or incorrect determinations of what was categorized as a “finding” versus an “observation.” The first example is OSSE cited Briya SFA for incorrectly following the CACFP meal pattern for Pre-K as an observation; however this same issue was cited as a finding in other reports. The second example is Friendship Public Charter School did not end the lunch service until 3 pm on the day of the review. The SA correctly required the SFA to take corrective action since the serving time occurred outside of the regulatory requirement. However, the SA reported the issue as an observation in the AR report and it should have been a finding.

Third, OSSE’s work papers occasionally did not match up to the final report or the final report did not match the corrective action. The first example is the work papers for Next Steps PCS suggest corrective action for not having a food safety plan but this was not included the final report. A second example is the work papers and final report for Kipp DC NE showed nine application errors but this should have only been eight as validated in the corrective action response.

Suggestion for Management Improvement:

To improve the SA’s monitoring process, OSSE should ensure reports are issued within 60 days. OSSE should also implement a second review of AR reports. This will improve consistency among reviewers, reduce errors, and ensure findings are correctly identified. In addition, OSSE should review work papers and other supporting documentation to make sure they match reports and required corrective action; if findings or observations change, notations should be made in the AR work papers. Please provide us with your plans to address this observation.

**Observation Number Five: Supporting documentation for grants was unable to be located during the review.**

The review of the FY 2011 TN Competitive Grant and the FY 2011 Direct Certification Grant indicated that OSSE is not retaining all supporting documentation for expenditures charged to grants. For the TN Competitive Grant, the final written report showed approximately \$90,000 remaining on the grant; however, the final financial report shows about \$10,000 remaining. This difference was used for OSSE staffing but there is no supporting documentation.

The FY 2011 Direct Certification Grant was used to develop and implement SLED. The grant was used to pay OSSE staffing costs but the records showing staff charges were incomplete and do not equal the total amount charged to the grant.

Suggestion for Management Improvement:

OSSE should develop a system for documenting and maintaining all expenditures against grants, including staffing charges. Please provide us with your plans to address this observation.

**Observation Number Six: OSSE uses local funds instead of Federal funds for grants.**

During the review of the FY 2011 TN Non-Competitive grant and the FY 2013 Direct Certification Performance Award, it was found that OSSE used local funds rather than Federal funds. As a result, for the TN Non-Competitive grant, OSSE returned over \$10,000 in Federal funds. For the Performance Award, Federal funds were drawn for Fiscal Year 2014 expenditures but local funds rather than Federal funds are being used for Fiscal Year 2015 expenditures.

**Suggestion for Management Improvement:**

The SA should develop a system to ensure that Federal funds are used to carry out activities related to a federal grant award. If local funds are used in lieu of Federal funds during the early part of the grant cycle, OSSE should ensure these funds are replaced with available Federal funds prior to the end of the grant period. A reconciliation of expenses and payments should be made prior to the end of each fiscal year to ensure the State replaces any local funds expended with Federal funds. This will help ensure that unobligated Federal funds are not recovered at the end of the grant period. Please provide us with your plans to address this observation.

**Observation Number Seven: OSSE's prototype RFP needs modification.**

The review of the prototype RFP identified areas that should be modified. Due to the specificity of these modifications, they have been included in Appendix A.

**Suggestion for Management Improvement:**

Please review the suggested modifications and include them when you make the changes required per Finding Number Seven.

**Observation Number Eight: Inspired Teaching Public Charter School's vendor contract with Revolution Foods needs improvement and increased clarity.**

Several areas needing improvement or clarity were found during the review of Inspired Teaching Public Charter School, Revolution Foods Contract for Vended Meals:

- The evaluation criteria used for scoring (page 21) does not match the criteria on the scoring sheet (page 50).
- Revolution Foods offered to loan at no charge an oven and a refrigerator for use at the charter school's site (pages 5 and 6), when no such request for equipment was included in the RFP. This offer was accepted as indicated by page 1 of the contract addendum. This has the potential to be overly responsive. SFAs should include requests for equipment in the solicitation if the need exists.

