



**Food and Nutrition Service
Memos on Food Service Management Contracts**

This document contains the following current memorandums that describe procurement and contractual requirements when a school enters into a contract for management of the school food service.

Date of Memo	Title of Memo	Subject(s)
January 2006	Application of OMB Cost Principles to Fixed-Price Management Contracts	Federal cost principles are not applicable to the costs underlying fixed-price meal charges.
June 2005	Distinction Between Catering Contract and Food Service Management Contract	Characteristics that distinguish whether a contract is for management of the food service or catering only.
June 2005	USDA Q&As on Procurement of Automated Accountability Systems in Conjunction with Food Service Management Company	Procurement of computerized systems in conjunction with management contracts.
June 2004	Responsibilities of Schools with Food Service Management Contracts	Responsibilities that must be maintained by the school in a food service management contract. Common audit findings concerning management contracts.
April 2002	Procurement Requirements for Management Company Purchases	Requirements for procurement of food, equipment, and other supplies by management company.

DATE: January 27, 2006
TO: Sponsors of School Nutrition Programs
FROM: Joseph Lee, Policy Coordinator
Food and Nutrition Service
SUBJECT: Application of OMB Cost Principles to Fixed-Price Food Service Management Contracts

This information applies to school food authorities (SFA) that contract with food service management companies (FSMC).

We previously provided a link to a July 2005 USDA memo that clarified whether OMB cost principles are relevant to the food acquisition costs borne by an FSMC charging an SFA a fixed price per meal for the reimbursable meals and contractually agreed upon meal equivalents served under a contract. For your reference, following is the complete text of the July 2005 USDA memo.

Text of USDA memo:

Pursuant to 210.19(a)(2), the SFA must ensure that all expenditures from its nonprofit school food service account meet the requirements for allowable costs. To be allowable, the cost must meet OMB cost circular requirements. That said, in a properly procured fixed price contract, the SFA's responsibility for determining allowable contract costs generally does not require applying the OMB cost principles to the contractor's cost underlying the fixed price meal charge. A SFA still has responsibilities under a fixed price per meal FSMC contract to determine that all costs are allowable nonprofit food service account expenditures, but these responsibilities are directed toward ensuring that contract terms and program requirements have been met. For example, the SFA must determine that the invoice from the FSMC is mathematically correct, i.e., number of meals and meal equivalents billed equals the number of meal and meal equivalents served in the school nutrition programs, the meals met the meal pattern and other contractual requirements, and the meals are billed at the contractual fixed price per meal. SFAs cannot use a fixed price meal contract to pay for otherwise unallowable costs, for example, the cost of lunches that do not meet the meal pattern requirements.

If you have any questions about this information, please contact FNS – Policy Team at 651-582-8526, 800-366-8922, or e-mail to fns@state.mn.us.

TO: Sponsors of School Nutrition Programs

FROM: Linda Rosenbaum-Grubbs, Supervisor
Food and Nutrition Service

SUBJECT: Distinction Between Catering Contract and Management Contract

DATE: June 21, 2005

This information applies only to school food authorities (SFAs) that contract to purchase meals from a caterer and claim the catered meals for program reimbursements. This does not apply to contracts for the sale of meals from SFAs to other organizations or groups.

Since the original FNS memorandum on the topic of distinguishing between catering contracts and management contracts was issued in April 2004, questions have arisen concerning implementation. The information in this memorandum, which was originally stated in a September 24, 2004 listserv message to SFAs, replaces the April 2004 memorandum.

Catering Contract Compared to Management Contract

For School Nutrition Programs purposes, a company that prepares menus and meals, but does not assume additional program responsibilities including counting reimbursable meals or ordering and accounting for commodities, is considered a catering company and not a food service management company. The table on the next page summarizes the main differences between a catering contract and a food service management contract.

A catering contract template that includes all program requirements is available on the MDE website. The template was recommended for 2004-05 catering contracts and is required for all catering contracts effective school year 2005-06.

If a company is determined to be a food service management company for program purposes, additional requirements apply.

Contractual Retention of Program Responsibilities

A school must retain its program responsibilities when purchasing meals from a caterer. Program responsibilities that may not be delegated to a catering company include:

- Counting and reporting reimbursable meals.
- Managing the process for ordering and accounting for USDA commodities.
- Determining student eligibility for free and reduced-price meals.
- Access to CLiCS. (Schools may not give company personnel access to CLiCS by sharing User ID's and passwords.)

If you have any questions about this information, please contact FNS - Applications Team or Policy Team at 651-582-8526, 800-366-8922, or e-mail to fns@state.mn.us.

