



Office for Prekindergarten through Grade 12 Education
School Operations and Management
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TO: School Business Administrators Contracting With Management Companies
FROM: Paula Tyner-Doyle, Coordinator
SUBJECT: 2013-2014 Food Service Management Co. Contract and Extension Information Memo

» IMPORTANT NEW INFORMATION ~ PLEASE READ CAREFULLY «

This memo covers important information and regulatory updates concerning the use of a food service management company (FSMC) in public schools, non-public schools and institutions participating in the Child Nutrition Programs. Please read in its entirety.

PLEASE NOTE: All contracts/extensions are between the School Food Authority (SFA) and a Food Service Management Company and are subject to review and approval by New York State Education Department (NYSED) in accordance with applicable federal and state laws.

All SFAs must follow USDA's food based menu plan; check your current contract/extension to ensure your SFA is indeed following USDA food based menu plan option. We anticipate that there may be some current contracts between SFAs and FSMCs that are consistent with the new nutrition standards of the final rule. Each contract is unique.

The final rule titled *Nutrition Standards in the National School Lunch and School Breakfast Programs* continues to impact current contracts between SFAs and FSMCs. NYSED has included a copy of the *Final Rule Nutrition Standards in the National School Lunch and School Breakfast Programs chart and Implementation Timeline*.

The SFA should be annually reviewing its FSMC contract with no expectation by either party to renew the contract. USDA has issued guidance on how to determine if there will be a "material change" to an existing FSMC Contract. SFAs must use the following criteria to determine if the changes constitute a material change to the contract:

1. If there would be an increase or decrease to the cost of the contract, would it have caused bidders to bid differently if the prospective change had existed at the time of bidding?
2. Would the prospective change materially affect the scope of services, types of food products, volume of food products, etc., in both the solicitation document and resulting contract? For example, the final rule requires schools to serve whole-grain rich products, and specific varieties of vegetables, increased amounts of fruit, etc., which already may be included in current contracts.

If costs to meet the new standards will result in increased costs beyond what is stipulated in the current contract the SFA must go out to bid. The SFA can not pay the FSMC for "additional costs".

Both the SFA and the FSMC must review their current contract. SFAs and FSMCs should keep in mind the increase of the bid price against the Consumer Price Index for All Urban Consumers (CPI-U) when determining if there is a material change to the contract. The current CPI-U can be found at www.bls.gov/ro2/cpinynj.htm.

If it has been determined, by either party, that the final rule constitutes a material change to the contract, then the SFA must go out to bid for the 2013-2014 school year.

If the final rule does not constitute a material change to the contract, SFAs will be allowed to extend for the 2013-2014 school year. However, both the SFA and the FSMC will need to agree to the terms of any amendment to the current contract necessary to ensure full implementation of the final rule. The 2013-2014 NYSED prototype FSMC Extension will include a required amendment which states that both the SFA and FSMC will be in full compliance and meet all the requirements set forth by USDA, including the food based menu planning requirement and implementation timeline without an increase in the contract price.

SFAs cannot pay above net allowable costs and FSMC must clearly disclose these costs. SFAs must review expenses to determine 1) if allowable charges are the net of rebates, discounts and applicable credits received, and 2) if they are necessary, reasonable and allocable to the Child Nutrition Programs. For example, charges incurred for labor and other expenses for a PTA luncheon cannot be allocated to the Child Nutrition Programs.

If the board of education, staff or students are not satisfied with the current FSMC, or if the SFA wants to make material changes to the food service operation to fulfill the recommendations of their wellness plan, the contract must be re-bid using the Department's revised bid specifications and contract for 2013-2014.

It is required that all public schools, non-public schools, residential child care institutions and jails participating in the National School Lunch, Breakfast and/or Special Milk Program that use the services of a FSMC, caterer, or consultant preparing meals on site, on a daily basis and running their food service operation in whole or in part, must competitively bid for services by complying with the following:

1) SFAs must use the 2013-2014 bid specification and agreement provided by the New York State Education Department.

(Failure to use the prototype contract will result in disapproval of the contract and the SFA having to rebid. Any changes to the prototype contract must be approved in writing by NYSED prior to letting bids.) Therefore:

- Complete NYSED Prototype Pre-bid FSMC Contracts are to be emailed to elattanz@mail.nysed.gov 30 days prior to letting bids.
- The Child Nutrition Program (CNP) Office must approve all FSMC contracts or extensions for SFAs to receive reimbursement for meals and milk served to students.
- Any changes, additions and/or deletions (also referred to as riders, addenda or addendum) to the State agency prototype contract must be submitted for review and approved prior to letting bids as required by the revised regulations and included in the designated portion of each contract type. Failure to do so will result in the SFA being required to properly rebid the contract.
- Schedules A-I must contain complete information and be included in with the prototype pre-bid contract for review and approval by the NYSED CNP Office. A NYSED CNP Office pre-approval letter will be sent to the SFA once the pre-bid has been approved.
- Changes to the contract are to be kept to a minimum. Altered specifications and/or contract are to be emailed in to NYSED CNP Office for approval 30 days prior to letting bids. *(A precautionary measure taken to ensure that the contract remains in compliance with federal and State regulations)*
- After bids have been let, the contract term is for one year and may be extended each year, for an additional four years.
- An increase to the bid price is limited to no more than the increase in the Consumer Price Index for Urban Consumers (CPI-U) for the New York-Northeastern New Jersey area. (Please visit www.bls.gov/ro2/cpinynj.html for the appropriate extension percentage)
- Going out to bid prior to submitting the bid for approval to The NYSED CNP will result in withholding reimbursement and/or potential loss of funds.
- Significantly changing menu items offered to students that result in higher costs to the FSMC are material changes to the food service operation and will require re-bidding of the current contract.
- Consult your school attorney to determine what other areas are considered material changes to the contract.

2) SFAs must follow the bidding procedures outlined in New York State General Municipal Law § 103. Specifically:

- Advertise the bid in the official school district's newspaper or one having general circulation in that locality. The SFA is required to **submit a notarized affidavit of publication** from the newspaper that advertised the

bid as proof of publication. **Failure to provide the affidavit of publication with the submission of the signed contract will cause the contract to be disapproved and require re-bidding of the contract.**

- At least five days shall elapse between the first publication of such advertisement and the date so specified (in the advertisement) for the opening and reading of bids. **It is the SFA's responsibility to ensure that the bid notice was published and enough time elapsed between the first advertisement and the date bids are opened. Recommendation:** Allow two weeks before advertised bids are opened and read, thereby providing ample time for bidders to visit the sites where work will be performed.
- **Visits to the sites where work will be performed must be scheduled after the bid has been advertised.** *(The requirements of the bid specification and agreement must be known to all potential bidders at the time the work site is examined, in order to provide a level playing field for all potential bidders, which includes the incumbent FSMC. The goal of competitive bidding is to provide a level playing field for all potential bidders. Creating an advantage for one potential bidder is clearly inappropriate).* **Failure to follow this procedure will result in the contract not being approved by our office and the SFA will be required to properly re-bid the contract.**
- The SFA must include with their contract submission a copy of the board meeting minutes selecting the winner of the bid if the lowest bidder is not chosen.