- Revolution Foods offered to provide breakfast in the classroom at no charge to the school for one week (pages 4 and 5). This is overly responsive and should not have been accepted or considered.
- The contract addendum (page 3) states that if the average minimum meals per day as estimated in the above box are not met, the price to the school will increase by 6 cents. Then it implies that the 6 cents may not be assessed unless the minimum deviates by more than 8%. These two provisions are contradictory and the first statement could result in a price increase if the minimum average meals decrease by even one meal.

**Suggestion for Management Improvement:**

OSSE should ensure the criteria used for scoring is clear and consistent. In addition, OSSE should provide guidance to SFAs in ensuring that bids received are not overly responsive. The contract addendum should be clarified to clearly state the condition under which a price increase will be initiated mid-year and it must be reasonable and based on a significant percentage change in the number of meals served, such as 8 percent. Lastly, OSSE must ensure all required provisions are included in the contracts. Please provide us with your plans to address this observation.

**Observation Number Nine: OSSE should update the procurement presentation and review SFAs' compliance with procurement rules.**

In an effort to enhance SFAs' and vendors' procurement knowledge, OSSE has hosted procurement trainings prior to the beginning of the SY. However, the presentation being used is incomplete and includes some inaccurate information. In particular, the difference between an RFP and IFB needs to be clarified and additional information on geographic preference, contract violations and bid protests should be added to the presentation.

OSSE should also review compliance with procurement rules in addition to providing training.

**Suggestion for Management Improvement:**

Since OSSE is using this presentation as their primary means of training SFAs and vendors on the procurement requirements, this presentation should be updated as described above. Please send our office a copy of the revised presentation.

Beginning in SY 2016-2017, OSSE should use the FNS Procurement Monitoring tool, currently under development, to ensure all SFAs adhere to procurement requirements. Please confirm OSSE will begin utilizing this procurement tool once available.

**Observation Number Ten: OSSE can extend emergency procurement contracts through the SY.**

Occasionally the Health Department has closed down a vendor's operation and this can affect several SFAs that have a contract with that vendor. When this type of closure occurs, it has been OSSE's policy to allow SFAs to contact their second best



bidder and see if they can obtain a temporary agreement with them to provide meals. The SA only allows these emergency contracts to last for a few weeks, until the SFAs can go out to bid again.

Suggestion for Management Improvement:

On a case by case basis, OSSE could allow, where reasonable, SFAs to contract with the second best bidder through an emergency procurement for the remainder of the current SY. Please provide us with your plans to address this observation.

**Observation Number Eleven: OSSE's F&RP Policy Statements should be updated.**

As part of the review, three pricing and four non-pricing school agreements/applications and F&RP Policy Statements were reviewed to ensure compliance with Federal regulations and guidance. The following was noted:

- Page 13 of the SY 2014-2015 School Programs Agreement/Application references nine documents that are considered part of the Policy Statement for Free and Reduced Price Meals for Pricing and Non-Pricing Sponsors. None of the staff were able to explain the item "Verification (V-1, V-2, and V-3)" nor could a copy of the document be provided to our reviewer.
- SFAs are not required to submit all documents, such as a W-9, every year. This made it difficult to locate copies that were submitted to the SA many years ago.
- The F&RP Policy Statement must include the LEA's direct certification procedures.

Suggestion for Management Improvement

- Remove the reference to "Verification (V-1, V-2, and V-3)" in the Policy Statement and submit a revised document to FNS.
- On a routine schedule, consider requesting updated copies of documents that SFAs are not required to submit to the SA each year. Please provide your plans for revising your document submission process.
- Include information in the F&RP Policy Statement describing the direct certification process in DC and submit a copy to FNS.

**Observation Number Twelve: OSSE used an unallowable processing agreement for USDA Foods.**

Twenty-four of sixty-eight SFAs did not receive any commodities during SY 2014-2015 because they utilize vendors that did not register with FNS or with the State as processors, which is a requirement for vendors before they can receive USDA Foods.

