

## CONTRACT TYPES, PROCEDURES & CHECKLISTS

There are two types of contracts required under the Summer Food Service Program (SFSP):

- A. **School Food Authority Contract** - A sponsor may enter into a written agreement with a school food authority (SFA) to provide summer meals. Sponsors are not required to use competitive bid procedures when contracting with an SFA. However, the sponsor may not contract with an SFA using a Food Service Management Company (FSMC) unless the school's Invitation for Bid (IFB) and/or the contract with the FSMC includes adequate language supporting the school's intention to provide SFSP meals to the community.

Sponsors who choose to contract with an SFA must:

- ✓ Use **Attachment A**, "Agreement to Furnish Food Service" as a basis for all allowable SFA contracts. Refer to **Attachment B** for suggested terms and conditions which may be added to the standard contract in order to ensure quality meal service and help prevent serious problems once the contract is awarded and operations have started.

- B. **Commercial FSMC Contract** – Sponsors may procure summer meals from a FSMC. When the contract total will not exceed the lower of the sponsor's local or internal purchase threshold, or \$250,000 (federal small purchase threshold), an informal competitive bid process may be used and the use of the standard IFB, **Attachment C**, furnished by the State Education Department (SED), is not required, although encouraged. For contracts that are equal to or exceed the sponsor's local or internal threshold (if lower than \$250,000), or \$250,000 or more, formal bid procedures and the standard IFB, **Attachment C**, must be used.

Sponsors are encouraged to consult with as many expert sources as necessary to obtain the information needed for an effective procurement. Permissible practices include collecting publicly available information and contracting manufacturers and distributors directly. Examples of publicly available information include but are not limited to product brochures, product specification handouts, and information available in trade journals or on the Internet.

Federal law and regulations hold program operators responsible for their own specifications and procurement documents. Program operators must conduct their procurement under the USDA entitlement programs in a manner that avoids any appearance of or actual conflicts of interest. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bid, and/or requests for proposals shall be excluded from competing for such procurements. For example: a vendor that furnished information to a program operator for the program operator's use in formulating specifications for procurement action may still be considered for the procurement award. However, a vendor that actually engages in drafting the specifications or other procurement documents may not be considered for the award.

Institutions operating the Child Nutrition Programs are encouraged to purchase unprocessed locally grown and locally raised agriculture products. In addition, the Farm Bill allows SFAs and other institutions receiving funds through the Child Nutrition Programs to apply a geographic preference when procuring those unprocessed agricultural products.

The following are minimal requirements sponsors must follow when contracting with a FSMC. In addition to these minimal requirements, sponsors should add terms and conditions unique or specific to their operations which; establish the required qualifications and responsibility of the bidders (**Attachment G**); clearly define the services needed; provide for desired food quality and menu standards and define both the minimal and the mandatory contract terms and conditions. Refer to **Attachment B** for suggested terms and conditions that may be added to the standard bid/contract.

**All Commercial FSMC Contracts must include:**

- \_\_\_ A quality control plan as outlined in Section F, Number 13 of **Attachment C**, “Summer Food Service Program Invitation for Bid and Contract”.
- \_\_\_ A condition that the contractor must submit to the sponsor and State agency the results of inspections made by the local health department or an independent agency to determine bacteria levels (in accordance with New York State Department of Health) in meals being served. This condition is included in Section F, Number 5 of **Attachment C**.
- \_\_\_ A cycle menu meeting meal pattern requirements.
- \_\_\_ The “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions” (page 12 of Attachment C, the "Invitation for Bid and Contract") if the contract is expected to equal or exceed \$25,000 signed by FSMC (vendor).
- \_\_\_ Food specifications and meal quality standards.
- \_\_\_ Food procurement specifications. Refer to Attachment D for sample procurement specifications. Sponsors may contract with a consultant or specialist to assist in writing quality procurement specifications including food product specifications and menus for summer meals. The cost of this consultant service is an allowable administrative cost to the SFSP. Sponsors that need assistance in increasing the quality and customer acceptance of their summer meals should consider contacting a local nutrition and/or food service specialist.
- \_\_\_ A 60-day termination clause whereby either party may cancel for cause.

