



**COLORADO**  
Department of Education

## Food Service Management Company Registration Session

January 18, 2017

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### Learning Objectives

Be sure to enter questions in the chat box on the lower right.

Participants will know:

- Who must register as a Food Service Management Company (FSMC)
- Responsibilities of the School Food Authority (SFA)
- Why a response to each Request for Proposal (RFP) is required
- Different types of contracts
- How do current regulations affect School Nutrition Programs and FSMCs?

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### Who Must Register with CDE?

- All FSMCs wanting to contract with Colorado SFAs that participate in any part of the USDA School Nutrition Programs
- 7CFR 210.2 defines FSMC: Commercial enterprise or nonprofit organization which is or may be contracted with by the SFA to manage any aspect of the school food service.

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## What are FSMCs?

On-Site	Cater/ Vended Meals
<ul style="list-style-type: none"> <li>Management of most of operation</li> <li>Menus, preparation, service, meal counting, personnel, etc. OR</li> <li>Vended meals with additional services provided (POS, serving, etc.)</li> </ul>	<ul style="list-style-type: none"> <li>Provide meals that are prepared elsewhere and delivered</li> <li>No onsite prep or services</li> <li><b>SFSP:</b> Provides unitized meals</li> </ul>

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## Federal Regulations

- 7CFR210.19(a)(6), 210.16(a)(10), 220.7(d)(1): CDE must annually review each contract and all supporting documentation) between SFA and FSMC
- Ensure compliance with all the provisions
- Complete prior to execution of contract by either party with CNP funds

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## Colorado State Rules

2202-R-208.00 Food Service Management Companies

- 208.03 SFAs must utilize the RFP and Contract prototypes and procedures as provided by CDE
- 208.04:
  - RFP documents must be approved by CDE before release of the RFP.
  - Contracts must be approved by CDE prior to the inception of the contract

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## What does the SFA Do?

- SFAs must comply with Federal, State and local procurement requirements when obtaining FSMC services
- Federal procurement requirements are at 2 CFR 200, 7 CFR 210 (NSLP), 7 CFR 220 (SBP), 7 CFR 250 (USDA foods) 7 CFR 225 (SFSP), 7 CFR 215 (SMP)
- Per 7 CFR 210.19(e), CDE may impose additional requirements which meet / exceed Federal standards

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## CDE RFP Packet for SFAs

1. CDE FSMC Request for Proposal
    1. Includes options for Fixed fee, cost reimbursable or vended meals that SFA will select
    2. Locked for tracked changes
    3. Must be used-if changed by vendor at any point vendor's proposal can be disqualified
  2. FSMC Response Tracker
  3. List of Colorado registered FSMCs
- # 2-6 returned to CDE with RFP final response

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## Why Require a Response to Each RFP?

- Ensures all eligible vendors have received the RFP
- Ensures all eligible vendors have an opportunity to present a proposal
- Maintains integrity of mandated "free and open" competition
- FSMCs not planning to submit a proposal must still respond with the reason

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## Types of RFPs/Contracts

1. Cost Reimbursable
2. Fixed Fee
3. Vended Only

- All contracts paid from the non-profit food service fund must be with the SFA or SFSP sponsor
- Individual Schools that are not SFAs or SFSP sponsors cannot contract with a FSMC/vendor

10




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## Cost Reimbursable vs. Fixed Fee

### Cost Reimbursable

- Basis: FSMC costs to perform food service duties
- SFA charged direct cost plus fixed management fee
- Overhead Expenses must be itemized
- FSMC cannot charge SFA for any program expenses not defined in the contract

### Fixed Fee

- Based on one price per each meal served
- Contract may be bid in 3 parts:
  - > *Direct operation cost*
  - > *Administrative Fee*
  - > *Management Fee*
- Price cannot change for any reason throughout contract

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## FSMC Management Fees

### ▪ Allowable Fee Structure

- Cents per meal
- Flat, Fixed Fee
- Combination of the above

### ▪ Prohibited Fee Structure

- Cost plus a percentage of cost
- Cost plus a percentage of revenue

12




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## Vended Contract

- CDE FSMC RFP modified for vended meals contract based on desired services
- Summer Food Service Programs: Use SFSP RFP for unitized meals

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## SFA Required Analysis Before Contracting

- Current costs and elements to be affected
- Identify Functions to contract & effects
- Identify Scope of contract: Meal programs, vending machines, catering?
- Create an advisory Board
- Non-Fiscal: Nutrition Goals, Education
- Identify SFA personnel responsible for FSMC contract & SFA duties
- SFA must know what CANNOT be delegated

14




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## Procurement Regulations

### 7 CFR 201.21

- Requires CDE's prior written approval for any changes to prototype solicitation/contract before issuing revised solicitation or execution of revised contract.
- Non-profit school food service account fund pays only for costs resulting from proper procurement and contracts.
- Requires CDE review and approval of SFA procurement of FSMC services BEFORE contract execution.

**CCR 2202-R-208.03** Districts must utilize the Request for Proposal (RFP) and Contract prototypes and procedures as provided by CDE.