In order to allow more vended charter schools to utilize their entitlement, the SA created a prototype storage warehousing agreement between SFAs and their vendors. This agreement permitted vendors to act as a storage facility to receive DoD Fresh and USDA Foods on behalf of the SFA. Therefore, the vendors could incorporate those foods into the menus they prepared for their contracted SFAs and rebate the SFAs for the value of the USDA Foods used.



On May 8, 2015, FDD Policy Memorandum FD -137 was released prohibiting this prototype agreement from being used. Instead, the memo pilots a way for vendors to receive DoD Fresh and USDA Foods by offering a simplified processor registration process for vendors that should make it easier for their contracted SFAs to receive the benefit of their USDA Foods entitlement annually.

Suggestion for Management Improvement:

As of July 1, 2015, OSSE must discontinue allowing the usage of their prototype agreement. Starting SY 2015-2016, vendors/processors will have to comply with FDD Policy Memorandum FD -137. The SA should notify present vendors of this memorandum and encourage them to register as processors of DOD Fresh and USDA Foods under this pilot project. The SA should also prepare an In-State Processing Agreement by modifying the prototype in FD-137 for use with vendors who may be in-state only. Submit documentation that these actions have been taken.

- **Appendix A: Suggested Modifications to the Prototype RFP**

Please note, these suggestions were identified during the review of the prototype RFP and may also apply to the prototype IFB. Please review your IFB accordingly.

1. *Observation:* Section B.2: Both the SFA and the bidder are asked to project meal participation and price per meal for the four potential renewal years succeeding the first year the contract.

*Suggestion:* The bid should only request prices per meal for the first year of the contract and bidders should be referred to D.12 for information regarding renewals and renegotiations of the price per meal for the renewal years. The SFA should also only indicate which meals it is bidding for in the coming SY and the projected student enrollment, grades and school buildings for the coming SY.

2. *Observation:* D.12 mentions that a renewal price increase will be based on the consumer price index or 10 percent, whichever is less. This almost guarantees that the meal price increase will be based on the consumer price index increase, since ten percent is a very high upward limit.

*Suggestion:* To protect SFAs from too steep a meal price increase, state that the price increase will be based on the consumer price index or a percentage increase closer to 3 percent, whichever is less.

3. *Observation:* In Section B.5, B.5.6 and B.5.7, there is a reference to an (a)(1) through (a)(3), which reviewers were unable to locate.

*Suggestion:* Clarify the reference.

4. *Observation:* In Section B.6 Requirements Regarding Pricing, at 1. b) Entitlement Discount Formulation, the vendor is given the option of rebating the SFA for “the value of amount commodities used in each meal delivered.” This unnecessarily complicates the rebate process and could lead to errors.

*Suggestion:* Amend the section to clarify that the vendor should simply charge the SFA the amount per meal agreed to per the contract and in the same invoice subtract the USDA Foods rebate owed by the vendor to the SFA from the amount the SFA owes the vendor for total meals served

5. *Observation:* There are several areas where the prototype RFP sounds more like an IFB. For example, Section B.6, 2. states, “Award will be made to a responsive, responsible bidder or bidders on the basis of the lowest aggregate cost to the institution.”

*Suggestion:* The SA should consider revising these clauses to reflect an RFP.

6. *Observation:* Section B.7, 3. b) reads: “The institution shall not be required to purchase from the contractor requirements in excess of the limit on total orders under this contract, if any.” It is not clear what the institution is not required to purchase.

*Suggestion:* The SA should consider rewriting this clause to more clearly state the intent.

7. *Observation:* Section B.7.8 Non-compliance states that when an administrative review disallows meals, the vendor will not be paid for those meals. Meals can be disallowed for various reasons, some of which would not implicate the vendor. For example, meals could be disallowed because an SFA employee serving the meal forgot to give the child milk.

*Suggestion:* This paragraph should be clarified to state that every time meals are disallowed due to a deficiency that is the fault of the vendor, the vendor will not be paid for those meals.