3) Bid documents and extensions are due in our office for approval on or before the prior month the contract begins. The following time table lists the due dates for approval of contracts and extensions:

Contract term start date (for new contracts or extensions)	Documents due to the Child Nutrition Program Office for approval on or before:
July	June 1 st
August	July 1 st
September	August 1 st
October	September 1 st
November	October 1 st
December	November 1 st
January	December 1 st
February	January 1 st
March	February 1 st
April	March 1 st
May	April 1 st
June	May 1 st

Failure to adhere to these due dates could result in reimbursement holds and/or possible loss of reimbursement.

Additional Information Included in this Packet:

- Guidelines for Submitting a Successful Contract
- 2013-2014 Updates to the Contract
- Summary of SFA and/or FSMC Ongoing Responsibilities
- The Contract
- Contract Review Process
- Contract Type II
- Calculating Vendor Payment under Type II contract
- Contract Type III
- Contract Type IV
- Definitions
- Acronyms
- Important Telephone Numbers and Web Addresses
- Important Regulatory References
- Food Service Management Company listing for 2013-2014 (*For informational purposes only. The Department does not have a formal registration procedure for FSMCs and does not endorse any FSMC.*)

If you have any questions, please contact Jamie McMillian, Elizabeth Lattanzio, Linda St. Pierre, Michele Beaver and Jerry Cioffi in Child Nutrition Program Administration at (518) 474-3956.

Recommended Steps to Successfully Submit A Contract for Approval

Read the Checklist. Ensure that each item listed is included with your submission, check it off on the checklist and then sign the checklist. **Submittal of the required checklist with your signature indicates that you verified that each item is included with the contract and complete.** If the checklist has not been used and/or signed, the documents will be returned to the Superintendent/Headmaster/Board President without being reviewed.

IMPORTANT INFORMATION REGARDING

PRE-APPROVAL CONTRACTS AND EXECUTED CONTRACTS

- ✓ **Pre-Approval Contract** - Any changes, additions, and/or deletions (also known as riders, addenda, or addendum) to the state agency 2013-2014 prototype contract must be submitted to Child Nutrition Program (CNP) for review and approval 30 days **prior** to letting bids as required by the federal and State regulations and included in the designated portion of each contract type. Failure to do so will result in the SFA being required to properly rebid the contract. Changes to the contract are to be kept to a minimum. **NYSED Prototype Pre-bid FSMC Contracts are to be emailed to elattanz@mail.nysed.gov 30 days prior to letting bids. ONLY COMPLETE PACKAGES WILL BE ACCEPTED.** A NYSED pre-approval letter will be sent to the SFA once the pre-bid has been approved.
 - ✓ The Table of Contents indicates the page numbers and outlines each area that requires the SFA's attention to **fill-in the blanks and/or circles the responsible party; complete charts; check boxes, complete forms, schedules and exhibits, specify required information and signatures.** (*Changes have occurred please note*)
 - ✓ **Table of Contents/Required Forms**
 - Form #1** and **Form #1A** - SFA Amendments to NYSED Prototype Contract
 - Form #3** - Bid Summary
 - Form #5** - Notarized Affidavit of Publication * ad must be attached to the affidavit
 - Form #7** - Debarment Option B
 - Form #7B** – Disclosure of Lobbying
 - Form #9** - Certification of Insurance
 - Form #11** - Summer Food Service Program
 - Form #12** - After School Snack
 - Form #2** - Cover Page
 - Form #4** - Board Minutes
 - Form #6** - Debarment Option A
 - Form #7A** - Certification of Lobby
 - Form #8** - Preparation of Bid Specifications
 - Form #10**- Performance Security *Submit proof of insurance
 - Form #11A /B**- Summer Food Service Program
 - ✓ **Table of Contents/ Required Schedules ***
 - Schedule A** - Menus and Related Materials
 - Schedule C** - Local Wellness Policy
 - Schedule D2** - Cost Responsibility Detail Sheet Explanation
 - Schedule F** - Food Safety Plan and Additional Food Safety Specifications
 - Schedule H** – Financial Accounting Attestation Statement
 - Schedule B** - Food and Beverage Specifications
 - Schedule D1** - Cost Responsibility Detail Sheet
 - Schedule E** - Itemized Inventory List
 - Schedule G** - Staffing Schedules and Other Related Information
 - Schedule I** – Additional Schedules
- *Ensure that only related items are included in applicable schedules**
- ✓ Do not submit binders with promotional information.
 - ✓ Any time the “FSMC/SFA” appears in the contract or bid specifications, the SFA must circle a choice as to which party is responsible for the task.
 - ✓ Ensure that Method A or B is selected in the bid specification.
 - ✓ Ensure that all pages are included (agreement **and** bid specifications) with the required **SIGNATURES AND DATES.**
 - ✓ Ensure all pages are submitted in proper number order. Do not reorder pages.
 - ✓ Check math to determine if the bid amount is calculated correctly.
 - ✓ Submit the required summary of bids form listing all bids received and indicating which bid was accepted.
 - ✓ Ensure that checklist is completed and signed.

RECOMMENDED STEPS TO SUCCESSFULLY SUBMIT AN EXTENSION FOR APPROVAL

Read the Checklist. Ensure that each item listed is included with your submission and check it off on the checklist, then sign the checklist.

Submittal of the required checklist with your signature indicates that you have verified that each item is included with the extension and complete. If the checklist has not been used and/or signed, the documents will be returned to the Superintendent/CEO/Board President without being reviewed.

The 2013-2014 extension must be completed on line. However, you must print it off and **submit a copy** of your original extension to the Child Nutrition Program (CNP) for review and approval. Once approved, an approval letter will be sent to the Superintendent/CEO of the SFA. The approval letter is for placement with the original contract extension in your files. (Remember to give a copy of the approved contract extension to the FSMC for their files.)

*** It is important to read the INSTRUCTIONS as the contract extension has changed for the 2013-2014 school year.**

EXTENSIONS:

- ✓ All lines on the extension form must contain appropriate information or N/A if information is not applicable as we can not accept extensions with any blanks. Extensions with blanks will not be accepted and will be returned to the Superintendent/CEO/Board President without being reviewed. It is also essential that you have a copy of your original contract for your reference when completing the extension. Please contact our office at (518) 474-3956 if you need a copy.
- ✓ **REQUIRED CHECKLIST** – The required checklist is to help assist you in properly completing the extension and must be filled out and submitted with the document.
- ✓ **SECTION 1** - The commencing and ending dates must be the same as the original contract date (month, day, and year). *See original contract, agreement section. Have a copy of the original contract for your reference to facilitate completing the extension. In the event you need a copy, please contact our office at (518) 474-3956.*
- ✓ **SECTION 2** – The commencing and ending dates must be the same month and day with the appropriate new year. If different, include proof of approval from School Board via minutes or letter signed by the School Board President.
- ✓ **PLEASE READ YEAR 2 OF FSMC CONTRACT (ORIGINAL CONTRACT 2012-2013)**
 - BREAKFAST IS NOT SUBJECT TO THE CPI-U INCREASE IF BID OPTION 2 WAS USED.
 - THE CONVERSION FACTOR TO BE USED IN THE 2013-2014 SCHOOL YEAR TO CONVERT A LA CARTE SALES WILL BE \$3.60 AS DETERMINED BY NYSED.
- ✓ Use the CPI-U online worksheet to:
 - ENSURE THAT THE CORRECT MONTH'S CPI-U IS USED - (check here <http://www.bls.gov/ro2/cpinynj.htm> or call the Bureau of Labor Statistics – New York Regional Office at 646-264-3600)
 - Ensure math calculations for the contract extension are correct
 - FOLLOW ROUNDING OF THE ORIGINAL BID PRICE. For example, if the original bid price stated a dollar amount with 4 decimal places the extension amount must be a dollar amount with 4 decimal places.
- ✓ Fill-in all required information for Type II, III, or IV contract meal pricing
- ✓ Guaranteed Return – *is not subject to CPI-U increase and must agree with section 1 of the extension or the original contract if applicable*
- ✓ Check Participation in the Summer Food Service Program
- ✓ Ensure all required SIGNATURES AND DATES
- ✓ Complete Required FORM #1 – Nutrition Standards in the National School Lunch and Breakfast Programs
- ✓ Return a completed “Certificate of Lobbying” form and the “Lobbying Activities” form, if applicable.
- ✓ Return Debarment Option A (SFA) or Debarment Option B (FSMC). Do not submit both.