Program Requirements – Management Contract Compared to Catering Contract		
	Food Service Management Contract	Catering Contract *
Applicable Procurement Law	Formal procurement with sealed bids or proposals is usually required due to the size of management contracts. Federal procurement rules are in 7 CFR 3016 for public organizations and 7 CFR 3019 for private nonprofit organizations. For school districts, state procurement law also applies.	If the catering contract is less than \$50,000 (for school districts) or \$100,000 (for nonpublic organizations), less formal “quotations” may be used instead of sealed bids.
FNS Review of Procurement	A school food authority must submit documentation of the procurement of the management contract to Food and Nutrition Service for review.	Documentation of procurement efforts for a catering contract is not submitted to Food and Nutrition Service. Procurement records must be available for review upon request.
Required Provisions	“Addendum” and “Renewal” forms, available on the MDE website, contain federal and state provisions that are required in a management contract. The “Addendum” form must be included as part of a new management contract. The “Renewal” form must be used to renew a management contract.	A standard catering contract, which includes all federally required provisions, is available on the MDE website. Effective school year 2005-06, the standard catering contract must be used to ensure that program requirements are met.
FNS Review of Contract	A school food authority must submit a copy of its management contract, or the renewal document in subsequent years, to Food and Nutrition Service each year for review.	Catering contracts are not submitted to Food and Nutrition Service. A catering contract must be available for review upon request.

* This information applies to an SFA’s catering contract for the purchase of meals that will be claimed for National School Lunch Program or School Breakfast Program reimbursement. It does not apply to an SFA’s contract for the sale of meals that will not be claimed for program reimbursement.

TO: Sponsors of School Nutrition Programs

FROM: Joseph Lee, Policy Coordinator
Food and Nutrition Service

DATE: June 14, 2005

SUBJECT: USDA Q&As on Procurement of Automated Accountability Systems in
Conjunction with Food Service Management Company

The following information on procurement requirements for automated accountability systems (such as point of service, inventory, financial management) has been provided by the U.S. Department of Agriculture. These Q&As apply only to SFAs that will combine the procurement of automated accountability systems and procurement of a food service management company.

If you have any questions about this information, please contact FNS – Policy Team at 651-582-8526, 800-366-8922, or e-mail to fns@state.mn.us.

Text of USDA Q&A:

Question 1: Can a food service management company (FSMC) act as the school food authority's (SFA) agent to procure automated accountability systems (point of service, inventory, financial management, etc.)?

Answer: Generally, the SFA can use a single contractor to perform more than one function. For example, an SFA can contract with a FSMC to manage its food service and act as its procurement agent for acquiring an automated accountability system. However, the SFA must ensure that its procurement solicitation and contract identifies the scope of duties the FSMC must fulfill and the FSMC's responsibilities as the agent of the SFA. The solicitation and contract documents should also include a description of the procedures the FSMC must follow in procuring the automated accountability system since the FSMC, as the SFA's agent, must comply with the same requirements the SFA would use to procure the system. The solicitation and contract documents must also identify whether the SFA or the FSMC as the SFA's agent will sign the contract with the successful system's bidder. Finally, the SFA should include an adequate description of how the FSMC will be paid for these services and how the SFA will pay for the system.

Question 2: Some FSMCs apparently have pre-existing arrangements with specific software companies. Is this a problem if the SFA seeks to use a FSMC that has such an arrangement for its automated accountability system?

Answer: While it is not a problem in the procurement of the FSMC, it may render the FSMC's software partner ineligible to compete for the SFA's software acquisition. Department regulations at 7 CFR Part 3016 prohibit the participation of an employee, officer or agent in the award or administration of a contract when an actual or apparent conflict of interest exists. A conflict of interest can arise when the employee, officer or agent or an organization which employs or is about to employ any of the preceding has a financial

interest in the firm selected for award. If the SFA's solicitation document for a FSMC requires the FSMC act as the SFA's agent to acquire the automated accountability system, then the FSMC must follow the same procurement procedures that SFA would use to obtain the software system. Since the FSMC has a pre-existing relationship with a specific software partner at least the appearance, if not an actual, conflict of interest, could arise.

Question 3: Can the SFA issue a FSMC procurement solicitation that requires the FSMC provide an automated accountability system?

Answer: Yes, but there are factors the SFA must consider. First, the SFA must develop its own software and hardware specifications for the automated accountability system and include those with its FSMC procurement solicitation. The ranking and evaluation of a combined FSMC and automated accountability system solicitation will require a higher degree of technical expertise than would normally be required to obtain a FSMC. Second, the SFA needs to ensure that it has not unduly restricted competition by requiring the FSMC provide both food service management and the automated accountability system. Third, the SFA needs to remember that it will not "own" the software system, but will only have access to it for the period of its FSMC contract. This means that the automated accountability system must be viewed as a one year acquisition since its FSMC contract is only a one-year contract (with up to 4 one-year renewals).

Question 4: As an alternative to question 3, can the SFA issue a FSMC procurement solicitation that requires the FSMC provide an automated accountability system that the SFA will own?

Answer: Yes. However, the SFA will still need to develop its software and hardware specifications so that the system it acquires is not dependent on the renewal of its FSMC contract. Additionally, the SFA must ensure that the automated accountability system is not integrated with FSMC's system so that it would be able to function with another FSMC or a self-operated food service.