8. *Observation:* Section B.8 Submission of Bids has a request under Format of Bids for two months proposed cycle menu. 210.16(b) requires a 21 day menu cycle written by the SFA.

*Suggestion:* Unless the SA is proposing to replace the 21 day menu cycle with a 2 month menu cycle, this should be changed to conform to the requirements of 210.16(b). Any amendments to Section B.8 Submission of Bid, must concur with the revision that will be made to the instruction for Attachment E, per Finding Number Seven.

9. *Observation:* Section B.8 Submission of Bids, under Contractor Pre-Qualification Questionnaire, asks: “Does your organization qualify as a Certified Business Enterprise (CBE)? If so, please provide a copy of your certification. If not, could you qualify? Would you be willing to pursue certification?” It is not clear here if this is a requirement for pre-qualification.

*Suggestion:* If this is a pre-qualification requirement, it should be stated clearly; if only a preference will be given to those who have this certification, then that should be stated. All such preferences should be incorporated as part of one of the categories in the scoring criteria section.

10. *Observation:* Section B.8, Submission of Bids, under Contractor Pre-Qualification Questionnaire, asks: “Will your organization use subcontractors for this contract?” It is not clear if this is asked for informational purposes only, or if the use of subcontractors would disqualify the bidder, since in D.11 Sub-contracts and Assignments it states that “The contractor shall not sub-contract with only one company for the total meal...or for the assembly of the meal.” If more than one

sub-contractor is allowed, but not one sub-contractor, it is hard to understand the rationale.

*Suggestion:* The SA should clarify its position on sub-contractors and the position should then be stated clearly and consistently in all parts of the prototype RFP referring to sub-contractors.

11. *Observation:* Section B.8 Submission of Bids, under Contractor Pre-Qualification Questionnaire, asks with regards to financial stability that the bidder list trade, bank and insurance references that the SFA can contact.

*Suggestion:* As stated above, if this is a pre-qualification requirement, it should be stated clearly. If instead it is part of the scoring criteria, the information should instead be requested in M.2. Technical Rating Scale, within the scoring criteria in a Financial Stability category.

In general, if there are two stages to the bid, one a pre-qualification list of information/documentation that the bidder has to provide in order to be considered during the scoring phase, and then this second scoring phase in which all bidders who submitted everything required for pre-qualification can be scored, then the RFP should be modified and organized to reflect this.

12. *Observation:* Section B.8 Submission of Bids, under Contractor Pre-Qualification Questionnaire, 1. Explanation to Bidders, has a sentence that reads: “Oral explanations or instructions given before the award of the contract shall not be binding.” This is misleading, since as is elsewhere explained in the RFP, oral explanations should never be given to any of the bidders, but rather all bidders must submit their questions in writing by a given deadline and the response, if one is merited, would be given in writing by the SFA to all bidders at the same time.

*Suggestion:* This clause should be clarified to state that only written explanations and instructions will be provided by the SFA to all bidders and that if any bidder believes the SFA has provided it oral instructions or explanations, these instructions and explanations are invalid. Similar modifications should be made to Section L: Questions about the Solicitation, where it states that responses to the prospective bidder’s question will be sent to it via email by the SFA and only if the SFA decides that the information would be necessary for all prospective bidders or detrimental to them if they did not have this information, would it be shared with all. All questions received from bidders by a certain deadline that will be answered, must be answered only in writing and shared with all bidders.

13. *Observation:* Section B.8 Submission of Bids, under Contractor Pre-Qualification Questionnaire, 3. Bidders Having Interest in More Than One Bid does not seem to clearly state its intent.

*Suggestion:* The section should be re-written to clearly state that if the same bid is submitted by the same person under a different name or under the name of a clerk, partner or other person, or if the same bid is submitted by a different person, all such bids shall be rejected

14. *Observation:* Section B.8 Submission of Bids, under Contractor Pre-Qualification Questionnaire, 7. Late Bids, Modifications of Bids or Withdrawals of Bids a) allows that for bids received after the deadline, an exception can be made if the registered or certified packet shows a given date stamp and is received before bid opening.