- ✓ Ensure that checklist is completed and signed.

2013-2014 Contract and Extension Information

1. Revisions

Several clauses in the Agreement section have been revised for each contract type to comply with federal and State regulations. It is extremely important that the SFA review the revised clauses listed below to become familiar with the new language.

A. SCOPE AND PURPOSE - The following sections under Scope and Purpose have been updated in the contract please refer to the applicable numbered sections and letter:

6 - Production Records and Standardized Recipes

- **Letter A** – Production records (7CFR 210.10(a)(3)) and standardized recipes (7CFR 210.10(1)(8)) are to be used in all schools throughout the SFA by the FSMC as required by federal and state regulations to ensure consistency, quantity and quality of meals served. All standardized recipes are to be kept on file in each kitchen and must indicate all ingredients and portion sizes. Samples of the standardized recipes to be used by the FSMC must be included in Schedule A with your bid.
- **Letter E** – Daily, accurate, production records (7CFR 210.10(a)(3)) are to be completed for each meal, in all buildings by the FSMC and kept on file for 3 years plus the current year, in the SFA, for auditing purposes as required by federal and State regulations. Samples of the production records to be used by the FSMC must be included in Schedule A with your bid.

9 – Monitoring

- **Letter C** – The SFA can recoup funds from the FSMC in the event fiscal action is taken by SED against the SFA based on areas of noncompliance related to the menu/meal pattern found during any review throughout the duration of this contract.

11 – USDA Foods

- **Letter Q** – The FSMC will use all USDA Foods ground beef and ground pork products, and all processed end products, in the SFA food service in accordance with CFR Part 250.53(5).
- **Letter R** – The Department of USDA foods, The NYS Child Nutrition Program Office, The SFA, The NYS Comptroller, The Department of Agriculture, or their duly authorized representatives may perform onsite reviews of the FSMC's food service operation, including the review of the records, to ensure compliance with requirements for the management and use of USDA Foods in accordance with CFR Part 250.53(10).

12 – Purchases

- **Letter E** – The FSMC shall be solely responsible for the purchase and payment of all foods and beverages necessary for it to render proper performance of the food service program as stated herein. Such purchases and performance shall apply to all items in addition to food and beverage, which will be necessary for compliance with and of this agreement. The FSMC is required to disclose discounts, rebates and other applicable credits whether the amounts were received by the contractor itself, a subsidiary or an affiliate of the contractor or entities under the control of the same parent corporation of the contractor. The FSMC will itemize current rebates, discounts, and credits on the monthly operating statements prior to submission to the SFA each month. An Attestation Statement will be signed by the FSMC on a monthly basis upon receipt of the monthly operating statement from the FSMC to the SFA.

16 – Sanitation/Health Certification

- **Letter D** - The **FSMC/SFA** shall **clean** the grease traps in the food service area to be in good working order.
- **Letter E** - The **FSMC/SFA** shall **maintain** the grease traps in the food service area to be in good working order.

21 – Vending Machines

- **Letter A** – The FMSC must ensure that all sales generated these a la carte vending machine sales accrue to the SFA and be deposited into the SFAs food service account and converted onto equivalent meals using the conversion factor which is determined by SED. The total number of vending machines determined by the SFA to be a part of the Child Nutrition Program whose sales must be converted to equivalent meals are _____.
- **Letter B** – The N/A SFA FSMC will be responsible for stocking, maintenance, upkeep and emptying monies from the Child Nutrition a la carte vending machines and must provide a verifiable audit of items sold and revenues received.
- **Letter C** – Timers may be requested for vending machines at the discretion of the SFA.

22 – Financial Accounting, Reporting and Auditing

- **Letter B** – The maximum per meal cost (bid amount) is \$_____ for breakfast, \$_____ for lunch and \$_____ for snack.
- **Letter I** – Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing credits to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the of the cost billed to the SFA. The FSMC must clearly identify, disclose and provide sufficient supporting documentation to the SFA for current rebates, discounts and credits on the monthly operating statement. A signed Attestation Statement in accordance with Schedule H of this contract will accompany the monthly operating statement from FSMC to the SFA.

For Method A or Method B the contractor must clearly identify, disclose and provide supporting documentation and a certification statement in accordance with schedule H that declares:” I certify that the information provided on monthly operating statements submitted to the SFA, all bills, invoices and receipts are net of all rebates, discounts and credits and the information included in the monthly operating statements are true and correct to the best of my knowledge.” Therefore, the SFA must choose one of the following two methods available to fulfill this requirement as indicated below:

(CHECK ONE)

Method A – The contractor must separately identify each cost submitted for payment to the SFA the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount of that cost that is unallowable (cannot be paid from the nonprofit school food service account);

OR

Method B –The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment. All records, bills and invoices must be available for review at any time by the SFA, State Agency or federal government agency to determine if cost are accurately reported as unallowable and the SFA is therefore not entitled to any associated rebates, discounts and credits.

26 – Contract Term, Termination, Renewals

- **Letter B** – This contract may be extended by the SFA and the FSMC under the rules and regulations prescribed by the Commissioner of Education; however, pursuant to federal regulations CFR Part 210.16(d), the contract between the school food authority and the food service management company shall be of duration of no longer than (1) one year; with the option to renew /extend annually with a maximum of (4) four years. Such renewals/extensions shall be executed prior to termination of the preceding contract period and shall not extend the original contract period beyond five years.
- **Letter E** – The SFA and FSMC may terminate the contract, for convenience, by giving sixty (60) days advance written notice to the other party. Such notice shall set forth with sufficient specificity such party’s reasons for contemplating termination. A FSMC facilitating the termination for convenience clause must provide adequate notice, to the SFA that would permit the SFA sufficient time to arrange alternate food service.

27 – General

- **Letter D** – The FSMC may not subcontract out services without the express prior approval, written authorization and consent of the SFA and governing board of the SFA.

2. **NUTRITION STANDARDS IN THE NATIONAL SCHOOL LUNCH AND BREAKFAST PRGRAMS** -The final rule titled *Nutrition Standards in the National School Lunch and School Breakfast Programs* was established in January of 2012 from Public Law 111-296, the Healthy, Hunger-Free Kids Act of 2010(HHFKA). The *Nutrition Standards in the National School Lunch and School Breakfast Programs* outlines the required food based menu pattern, standards and timeline (attached) to be followed and adhered to by every SFA participating in the National School Lunch and Breakfast Programs.