Question 5: Are there any other factors an SFA needs to consider when it seeks to combine its procurement of some type of automated accountability system with its procurement of a FSMC?

Answer: Yes, there are a number of other factors the SFA needs to consider. Among these are that the automated accountability system may require multi-year implementation. If a multi-year approach is required, it cannot be dependent upon the renewal of its FSMC contract. Second, if the automated accountability system's cost will be amortized over more than one year, non-renewal of the FSMC's contract cannot cause acceleration of the payment schedule without approval of the SFA. Third, if the automated accountability system will include student eligibility information, the SFA must ensure adequate controls exist to prevent improper use or disclosure of that information. Fourth, the SFA needs to ensure any automated accountability system is compatible with its school district's current and long term automation plans including its district's requirements for software and hardware compatibility and integration. Finally, if the FSMC will use a subcontractor to provide the

automated accountability system, the SFA needs to determine the extent to which it will have authority to accept or reject a particular subcontractor and whether subcontracting is permitted under applicable State and local rules.

**FOOD AND NUTRITION SERVICE
MEMORANDUM**

DATE: June 2, 2004

TO: SPONSORING AUTHORITIES of FROM:
National School Lunch Program

SUBJECT: **Responsibilities of Schools with** FROM:
Food Service Management Contracts Linda Rosenbaum-Grubbs, Supervisor
Food and Nutrition Service

*This information applies to school food authorities with food service management contracts.
This replaces the original FNS memorandum dated May 21, 2004.*

Recent audits conducted by the USDA Office of Inspector General have found that some school food authorities with food service management contracts are abandoning their National School Lunch Program responsibilities either through direct delegation to their management company or through inadequate oversight of management company operations.

Contracting with a management company does not relieve a school food authority of its responsibilities for meeting program requirements. By the terms of the Permanent Agreement for school meal programs between a school food authority and the Minnesota Department of Education, a school food authority must retain responsibility for ensuring that its school food service meets National School Lunch Program requirements. The school food authority may not delegate to a management company the school food authority's responsibilities for:

- Using nonprofit food service account funds to pay only allowable costs regardless of the costs billed by the management company.
- Determining the eligibility of children for free and reduced-price meals.
- Ensuring that only reimbursable meals are included on the claim for reimbursement regardless of the number of meals billed by the management company.

The school food authority may not permit the accrual of all income and expenses to the management company.

The school food authority must have procedures in place to determine the validity of meals claimed for reimbursement.

The school food authority is responsible for ensuring that any deficiencies in the food service are identified and that effective actions are taken to correct deficiencies. The school food authority must conduct an annual on-site review of each school prior to February 1 of each school year. When the review identifies problems with a school's meal counting or claiming procedures, the school food authority must ensure the school implements corrective action and must conduct a follow-up on-site review within 45 days of the review.

USDA-OIG Audits

Recently, USDA-OIG conducted audits in other states of twenty-four school food authorities with food service management contracts. Sixteen of the twenty-four school food authorities failed to provide proper oversight of their school food service operation and their management company.

Problems identified in the OIG audits included these errors by school food authorities:

1. Inflating meal claims (claiming more meals than billed by their management company);
2. Reimbursing the management company for meals that were not supported by documentation;
3. Failing to reconcile the number of meals claimed with the number of meals billed by the management company;
4. Using nonprofit food service account funds to pay unauthorized and unallowable costs billed by the management company;
5. Allowing all food service revenue to accrue to the management company;
6. Delegating approval of student eligibility for free and reduced-price meals.

If you have any questions about this information, please contact Food and Nutrition Service – policy team at 651-582-8526, 800-366-8922, or e-mail to fns@state.mn.us.

**FOOD AND NUTRITION SERVICE
MEMORANDUM**

DATE: April 3, 2002

TO: SPONSORING AUTHORITIES of School Nutrition Programs
With food service management contracts

FROM: Mary Begalle, Director
Food and Nutrition Service

SUBJECT: Procurement Requirements for Management Company Purchases

This is to clarify requirements for procuring food, equipment, and other supplies and services under a food service management contract.

- In general, federal regulations require procurement procedures to be followed when obtaining supplies, food, equipment and other services. “These requirements ensure that such materials and services are obtained for the Program efficiently and economically.” (7 CFR 210.21(a))
- Management companies with **cost-based contracts** must follow federal procurement procedures when incurring costs because costs will be passed along to the school food authority under the terms of the contract. A management company operating under a cost-based contract may not, for example, limit its suppliers to a group with which it has an ongoing business relationship.
- If the contract between the school food authority and the food service management company is not cost-based, but instead uses a **flat fee or per-meal rate**, then all of the charges from the management company to the school food authority have been properly procured. In this situation it is not necessary to control the charges between the management company and its suppliers by obliging the management company to follow federal procurement procedures when obtaining goods and services.

If you have any question about procurement procedures relating to food service management contracts, please contact FNS at (651) 582-8526 or (800) 366-8922.