*Suggestion:* Normally RFPs stipulate all bids must be received by a given date and hour, no exceptions granted. The SA should consider deleting this exception from the RFP.

15. *Observation:* Section C: Specifications/Work Statement, C.1. Scope 5. states: “All costs to the Program must be net of applicable discounts, rebates and applicable credits...”

*Suggestion:* Since this RFP is for a fixed price contract and such language is only applicable to cost reimbursable contracts, all such language should be removed from this RFP.

16. *Observation:* Section D.7. Insurance states that “State agencies will furnish institutions their State Insurance requirements to insert herein.”

*Suggestion:* If the SA has insurance requirements, it should list them here directly.

17. *Observation:* Section D.10 Termination e) has a reference to a paragraph (2), but it is not clear which paragraph 2 is being referred to. Section D.10 Termination e) a. and e) b. are also not comprehensible without knowing what paragraph 2 refers to, since a. refers to remedies for actions that are equivalent to a breach of contract and b. has a reference to additional penalties that seem to be called for when there is an attempt to pay gratuities to any SFA employee.

*Suggestion:* Section D.10 Termination e) and Section D.10 Termination e) a. & b. should be re-written to clarify their intent.

18. *Observation:* Section F.1 Terms of Contract states that contract shall be one year from the date of award. Most SA RFPs stipulate that the contract goes from the date of award until the next June 30, after which all renewals and new contracts run from July 1 through the next June 30, to coincide with the NSLP School Year.

*Suggestion:* When the beginning date for all contracts is the same, notices regarding bids and renewals can be sent to all SFAs at the same time and work schedules can be coordinated so that contract approvals and renewals take place

during an identified time period. The SA should therefore consider July 1 as the default starting date of all SFA/FSMC contract renewals and first year contracts, with the exception of those first year contracts that are, for whatever reason, bid out and awarded too late to begin operation by the first day of a new SY. When that occurs, the beginning date of the contract would be whatever the solicitation had indicated, but the last day of that first year would still be June 30 and after that each contract renewal date would coincide with the renewal date for all other District of Columbia SFA/FSMC contracts.

19. *Observation:* Section M.1. Scoring criteria states “the total score will not necessarily be determinative of the award. Rather the total scores will guide the institution in making an intelligent decision based upon the evaluation criteria..” This undermines the value and purpose of the scoring section. Its purpose is not simply to guide the institution in making an intelligent decision based upon the evaluation criteria. Instead the scoring criteria section of an RFP, consisting of price and other factors, should be so designed that the SFA can rely on the scoring results to award the contract to that responsive and responsible bidder who scores the highest. As stated at 7 CFR 200.320(d)(3) & (4), well-crafted scoring criteria should almost always be the determinate factor in deciding who wins the contract:

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered

Most SA RFPs state in their overview section that the SFA reserves the right to reject any and all proposals. Such a clause is inserted to protect the SFA if it has a good reason to believe that though a given entity submitted an excellent proposal, evidence has surfaced indicating its actual performance with others contracts fall far short of how it describes itself. The statement that the SFA reserves the right to reject any and all proposals is more than sufficient to protect it in instances where there is conclusive evidence that the bidder’s proposal does not accurately reflect its actual performance.

*Suggestion:* The SA should include in its overview section a statement that it reserves the right to reject any and all proposals. It should rewrite the sentence in Section M.1. to inform bidders that the SFA evaluation committee will evaluate all complete proposals submitted by the deadline, based on the following criteria, with the scoring criteria section of the solicitation immediately following.

20. *Observation:* Section M.2 Technical Rating Scale, which is the scoring criteria section, only has three categories: pricing, method of approach and implementation and offeror’s experience. A best practice would be to have more developed scoring criteria sections that include a number of other categories such as: food appearance and taste, based on samples provided by the bidder, packaging and the bidder’s distribution strategy. In addition, the preference that bidders are

given for purchasing foods within the SFA's defined area of geographic preference should be incorporated into the scoring criteria section of the solicitation.