Final Rule Nutrition Standards in the National School Lunch and School Breakfast Programs – Jan. 2012

	Breakfast Meal Pattern			Lunch Meal Pattern		
	Grades K-5 ^a	Grades 6-8 ^a	Grades 9-12 ^a	Grades K-5	Grades 6-8	Grades 9-12
Meal Pattern	Amount of Food ^b Per Week (Minimum Per Day)					
Fruits (cups) ^{c,d}	5 (1) ^e	5 (1) ^e	5 (1) ^e	2½ (½)	2½ (½)	5 (1)
Vegetables (cups) ^{c,d}	0	0	0	¾ (¾)	¾ (¾)	5 (1)
Dark green ^f	0	0	0	½	½	½
Red/Orange ^f	0	0	0	¾	¾	1¼
Beans/Peas (Legumes) ^f	0	0	0	½	½	½
Starchy ^f	0	0	0	½	½	½
Other ^{f,g}	0	0	0	½	½	¾
Additional Veg to Reach Total ^h	0	0	0	1	1	1½
Grains (oz eq) ⁱ	7-10 (1) ^j	8-10 (1) ^j	9-10 (1) ^j	8-9 (1)	8-10 (1)	10-12 (2)
Meats/Meat Alternates (oz eq)	0 ^k	0 ^k	0 ^k	8-10 (1)	9-10 (1)	10-12 (2)
Fluid milk (cups) ^l	5 (1)	5 (1)	5 (1)	5 (1)	5 (1)	5 (1)
Other Specifications: Daily Amount Based on the Average for a 5-Day Week						
Min-max calories (kcal) ^{m,n,o}	350-500	400-550	450-600	550-650	600-700	750-850
Saturated fat (% of total calories) ^{n,o}	< 10	< 10	< 10	< 10	< 10	< 10
Sodium (mg) ^{n, p}	< 430	< 470	< 500	< 640	< 710	< 740
Trans fat ^{n,o}	Nutrition label or manufacturer specifications must indicate zero grams of trans fat per serving.					

^aIn the SBP, the above age-grade groups are required beginning July 1, 2013 (SY 2013-14). In SY 2012-2013 only, schools may continue to use the meal pattern for grades K-12 (see § 220.23).

^b Food items included in each food group and subgroup and amount equivalents. Minimum creditable serving is 1/8 cup.

^cOne quarter-cup of dried fruit counts as 1/2 cup of fruit; 1 cup of leafy greens counts as 1/2 cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.

^dFor breakfast, vegetables may be substituted for fruits, but the first two cups per week of any such substitution must be from the dark green, red/orange, beans and peas (legumes) or “Other vegetables” subgroups as defined in §210.10(c)(2)(iii).

^eThe fruit quantity requirement for the SBP (5 cups/week and a minimum of 1 cup/day) is effective July 1, 2014 (SY 2014-2015)

^fLarger amounts of these vegetables may be served.

^g This category consists of “Other vegetables” as defined in §210.10(c)(2)(iii)(E). For the purposes of the NSLP, “Other vegetables” requirement may be met with any additional amounts from the dark green, red/orange, and beans/peas (legumes) vegetable subgroups as defined in §210.10(c)(2)(iii)

^hAny vegetable subgroup may be offered to meet the total weekly vegetable requirement.

ⁱAt least half of the grains offered must be whole grain-rich in the NSLP beginning July 1, 2012 (SY 2012-2013), and in the SBP beginning July 1, 2013 (SY 2013-2014). All grains must be whole grain-rich in both the NSLP and the SBP beginning July 1, 2014 (SY 2014-15)

^jIn the SBP, the grain ranges must be offered beginning July 1, 2013 (SY 2013-2014).

^kThere is no separate meat/meat alternate component in the SBP. Beginning July 1, 2013 (SY 2013-2014), schools may substitute 1 oz. eq. of meat/meat alternate for 1 oz. eq. of grains after the minimum daily grains requirement is met

^lFluid milk must be low-fat (1 percent milk fat or less, unflavored) or fat-free (unflavored or flavored).

^mThe average daily amount of calories for a 5-day school week must be within the range (at least the minimum and no more than the maximum values).

ⁿDiscretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, trans fat, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent milk fat are not allowed.

^oIn the SBP, calories and trans fat specifications take effect beginning July 1, 2013 (SY 2013-2014).

^pFinal sodium specifications are to be reached by SY 2022-2023 or July 1, 2022. Intermediate sodium specifications are established for SY 2014-2015 and 2017-2018. See required intermediate specifications in § 210.10(f)(3) for lunches and § 220.8(f)(3) for breakfast

Implementation Timeline

New Requirements	Implementation (School Year) for NSLP (L) and SBP (B)						
	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2022/23
Fruits Component							
<input type="checkbox"/> Offer fruit daily	L						
<input type="checkbox"/> Fruit quantity increase to 5 cups/week (minimum 1 cup/day)			B				
Vegetables Component							
<input type="checkbox"/> Offer vegetables subgroups weekly	L						
Grains Component							
<input type="checkbox"/> Half of grains must be whole grain-rich	L	B					
<input type="checkbox"/> All grains must be whole-grain rich			L, B				
<input type="checkbox"/> Offer weekly grains ranges	L	B					
Meats/Meat Alternates Component							
<input type="checkbox"/> Offer weekly meats/meat alternates ranges (daily min.)	L						
Milk Component							
<input type="checkbox"/> Offer only fat-free (unflavored or flavored) and low-fat (unflavored) milk	L, B						
Dietary Specifications (to be met on average over a week)							
<input type="checkbox"/> Calorie ranges	L	B					
<input type="checkbox"/> Saturated fat limit (no change)	L, B						
<input type="checkbox"/> Sodium Targets o Target 1 o Target 2 o Final target			L, B			L, B	L, B
<input type="checkbox"/> Zero grams of trans fat per portion	L	B					
Menu Planning							
<input type="checkbox"/> A single FBMP approach	L	B					
Age-Grade Groups							
<input type="checkbox"/> Establish age/grade groups: K-5, 6-8, 9-12	L	B					
Offer vs. Serve							
<input type="checkbox"/> Reimbursable meals must contain a fruit or vegetable (1/2 cup minimum)	L		B				

3. Conversion Rate

The conversion rate for a la carte sales in Type II contracts will be \$3.60 for contracts going out to bid for the 2013-2014 school year. As in the past, this conversion rate is to be used for new bids using the Type II contract. This rate is now subject to a yearly increase when executing a contract extension.

The conversion rate has been established to ensure a fair level of payment to the FSMC, while simultaneously guaranteeing that child nutrition revenues are not subsidizing adult and a la carte items. The conversion rate is also in place to avoid making the sale of a la carte items more profitable than the marketing of reimbursable meals. A lower conversion rate generates more equivalent meals and therefore more money to the FSMC. The Department strongly affirms the mission of the Child Nutrition Programs, to provide students with nutritious breakfasts and lunches.