**All Commercial FSMC Contracts that equal or exceed \$250,000 annually must ensure the following requirements are met.**

- \_\_\_ Complete the standard Invitation For Bid (IFB), **Attachment C**, furnished by the State Education Department (SED).
  - \_\_\_ Insert on page 1 a bid bond\* percentage not less than 5 percent or more than 10 percent of the value of the contract.
  - \_\_\_ A performance bond\* percentage of 10 percent of the value of the contract.
- \_\_\_ Include the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions”, signed by FSMC (vendor).
  - page 12.
- \_\_\_ Include “Certification Regarding Lobbying”, and “Disclosure of Lobbying Activities”, signed by FSMC (vendor) pages 14-16.
- \_\_\_ Sponsors going out to bid for the first time must submit a plan for and synopsis of the IFB advertisement and bid specifications to SED with the sponsor annual application/renewal.
- \_\_\_ Sponsors are encouraged to submit bid specifications to SED four weeks prior date of bid opening to ensure that they meet Federal and State requirements.
- \_\_\_ If the IFB has changed from the previous year, submit a copy of the IFB to SED.

- \_\_\_ Publically announce at least once, the invitation for bid not less than 14 days before the bid is opened.
  - \_\_\_ Advertisement must contain a statement of the time, date and location where all bids received will be publicly opened and read. **Attachment F** is a sample bid advertisement
  - \_\_\_ Publish advertisement in the newspaper(s)/website(s) having the largest circulation.
  - \_\_\_ Obtain Affidavit of Publication from the company(s) that published the bid advertisement indicating the date(s) the advertisement was printed.
- \_\_\_ Notify SED of the bid opening not less than 14 days before bids are opened.
- \_\_\_ Publically open all bids in the presence of an SED Child Nutrition Program representative.
- \_\_\_ Submit the following documents to SED for approval before awarding the contract:
  - \_\_\_ The Affidavit of Publication from the company(s) that published the bid advertisement indicating the date(s) the advertisement was printed.
  - \_\_\_ Copies of all bids received
  - \_\_\_ Bid Award Summary (**Attachment H**).

\*Bid and Performance Bonds must be obtained only from surety companies listed in the current Department of the Treasury Circular 570. A copy of Circular 570 is available from the Government Printing Office for a small fee. Sponsors may obtain a copy by calling (202) 512-1800, or by downloading at: <http://www.fms.treas.gov/c570/index.html>. No "alternative" forms of bonds, i.e., cash, cashier's check, certified checks, letters of credit or escrow accounts, etc. shall be allowed.

*Commercial FSMC Contracts may not include:*

- ✓ A minimum bid price.
- ✓ Special meal requirements to meet ethnic or religious needs unless such needs are necessary to meet the needs of the children to be served.

**Commercial FSMC Contract Extension** - Sponsors, with SED approval, may execute agreements with FSMCs that include an option for renewal that does not exceed four additional years from the original agreement. **Attachment E** is the extension of contract.

Original contracts having a value of less than \$250,000.00 must be rebid in accordance with Section 225.15 (m), Part 7 of the Consolidated Federal Regulations if contract extension will equal or exceed \$250,000.00.

Sponsors wishing to extend their contract:

- \_\_\_ Complete the Extension of Contract, **Attachment E**

- \_\_\_ If the sponsor in an urban location is negotiating an increase in meal prices with the FSMC, the sponsor must obtain the current annual figure of the Consumer Price Index, New York-Northern New Jersey at [https://www.bls.gov/regions/new-york-new-jersey/news-release/consumerpriceindex\\_newyorkarea.htm](https://www.bls.gov/regions/new-york-new-jersey/news-release/consumerpriceindex_newyorkarea.htm) when calculating the maximum increase allowable for the new meal price on their extension. From the CPI-U

(Table A) obtain the current 12-month figure (last column and row on the table) and convert it to a percentage and then multiply by the meal price fee from the previous year.

For example:

*This a sample month only, you need to use the current month/year when you complete this calculation*

February CPI-U = 2.7 converted to a percent is .027

$.027 \times \$1.37$  (2011 breakfast price fee) = .03699

$.03699 + \$1.37 = \$1.40699$  or \$1.41.

- \_\_\_ Include the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions” if the contract is expected to equal or exceed \$25,000.
- \_\_\_ Include “Certification Regarding Lobbying”, and “Disclosure of Lobbying Activities”, if the contract is expected to equal or exceed \$100,000.
- \_\_\_ Confirm that the FSMC has not been debarred and added to the Excluded Parties List System at [www.sam.gov](http://www.sam.gov).
- \_\_\_ Submit the contract extension to SED for approval no later than 14 days prior to the beginning of program operation. Programs operating prior to SED approval may not be allowed to claim reimbursement for meals served during that time.

## **SUBMISSIONS TO THE DEPARTMENT**

All documents that are required to be submitted to the Department should be sent to:

New York State Education Department  
Child Nutrition Program Administration  
Summer Food Service Program  
89 Washington Avenue  
375 EBA  
Albany, NY 12234-0055  
Fax: (518) 474-9920  
Email: [cnsfsp@nysed.gov](mailto:cnsfsp@nysed.gov)