*Suggestion:* The SA's scoring criteria section should be more carefully developed so that SFAs can rely with confidence on the final score obtained from the scoring criteria section to award the bid.

21. *Observation:* The SA RFP has a section where samples from each bidder are requested, but this is not incorporated into the scoring criteria section of the RFP.

*Suggestion:* Food samples should be requested as part of the food appearance and taste segment of the scoring criteria section of the RFP and then scored accordingly.

**Appendix B: Regulatory Citations**

<b>2 CFR</b>		
<b>Citation</b>	<b>Finding</b>	<b>Description</b>
180.300	6, 7	When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by: (a) Checking SAM Exclusions; or (b) Collecting a certification from that person; or (c) Adding a clause or condition to the covered transaction with that person.

<b>7 CFR</b>		
<b>Citation</b>	<b>Finding</b>	<b>Description</b>
210.2	7	<i>Food service management company</i> means a commercial enterprise or a nonprofit organization which is or may be contracted with by the school food authority to manage any aspect of the school food service.
210.9(b)(4)	9	Comply with the requirements of the Department's regulations regarding financial management
210.9(b)(5)	9	Serve lunches, during the lunch period, which meet the minimum requirements prescribed in 7 CFR 210.10
210.9(b)(13)	9	Enter into an agreement to receive donated foods as required by 7 CFR part 250
210.9(b)(14)	9	Comply with the food safety requirements of 7 CFR 210.13
210.9(b)(21)	9	No later than March 1, 1997, and no later than December 31 of each year thereafter, provide the State agency with a list of all schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day the preceding October. The State agency may designate a month other than October for the collection of this information, in which case the list must be provided to the State agency within 60 calendar days following the end of the month designated by the State agency. In addition, each school food authority shall provide, when available for the schools under its jurisdiction, and upon the request of a sponsoring organization of day care homes of the Child and Adult Care Food Program, information on the boundaries of the attendance areas for the schools identified as having 50 percent or more of enrolled children certified eligible for



		free or reduced price meals.
210.16(a)	7	General. Any school food authority (including a State agency acting in the capacity of a school food authority) may contract with a food service management company to manage its food service operation in one or more of its schools. However, no school or school food authority may contract with a food service management company to operate an a la carte food service unless the company agrees to offer free, reduced price and paid reimbursable lunches to all eligible children. Any school food authority that employs a food service management company in the operation of its nonprofit school food service shall:
210.16(a)(4)	7	Retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals;
210.16(a)(5)	7	Retain signature authority on the State agency-school food authority agreement, free and reduced price policy statement and claims;
210.16(a)(8)	6, 7	Establish an advisory board composed of parents, teachers, and students to assist in menu planning
210.16(b)(1)	7	<p>Invitation to Bid: In addition to adhering to the procurement standards under § 210.21, school food authorities contracting with food service management companies shall ensure that:</p> <p>(1) The invitation to bid or request for proposal contains a 21-day cycle menu developed in accordance with the provisions of § 210.10, to be used as a standard for the purpose of basing bids or estimating average cost per meal. A school food authority with no capability to prepare a cycle menu may, with State agency approval, require that each food service management company include a 21-day cycle menu, developed in accordance with the provisions of § 210.10, with its bid or proposal. The food service management company must adhere to the cycle for the first 21 days of meal service. Changes thereafter may be made with the approval of the school food authority.</p>
210.16(c)(1)	7	The food service management company shall maintain such records as the school food authority will need to support its Claim for Reimbursement under this part, and shall, at a minimum, report claim information to the school food authority promptly at the end of each month. Such records shall be made available to the school food authority, upon request, and shall be retained in