4. A La Carte Sales

The FSMC, as a result of the contract, agrees to provide breakfast, lunch and a la carte sales services to the SFA. However, the extent of the a la carte service provided to children and adults in the SFA is determined by the SFA. A la carte sales can take place on the line where students receive their meal, at a separate service line or in vending machines. Vending machines are merely a distribution mechanism used to merchandize a la carte sales in the SFA. All revenues derived from a la carte sales must accrue to the SFA. Any vending operation should provide for a verifiable audit of items sold and revenues received. Sales must be deposited into the SFA school lunch account as a la carte sales, subject to the agreed upon conversion factor. The conversion factor is used to convert a la carte sales into equivalent meals and equivalent meals are billed by the SFA at the current bid price.

5. Certification Regarding Debarment

Although we have included a list of the FSMCs that have not been debarred (with an asterisk) as a part of our annual FSMC web posting, it was based on our office checking on the Excluded Parties List System (EPLS) website as of February 2013. By the time you go out to bid or extend, circumstances regarding the FSMC's debarment status may have changed. Therefore, the SFA must look on the EPLS website and complete the Debarment Option A form **or** the FSMC must complete the Debarment Option B form; both of which are in your packet. Please note: only the Debarment Option A or Debarment Option B form needs to be submitted with your contract or extension – **please do not submit both forms.**

6. Certification Regarding Lobbying Forms

The Certification Regarding Lobbying Form is required to be completed by the FSMC. FSMCs not participating in lobbying activities involving the Child Nutrition program do not need to complete the Disclosure of Lobbying form. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis. (This is only required if money is spent on lobbying activities.) A copy of the disclosure form is provided. **(Refer to the Table of Contents for each type of the NYSED contract prototype for related information.)**

7. Summer Food Service Program (SFSP)

In an effort to increase participation and feed more children in low-income areas during the summer months, USDA is continuing to encourage participation in the – The Simplified Summer Food Service Program (SFSP). Under this option:

- ◆ SFAs can apply to our SFSP Unit to operate the SFSP.
- ◆ Schools are reimbursed at the SFSP free rates.
- ◆ Up to two meals per day (four for migrant and camp sites) may be served to children, 18 and under, free of charge.

SFAs contracting with an FSMC are not permitted to add SFSP participation to the existing contract because the addition constitutes a substantive change to the contract. There are important program differences between the NSLP and the SFSP. If you plan to administer the SFSP, contact the SFSP at (518) 486-1086 for assistance.

SFSP and additional provisions, general terms and conditions, as required in federal regulations 7CFR Part 225, are included in Type II and Type III **(Refer to the Table of Contents for each type of the NYSED contract prototype for related information.)**

An SFSP menu should be included in the bid specification and as well as indicating all the sites where the SFSP will operate along with other pertinent data in the appropriate appendices. If meals are pre-packaged and delivered to areas without refrigeration, a quality control plan must be in place as indicated in the SFSP section. SFAs letting bids for the 2013-2014 school year are required to use the SFSP forms or go out to bid separately for the SFSP.

The signatures of both parties are required on applicable SFSP forms to signify acceptance of the terms governing the SFSP operation and the SFA's participation in the program. These terms and conditions, which provide for the operation of the SFSP in compliance with 7 CFR Part 225, are applicable to both the SFA and the FSMC.

SFAs that use the Type IV contract are not permitted to participate in the SFSP because they are already operating a year round program under the NSLP.

8. USDA Foods

Please read the important changes regarding USDA Foods in the Type II and Type IV NYSED prototype contracts which have been added to conform to USDA's policy regarding the use of USDA Foods. **(Refer to the Table of Contents for each type of the NYSED contract prototype for related information.)**

To prevent overestimating the use of USDA Foods in an SFA's food service program we recommend using the current (2012-13) USDA Foods entitlement formula:

\$.2275 cents per meal multiplied by the average daily participation (in the NSLP) multiplied by 180 days.

SFAs and FSMCs should not base their estimates of future availability on past USDA Foods received by the SFA. The Office of General Services, Division of USDA Foods has made changes to accommodate SFAs in the delivery and types of foods available.

9. Food Safety Inspections

Effective July 1, 2005, schools participating in the NSLP or the SBP are required to obtain two food safety inspections conducted by a State or local governmental agency responsible for such inspections. The SFA is responsible for informing their State or local Health Department that they are due for an inspection if the annual inspections do not occur routinely. In addition, schools must post, in a visible location, a report on the most recent food safety inspection, and provide a copy of the food safety inspection report to a member of the public upon request. If an SFA participates in the SFSP, the SFA must notify the Department of Health (DOH) of approved SFSP sites each year. The FSMC providing meals to SFSP sites must periodically submit meals to the local Health Department or an independent agency to determine bacteria levels in the meals being served. Such levels shall conform to the standards, which are applied by the local health authority with respect to the level of bacteria, which may be present in meals served by other establishments in the locality. The results of the inspections must be submitted promptly to the sponsor and State agency.

10. Criminal Penalties

Criminal penalties are increased to \$25,000 which is the maximum fine for embezzling, willfully misapplying, stealing or obtaining by fraud funds, assets or property acquired under the National School Lunch Act or the Child Nutrition Act.

11. Breakfast Program

Remember that all public schools with a severe need designation are required to have or start a reimbursable breakfast program. A severe need school is one that served 40 percent or more of its lunches to free and reduced price eligible students in the second preceding year. All other public elementary schools that participated in the lunch program on or after January 1, 1993 are required to have or start a breakfast program. Your SFA may have received an exemption from starting a breakfast program in certain buildings, which is granted on a yearly basis. If your SFA will begin a breakfast program in 2013-2014, you must include menus for the breakfast program in the bid and indicate which schools will be starting a breakfast program. This is a multiple year contract and specifications should be prepared with that in mind.

12. Reimbursement for Snacks in After School Care Programs through the National School Lunch Program

Public Law 105-336, the William F. Goodling Child Nutrition Reauthorization Act of 1998, expanded the United States Department of Agriculture's NSLP. SFAs can enhance the nutrition benefits for children by providing reimbursement for snacks served to children in after school care programs through age 18. The intent is to assist schools to operate organized programs of care that include educational or enrichment activities. These programs are known to help reduce or prevent children's involvement in juvenile crime or other high-risk behavior.

If the SFA administers the after school programs or retains the authority for the program; the snacks may be claimed by the SFA under the NSLP. SFAs participating only in the Special Milk Program are not eligible. If a public or nonprofit organization other than the SFA administers the after school program, that sponsor may be eligible to claim the snacks under the Child and Adult Care Food Program (CACFP) through the Department of Health. SFAs that claim supper do so through the CACFP. Other SFAs may find that serving and claiming the snacks in the NSLP eliminates the need to be in the CACFP. See the memorandum dated June 2007 concerning reimbursement for snacks served to children in after school care programs through the lunch program that addresses NSLP issues, as administered by this office. For information on the CACFP, call DOH at 1-800-942-3858.

Only SFAs participating in the NSLP and interested in receiving reimbursement for snacks served to children in after school care programs through the NSLP if letting bids for 2013-2014 for Type II and Type IV must include the names of sites and times where snacks will be served on the appropriate appendix (**Refer to the Table of Contents for each type of the NYSED contract prototype for related information.**)

SFAs using the Type II contract must use Bid Option 2 to receive separate bid prices for the breakfast, lunch and the snacks served to children in after school care programs through the NSLP. For SFAs with the Type II contract, using Bid Option 2 will enable you to require bidders to provide separate bid prices for snacks, breakfast and lunch with a solid means for determining the lowest responsible bidder. Remember; check the current reimbursement rate for free snacks to ensure a fair bid price.