**2 CFR 200 Uniform Administrative Requirements**, cost principles, and audit requirements for Federal awards

**250.53 USDA Foods Regulations**

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## Cost Reimbursable Contract Responsibilities of FSMC

**Allowable costs** (7 CFR 210.21 (f): Charges to SFA must be net of all discounts, rebates, and applicable credits.

### **Unallowable Costs -**

1. Identify amount for each cost submitted to SFA for payment from the non-profit food service account that's
  - a) **allowable for payment**
  - b) **unallowable and cannot be paid**
- or
2. Exclude all unallowable costs from billing documents and certify that only allowable costs are submitted for payment. Records must maintain visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;

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## Violations of Free and Open Competition

- X Vendor assists in RFP preparation to which they will respond
- X Proposals accepted after bids publicly read
- X Programs added after proposal is awarded
- X Collusion between firms
- X Gifts from FSMC to the SFA
- X Insufficient RFP submission time:<30-45 days
- X Identical information not shared with all vendors
- X Unreasonable requirements

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## What this Means for the SFA

**Any violation of Free & Open Competition makes a proposal non-responsive and cannot be executed**

- If contract was awarded, the SFA must rebid the contract
- If violation occurred prior to award, the FSMC's proposal is ineligible

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## USDA Foods (Commodities)

(7CFR250.51(a-d), 250.54 & .52)

- USDA Foods "received" on arrival at SFA/FSMC's storage facility per state year
- FSMC credits SFA monthly for USDA Foods: invoice reductions, refund, discounts in ALL contracts
- CDE is required to monitor crediting of USDA Foods in a FSMC contract during Administrative Reviews and annually
- USDA Foods values based on current USDA "Value of USDA Foods Received"
- Commercial and USDA Foods can be inventoried/stored together
- FSMC's system of inventory management cannot charge SFA for USDA Foods

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## SFA's RFP Process

1. SFA obtains RFP prototype from CDE OSN
2. Submits completed copy of RFP to CDE for approval
3. Sends approved RFP to all CDE Registered FSMC's and publicizes
4. All registered FSMCs must respond or send reason for non-response
5. Requests for proposals are publicized

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## SFA Contract Process

### SFA:

1. Submits contract with required documents to CDE for approval
2. CDE approves contract prior to signing by FSMC and SFA.
3. Reviews CDE recommendations/requirements with FSMC
4. Recommends contract to School Board for approval  
**Board Approval/signature + FSMC signature = Contract**

### NOTE:

- SFA and FSMC operations cannot begin until contract approval & execution
- Shared FSMC Food Service employees between districts must be in original RFP or rebid required

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## Non Delegable Duties

**SFA is responsible for the following duties and FSMC may not perform them:**

- Develop FSMC RFP
- Review and approve menus
- Establish advisory committee and conduct meetings
- Meal and a la carte prices
- Develop Food Service Budget
- Access & enter data in Claim system
- Conduct On-Site reviews in each building
- Review FSMC invoices for credits, discounts, rebates to ensure proper credit to SFA
- Review USDA Foods utilization

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## Services FSMC Can Provide

- Acceptable counting & Accountability methods
- Analysis of trends & participation reports
- Payroll
- Employee Training
- Appropriate menu components & portion sizes
- Participation in advisory committees
- Nutrition education
- Regular presentations to the Board and PTA
- Support Services (Dietitian or Chef)

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## When does a contract change = rebid?

- **A proposed contract modification**
  - changes the scope of a contract or
  - increases the contract amount by more than the Simplified Acquisition Threshold-currently \$150,000(2 CFR 200.324 (b)(5))
- **When the nature of the contract has a substantive change**
- **Other vendors might have bid differently (size, location, etc.)**
- **Examples of material change:**
  - *Add or delete programs or sites (relative)*
  - *Change in type of contract (cost reimbursable to fixed fee)*

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## USDA Changes

### ■ Procurement Review

- Reviewing SFA written board and staff code of ethics, conflict of interest, procurement standards
- Finding unapproved non-domestic foods in FSMC storage

### ■ USDA Professional Standards

- All new food service directors, including new FSMC contracts, must meet education and experience requirements
- Minimum training requirements for all staff must be tracked

### ■ Administrative Review Fiscal Action

- Starting SY16-17, inadequate menu component portions could result in claims being held from SFAs until corrective action
- Finding any deficient recipes or menus unchanged from prior review = fiscal action




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## State Agency Duties

- Provide RFP prototype to SFA
- Review
  - SFA submitted RFP prior to release
  - Contract prior to execution
- Assure full and open competition
- Monitor contracts annually, including 2 months of FSMC billing to SFA




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## Resources

1. Use resources on CDE OSN Webpage:  
<http://www.cde.state.co.us/nutrition>
2. Administrative Review Results required to be posted online  
<http://www.cde.state.co.us/nutrition/adminreviewstateagencysummary>
3. FSMC and Procurement:  
<http://www.cde.state.co.us/nutrition/osnprocurement>
4. Contact CDE at (303) 866-6661 or  
[NutritionProcurement@cde.state.co.us](mailto:NutritionProcurement@cde.state.co.us)




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