		accordance with §210.23(c).
210.16(d)	6	Duration of contract. The contract between a school food authority and food service management company shall be of a duration of no longer than 1 year; and options for the yearly renewal of a contract signed after February 16, 1988, may not exceed 4 additional years. All contracts shall include a termination clause whereby either party may cancel for cause with 60-day notification.
210.18(m)	7	Fiscal action. Fiscal action for violations identified during an administrative review or any follow-up reviews must be taken in accordance with the provisions in § 210.19(c) of this part. (2) Performance Standard 2 violations. Except as noted under paragraph (m)(2)(iv) of this section, a State agency is required to take fiscal action for violations of Performance Standard 2 as follows: (ii) For repeated violations involving vegetable subgroups... (iii) For violations involving food quantities cited under paragraph (g)(2) of this section.
210.19(a)(5)	1	<i>Food service management companies.</i> Each State agency shall annually review each contract (including all supporting documentation) between any school food authority and food service management company to ensure compliance with all the provisions and standards set forth in this part before execution of the contract by either party. When the State agency develops a prototype contract for use by the school food authority that meets the provisions and standards set forth in this part, this annual review may be limited to changes made to that contract. Each State agency shall review each contract amendment between a school food authority and food service management company to ensure compliance with all the provisions and standards set forth in this part before execution of the amended contract by either party. The State agency may establish due dates for submission of the contract or contract amendment documents. Each State agency shall perform an on-site review of each school food authority contracting with a food service management company, at least once during each 5-year period. The State agency is encouraged to conduct such a review when performing reviews in accordance with §210.18. Such reviews shall include an assessment of the school food authority's compliance with §210.16 of this part. The State agency may require that all food service management companies that wish to contract for food service with any school food authority in the State

		register with the State agency. State agencies shall provide assistance upon request of a school food authority to assure compliance with Program requirements.
210.21(c)(2)	1	<i>Prototype solicitation documents and contracts.</i> The school food authority must obtain the State agency's prior written approval for any change made to prototype solicitation or contract documents before issuing the revised solicitation documents or execution of the revised contract.
210.21(g)(1)	7	<i>Geographic preference.</i> (1) A school food authority participating in the Program, as well as State agencies making purchases on behalf of such school food authorities, may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing the geographic preference to procure such products, the school food authority making the purchase or the State agency making purchases on behalf of such school food authorities have the discretion to determine the local area to which the geographic preference option will be applied;
245.6(f)	10	<i>Disclosure of children's free and reduced price meal or free milk eligibility information to education and certain other programs and individuals without parental consent.</i> The State agency or local educational agency, as appropriate, may disclose aggregate information about children eligible for free and reduced price meals or free milk to any party without parental notification and consent when children cannot be identified through release of the aggregate data or by means of deduction...
245.6(g)	10	<i>Disclosure of children's eligibility information to Medicaid and/or SCHIP, unless parents decline.</i> Children's free or reduced price meal or free milk eligibility information only may be disclosed to Medicaid or SCHIP when both the State agency and the local educational agency so elect, the parent/guardian does not decline to have their eligibility information disclosed and the other provisions described in paragraph (i) of this section are met....
245.6(h)	10	<i>Notifying households of potential uses and disclosures of children's eligibility information.</i> Households must be informed that the information they provide on the free and reduced price meal or free milk application will be used to determine eligibility for free and reduced price meals or free milk and that eligibility information may be