SFAs using the Type IV contract will not need to use a different bid option or form because the cost of providing snacks will be included in the annual financial budget projection prepared by the FSMC. However, SFAs using these contracts must complete the appropriate appendix indicating which schools are receiving reimbursement for snacks. SFAs using the Type III contract do not participate in the NSLP and are not eligible to receive reimbursement for snacks.

Existing contracts can be modified to include the receipt of reimbursement for snacks served to children in after school care. Neither USDA nor the Department consider reimbursement for snacks served in an after school program, a new or separate program. The estimated cost to an SFA for providing snacks to children in after school care would be a small percentage of the total cost of the existing lunch program and therefore is not considered a material change to the contract. Existing contracts should be modified to include an estimate of the number of snacks to be served for the current school year and a bid price should be negotiated between the SFA and the FSMC to provide the required items. Check with your school attorney on the proper language for the amendment.

13. Local Wellness Policy

Section 204 of the Child Nutrition and Women, Infants and Children Reauthorization Act of 2004 (PL 108-265) signed into law June 30, 2004, included a provision that requires each local educational agency (LEA) participating in the National School Lunch Program, School Breakfast Program, Special Milk Program and Summer Food Service Program to establish a local wellness policy for schools under the LEA.

14. HACCP Based Food Safety Plan

Section 111 of the Child Nutrition and WIC Reauthorization Act of 2004 (Public law 108-265) amended section 9(h) of the Richard B. Russell National School Lunch Act requires SFAs to implement a food safety program. The Reauthorization Act requires that, during the preparation and service of meals, the SFA comply with a HACCP system established by the Secretary of Agriculture. Please note:

- It is the SFA's responsibility to develop in writing a "HACCP Based Food Safety Plan" for each building (area that food is received, stored, prepared and held, served, etc.).
- The written plan must be on site and implemented in each building
- FSMC are responsible to adhere to the SFA School Food Safety Plan and affirm all food service employees understand and implement the plan.

15. Fresh Fruit and Vegetable Program

The FFVP is limited to elementary schools that participate in the National School Lunch Program and where at least 50 percent of students qualify for free or reduced price meals. Approved schools are funded through an allocation grant to purchase and distribute domestic products only, with the exception of bananas. The SFA may delegate the operation of the FFVP program to the FSMC, however the SFA must ensure that students in schools selected for the grant have access to the program everyday and that menus, food, labor and miscellaneous costs be submitted for the calendar month 10 days after the month ends in order to submit claims for program reimbursement to SED.

Food, labor and miscellaneous costs incurred will be reimbursed from the pre-approved allocation of money from a discretionary grant from the federal government. Additional fees, if any, must be negotiated and agreed upon, prior to implementation of the Fresh Fruit and Vegetable Program. If the FSMC administers the FFVP for the SFA, administrative expenses paid to the FSMC can not exceed \$100 total per month for the total of up to 50 schools participating in the program. The administrative expense may increase incrementally by \$100 per month for an additional total of up to 50 schools participating in the FFVP.

USDA allows no more than ten percent (10%) of the total grant awarded the SFA for administrative expense (which includes equipment purchases.) Refer to the USDA FFVP guidance material at the following link: <http://www.fns.usda.gov/cnd/FFVP/Resources/FFVPhandbookFINAL.pdf>. NYSED limits the total administrative expenses paid to the FSMC to one half percent (1/2%) of the respective percent for SFAs with more than 150 schools participating in FFVP. See chart below:

Number of Schools	Allowable Per Month Total
1-50 schools	= \$100
51-100 schools	= \$200
101-150 schools	= \$300
151 plus schools	= 1/2% (cannot exceed 1/2% of up to 10% administrative expenses)

16. Employees

SFA must review employee records to ensure that proper procedures have been followed by the FSMC, with respect to the Fingerprinting requirement for all persons that come into contact with children while working in schools and completion of the Employment Eligibility Verification Form I-9 required for all persons hired by the company. These documents must be maintained on SFA premises for verification by SFA and other interested State and federal agencies.

17. Re-negotiating of Contract Terms

Re-negotiation of existing contract terms once the executed contract/extension has been approved by SED requires rebidding. If related addendums were made, they must be submitted to our office for review/approval.

18. Fire and Theft Insurance

The FSMC shall provide fire and theft insurance at its own expense to cover any risk created by fire and/or theft to its property located on the premises of the SFA. The FSMC further agrees to provide all necessary fire and/or theft insurance to cover clothes, garments and other articles owned by their employees.

19. Staff Schedules

In the event the SFA retains the services of the food service staff, the SFA must list all food service staff in Schedule G specifying the title and salary of each employee.

Summary of SFA and/or FSMC Ongoing Responsibilities

NYSED Child Nutrition Program Office welcomes all SFA/FSMC contracts and/or extensions into the program, however it is imperative that SFAs are aware that our agreement is with the SFA and that it is the SFA's responsibility to provide ongoing requisite administrative oversight of the FSMC's operation. It is also the responsibility of the SFA to ensure that each school year there is a *current* approved contract or extension on file in order to claim for reimbursement. All fiscal records pertaining to the Child Nutrition Program must be retained by the SFA.

A. Preparing Bid Specifications

SFAs may contract with individuals or companies in order to obtain information from as many sources as possible to assist in preparing bid specifications. However, an FSMC or other interested party may not participate in the procurement process by way of drafting the bid specifications, procedures or documents, if they intend to be a potential candidate for providing the service or product. In addition, it is not allowable for a potential bidder and/or a incumbent FSMC who is planning to be a potential bidder to make suggestions to the SFA to meet only their specific needs and/or suggest the use of terminology and/or phrasing that it is only familiar to them as in the SFAs preparation of bid specifications. Doing so prohibits them from participating in the bidding process as a viable candidate. It is important to keep in mind that FSMC does not "dictate" the bid specifications. This provision is intended to ensure that SFAs have sufficient flexibility in contracting matters, while maintaining an open and free competition.

B. Increasing the bid price

The SFA can increase the bid price for breakfast and/or lunch using the Consumer Price Index for Urban Consumers (CPI-U) as a guide and limit. You must use the May CPI-U for contracts ending in June, or the September CPI-U for contracts ending in October, etc. Education Law 305 states the percentage of increase in the bid price for breakfast and/or lunch **cannot exceed** the CPI-U for the twelve-month period immediately proceeding the month in which the contract ends. However, you can negotiate an increase that is less than the CPI-U. Call the U.S. Department of Labor, Bureau of Labor Statistics, for **the Consumer Price Index for Urban Consumers in the New York-Northeastern, New Jersey** area at (646) 264-3600. You may also obtain that information on the World Wide Web at <http://www.bls.gov/ro2/cpinynj.htm>. Click on New York regional economy, scroll down to Consumer Price Index and review New York-Northeastern New Jersey-Long Island All Urban Consumers (U). See the "percentage change from year ago" column for recent CPI-U information.

PLEASE NOTE - The prototype extension automatically calculates the CPI-U increase for the current year price when the CPI-U percentage and prior years bid price is added to the extension.