		disclosed to other programs....
245.6(i)	10	<i>Other disclosures.</i> State agencies and local educational agencies that plan to use or disclose information about children eligible for free or reduced price meals or free milk in ways not specified in this section must obtain written consent from the child's parent or guardian prior to the use or disclosure...
245.6(j)	10	<i>Agreements with programs/individuals receiving children's free and reduced price meal or free milk eligibility information...</i>
245.6(k)	10	<i>Penalties for unauthorized disclosure or misuse of information.</i> In accordance with section 9(b)(6)(C) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(6)(C)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this section will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.
245.9(b)(3)	3	<i>Meal counts.</i> During the base year, even though meals are served to participating students at no charge, schools must take daily meal counts of reimbursable student meals by type (free, reduced price, and paid) at the point of service, or as otherwise approved under part 210 of this chapter. During the non-base years, participating Provision 2 schools must take total daily meal counts (not by type) of reimbursable student meals at the point of service, or as otherwise approved under part 210 of this chapter. For the purpose of calculating reimbursement claims in the non-base years, school food authorities must establish school specific monthly or annual claiming percentages, as follows...
245.10(a)(1-5)	10	(a) Each local educational agency of a school desiring to participate in the National School Lunch Program, School Breakfast Program, or to provide free milk under the Special Milk Program, or to become a commodity-only school shall submit for approval to the State agency a free and reduced price policy statement. Once approved, the policy statement shall be a permanent document which may be amended as necessary, except as specified in paragraph (c) of this section. Such policy statement, as a minimum, shall contain the following: (1) The official or officials designated by the local educational agency to make eligibility determinations on its behalf for free and reduced price meals or for free milk; (2) An assurance that for children who are not

		<p>categorically eligible for free and reduced price benefits the local educational agency will determine eligibility for free and reduced price meals or free milk in accordance with the current Income Eligibility Guidelines.</p> <p>(3) The specific procedures the local educational agency will use in accepting applications from families for free and reduced price meals or for free milk. Additionally, the local educational agency must include the specific procedures it will use for obtaining documentation for determining children's eligibility through direct certification, in lieu of an application. Local educational agencies shall also provide households that are directly certified with a notice of eligibility, as specified in §245.6(c)(2) and shall include in their policy statement a copy of such notice.</p> <p>(4) A description of the method or methods to be used to collect payments from those children paying the full price of the meal or milk, or a reduced price of a meal, which will prevent the overt identification of the children receiving a free meal or free milk or a reduced price meal, and</p> <p>(5) An assurance that the school will abide by the hearing procedure set forth in §245.7 and the nondiscrimination practices set forth in §245.8.</p>
245.10(b)	10	The policy statement submitted by each local educational agency shall be accompanied by a copy of the application form to be used by the school and of the proposed letter or notice to parents.
245.12(h)	3	The State agency shall take action to ensure the proper implementation of Provisions 1, 2, and 3.
245.12(a)	10	<p>(a) Each State agency, or FNSRO where applicable, shall, for schools under its jurisdiction:</p> <p>(1) As necessary, each State agency or FNSRO, as applicable, shall issue a prototype free and reduced price policy statement and any other instructions to ensure that each local educational agency as defined in §245.2 is fully informed of the provisions of this part...</p>
245.12(b)	10	State agencies, and FNSRO where applicable, shall review the policy statements submitted by school-food authorities for compliance with the provisions of this part and inform the school-food authorities of any necessary changes or amendments required in any policy statement to bring such statement into compliance. They shall notify school-food authorities in writing of approval of their policy statements and shall direct them to distribute promptly the public announcements required under the

		provisions of §245.5.
250.3	4	<i>Processor</i> means a commercial enterprise that processes donated foods at a commercial facility
250.51(a)	7	<i>Crediting for donated foods.</i> In both fixed-price and cost-reimbursable contracts, the food service management company must credit the recipient agency for the value of all donated foods received for use in the recipient agency's meal service in a school year or fiscal year (including both entitlement and bonus foods). Such requirement includes crediting for the value of donated foods contained in processed end products if the food service management company's contract requires it to...
250.52(c)	7	<i>Disposition of donated foods and credit reconciliation upon termination of the contract.</i> When a contract terminates, and is not extended or renewed, the food service management company must return all unused donated ground beef, donated ground pork, and processed end products, and must, at the recipient agency's discretion, return other unused donated foods....
3016.36(b)(12)	7	Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to...
3016.36(i)(2)	6	Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)
3016.36(i)(6)	7	Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)
3018.110(d)	6, 7	Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section: (1) A subcontract exceeding \$100,000 at any tier under a Federal contract; (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant; (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or, (4) A contract or subcontract exceeding \$100,000 at any

		tier under a Federal cooperative agreement, Shall file a certification, and a disclosure form, if required, to the next tier above.
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