The FSMC can ask the SFA for an increase in the bid price for the new school year/term. However, if the SFA decided that there was not a significant increase in costs from last year to this year, they do not have to agree to an increase. *Careful monitoring of the FSMC's operating statements, outlining expenses and income, will help make that determination.*

C. Returning to a Self-Operated Program

SFAs are required to send or fax a letter to our office on official school letterhead stating that the SFA will no longer be using the services of a FSMC for the 2013-2014 school year. The letter must be signed by the business official or superintendent. The signature of the principal is required for nonpublic schools.

D. Prohibitions for the FSMC

Federal regulations prohibit an FSMC representative from signing or submitting on-line program agreements and reimbursement claim forms. However, FSMC personnel may prepare claims for the SFA's review, approval and submission.

An FSMC representative cannot be the reviewing, verification or hearing official for the free or reduced price applications. SFA personnel must update the master list of eligible students and provide it to FSMC personnel (i.e., cashiers) with the understanding that the master list contains confidential information and should not be shared with anyone. In addition, only SFA personnel must conduct verification.

SFA personnel must conduct an annual self review in all schools participating in the Child Nutrition Programs before February 1. The SFA must use the appropriate self review form provided on our web site or they may use one they have developed. FSMC personnel can accompany the SFA on the self review, but they may not conduct the self-review for the SFA.

E. USDA Foods

The SFA is held financially responsible for the distribution and use of USDA Foods. The SFA should monitor USDA Food orders, pick up slips and inventory sheets to ensure that USDA Foods are being used solely for your child nutrition programs.

F. Handling the Program Money and Fiscal Records

The SFA must account for all money received from the sale of lunches and/or breakfasts to students and adults, a la carte sales and reimbursement for meals served. These funds must be kept in an account by the SFA in the name of the SFA only. Funds can be kept in the general fund of the SFA, but they must be accounted for separately.

FSMC personnel may deposit monies in the SFA account, however, the FSMC should turn in the deposit slip to the SFA within a reasonable period (i.e., less than one hour).

G. Administrative Monitoring

SFAs must review and audit the invoices and monthly operating statements from the FSMC. The invoices received must adhere to the selected format described in the contract between the SFA and FSMC. Invoices for the Type II contract should report, at a minimum, the number of reimbursable lunch and breakfast meals, plus equivalent meals, multiplied by the bid price. These invoices should also report the dollar amount of a la carte sales and the conversion to equivalent meals by the factor listed in the contract.

Payments to the FSMC must also be made on a timely basis, as described in the contract. Invoices for the Type III and IV contracts should list direct expenses and administrative/service fees separately. Direct expenses should be itemized by categories for food, labor, and miscellaneous costs.

The FSMC's monthly operating statements must be received by the SFA no later than 10 days following the calendar month in which services were rendered. All reported expenditures must be legitimate, allowable costs that are incurred solely for the SFA's on-site operations, not corporate or administrative costs. These allowable direct costs must be supported by source documentation (i.e., food and supply invoices, payroll records, receipts for equipment rental, mileage logs, etc.).

Contracts that provide for a return to the SFA or a break-even program require the FSMC to operate within annual program income. If the FSMC's expenses exceed the bid price or annual program income, or both, the FSMC must absorb the loss.

Although the SFA is held responsible for any areas of noncompliance and subsequent fiscal action found during an Administrative Review (AR) review since our agreement is with the SFA, the SFA may then recoup funds from the FSMC for related program violations. The SFA must review the point of service accountability system to determine if complete meals are properly being claimed by category for reimbursement. Menus, which must meet menu planning requirements, must be received by the SFA as indicated in the contract (usually 10 days before service) for review and approval.

H. Establishing a Nutrition Committee

As stated in the regulations: 7 CFR Part 210.16(a) (8) "Establish an advisory board composed of parents, teachers, and students to assist in menu planning." An SFA contracting with an FSMC, must establish an advisory board. The advisory board should meet with a representative of the FSMC to assist in menu planning. The advisory board can also review the menus to confirm that meal standards outlined in the bid specification are being met in the cafeteria. While there is no set number of times the nutrition committee should meet, we recommend the committee meet at least three times per year, include children from all grade levels and minutes of the meetings should be retained.

I. Additional Expenses for Implementing the New Meal Pattern

FSMC contract and applicable extensions included language requiring the FSMC to meet the new meal pattern requirements pursuant to the HHFKA Public Law 111-296 in applicable regulations. Therefore, compliance with these new meal pattern requirements are already an obligation of the FSMC under the terms of that contract and applicable extensions and any additional fees assessed by the FSMC for future compliance with the new meal pattern requirements are prohibited.

THE CONTRACT

Any changes made by the SFA to the prototype contract must be approved by the Child Nutrition Program Office prior to going out to bid.

A. Certain areas in the contract are mandated by federal regulations 7CFR 210.16.

The following items must be a part of the bid specification:

- (1) Performance Security
 - Must be at least 10 percent of annual projected operating cost.
- (2) Sixty-day Termination Clause - Cannot be changed.
 - Either party may terminate contract *for cause*, with 60 days written notice. We recommend the notice be sent by certified mail, return receipt requested.
- (3) Penalty Clause - See Term, Termination clause in the Agreement section of the contract.
- (4) Authorized Signatures of Both Parties. - The school board president's or executive director's signature is required on the contract and extension.
- (5) Twenty-one day cycle menu - **This is the most important aspect of the bid specifications.** Federal regulations require menus included in the bid be followed for the first 21 days of service. The standards and style of service must be followed for the life of the contract. Menus must include all food items that should be available on a daily or weekly basis in each school. Menus are the basis for estimating costs and formulating bids.
- (6) Procurement Specifications – The procurement specifications need to be specific as to what the SFA is looking for and should list the type, style and quality standards for items found in menus as follows:
 - Name of product
 - Federal grade
 - Size information for container and product
 - Unit on which price will be based (bid units)
 - Quality indicators: product type
 - Packaging – procedures and type
 - Test and inspection procedures
 - Buy American
- (7) Bid Form
 - The contract is a maximum per meal cost reimbursement bid. The administrative fee is fixed per meal, but direct per meal costs reimbursed can be up to the maximum amount of the bid. The SFA is required to pay the average (of the contract term) direct per meal cost or the maximum direct per meal cost, plus the fee, whichever is less.
 - A bid of zero is not acceptable.
 - Award is to the lowest responsible bidder, with responsibility determined by the Board of Education or Board of Directors.
- (8) Financial Budget Projection
 - Should be reviewed to determine if the information is reasonable and accurate and to assist in determining the responsibility of the bidders.
- (9) Non-Collusive Statement
 - Must be completed by the bidder.
- (10) The corporate affidavit gives authority to the FSMC personnel listed on the affidavit to sign the contract.

B. Although the district is billed on a weekly or monthly basis, the contract bid is based on the full school year. The SFA should review the FSMC's financial records monthly to determine if payments to the FSMC are within contract limits. **Payments to the FSMC may not be carried over from one contract year to another.** An end of the year reconciliation must be conducted to ensure the fiscal integrity of the program.

C. Any changes made by the SFA to the prototype contract must be approved in writing by the Child Nutrition Program Office before going out to bid. Complete NYSED Prototype Pre-bid Contracts are to be emailed to elattanz@mail.nysed.gov 30 days prior to letting bids. A pre-approval letter will be sent to the SFA once the pre-bid has been approved.

THE CONTRACT REVIEW PROCESS

- A. SFA completes the bid specifications with the following:
- Information on school participation
 - Prices of meals
 - A la carte prices
 - Menus
 - Food and beverage procurement specifications
 - Selection of how costs are to be reported – Method A or Method B
 - Insurance requirements
 - Performance security
 - Selection of bid option 1 or 2
 - Schedules A-I
- B. Any changes to the prototype contract must be approved in writing by our office. E-mail the proposed bid specification and contract to CNP office **30** days prior to letting bids to elattanz@mail.nysed.gov.
- If specifications are satisfactory, the SFA will be notified in writing.
 - If specifications are not satisfactory, the SFA will be notified in writing. The SFA must revise the documents by the due date listed on the letter in order to receive approval for the altered bid package.
 - After the bid specification/contract has been approved, follow the bid advertisement procedures discussed on page 2 of this memo.
- C. Once a bidder has been chosen, complete the agreement section of the document as follows:
- Fill in all blanks with the appropriate information in the agreement section of the document.
 - Ensure that signatures and dates are included for all parties.
 - The FSMC must complete the required Corporate Affidavit for the person signing the bid.
 - The FSMC must complete the Certification Regarding Lobbying and Disclosure of Lobbying Activities form, if necessary.
 - The SFA must complete the Summer Food Service Program appendix, (refer to table of contents in each applicable contract type) with required signatures of both parties, only if participating in the program.
- D. After the documents have been completed and signed:
- Use the checklist on the cover page of the contract document to double-check inclusion of the required document. The final contract must contain all documents included by the SFA in the invitation to bid and all completed documents submitted by the FSMC that have been mutually agreed upon by both parties (i.e., work sheets, menus, product specifications, other attachments, and operating cost sheets).
 - **Submit a copy** of your original Contract for review and approval to the NYSED Child Nutrition Program Office, 99 Washington Ave, Room 1623 OCP, Albany, NY 12234. Include with your submission the **required** 2013-2014 Management Company Contract Checklist.
 - Once approved, an approval letter will be sent to the Superintendent/CEO of the SFA. The approval letter is for placement with the original contract in your files. (Remember to give a copy of the approved contract to the FSMC for their files.)
 - If the contract is not approved, the Superintendent/CEO will receive a memo indicating corrections that need to be made and a due date which corrections need to be submitted to the CNP office. .
 - Return the corrected documents on or before the due date listed on the memo.

CONTRACT TYPE II

AWARD BASIS - MAXIMUM PER MEAL COST

The **Type II** contract is awarded based on a maximum per meal payment to the FSMC for direct costs (food, labor and miscellaneous expenses) and an administrative fee. This is not a fixed price contract. The maximum per meal fee is composed of:

- (1) The administrative fee and
- (2) The direct cost of operations (food, labor, miscellaneous expenses) per meal.

(For Example)

Administrative Fee		\$.20
Direct Cost of Operations	+	<u>2.05</u>
Maximum Per Meal Cost		\$ 2.25*

*** The \$2.25 figure (in the example) would be the bid price written in on the bid form by the FSMC.**

Although the maximum per meal cost is the bid price, the per meal payment to the FSMC is contingent upon the following:

- Annual direct cost of operations, as audited and approved by district personnel

and

- Limited to the extent of program income.

Note: At no time during the contract period can the per meal payment to the FSMC exceed the contract terms (the number of meals plus *equivalent meals multiplied by the bid price.) *Equivalent meals are calculated by dividing the a la carte sales figure by the equivalent meal conversion factor set by the Department. *The New York State Education Department establishes the conversion factor which will change with each contract extension year.*

Special attention should be paid to the content of the menu to be used for bidding the maximum per meal cost contract. The menu, as bid, must be used for the first 21 days of service and sets the quality standards for future menus and any special functions the SFA would like the FSMC to perform. Bidders use the information contained on the menu to calculate the food cost. It will be difficult for the FSMC to expand the food service program selections after the bid is awarded.

Special Functions:

Any district approved non-contractual (not specified in the original bid) special function, or catered event that is outside the child nutrition program operation, and is provided by the food service contractor, must be billed outside the contract. The district has an obligation to reimburse the FSMC out of the General Fund account for the cost of these services. Payments received by the contractor for these services **can not** be reflected as "a la carte sales" when calculating equivalent meals under the Type II contract. For more information about payment refer to "Calculating Vendor Payment".

Extending Contracts

Upon contract renewal, the increase in the bid price (extension price) is limited to any increase in the NY, Northeastern New Jersey Consumer Price Index (CPI-U) for all urban consumers for the 12 month period immediately preceding the month in which the contract terminates. The justification of any increase should be provided by the FSMC.

CALCULATING VENDOR PAYMENT UNDER THE TYPE II CONTRACT

The award of bid under the Type II contract is to the lowest responsible bidder. The board of education or director of a non-public school determines bidder responsibility. The maximum per meal fee is composed of:

1. The administrative fee, per meal and
2. The direct cost of operations, consisting of food, labor and miscellaneous expenses per meal.

(For Example)

Administrative Service Fee	\$.20
Direct Cost of Operations	<u>+ 2.05</u>
Maximum Per Meal Cost	\$ 2.25

Payment to the vendor is:

Limited to:

1. The extent of program income.
2. Contract terms - meals and equivalent meals multiplied by the bid price.

Contingent upon:

1. The direct cost of operations for food, labor, and miscellaneous expenses as defined in the contract and as audited and approved, net all rebates, discounts and credits.
2. Administrative fee (quoted per meal fee multiplied by meals served).

For all examples:

Meal pattern meals served in one month	13,000
Equivalent meals served in one-month	<u>+ 7,000</u>
Total meals =	20,000

Per meal bid price comprised of:

Direct operating costs	\$ 2.05
Administrative Fee	<u>+ .20</u>
	\$ 2.25

2. Maximum allowable monthly payment under contract terms:
20,000 (total meals) x \$2.25 (bid price) = \$45,000

Example 1

Actual costs for one month	
Food	\$23,000
Labor	18,500
Misc.	5,500
Adm. Fee	<u>4,000</u> (\$.20 x 20,000 meals)
Total	\$51,000

- A. Actual Costs = \$51,000
- B. Maximum Payment = \$45,000 (Meals x bid price)
Payment to the vendor should be the lesser of A or B
Payment to vendor for this example is B = \$45,000

Example 2

Actual Costs for one month	
Food	\$22,000
Labor	14,000
Misc.	4,000
Adm. Fee	<u>4,000</u> (\$.20 x 20,000 meals)
Total	\$44,000

- A. Actual Costs = \$44,000
- B. Maximum Payment = \$45,000 (Meals x Bid Price)
Payment to the vendor should be the lesser of A or B
Payment to vendor in this example is A = \$44,000

CONTRACT TYPE III

AWARD BASIS - ADMINISTRATIVE SERVICE FEE

The contract must be awarded on a fixed fee basis. The FSMC **cannot** receive payment from the SFA for the cost plus a percentage of the cost, or a percentage of the income from the program.

The **Type III** contract is awarded based on an annual administrative fee or a per meal administrative fee. The administrative fee is defined as all other costs, **except**, food, labor, and miscellaneous expenses as defined below. The administrative fee is the only source of profit for the FSMC.

When using a Type III contract, the Department's Office of Counsel has ruled that the Governing Board of the SFA must purchase all food and non-food items in accordance with General Municipal Law §103 and Part 114 of the Regulations of the Commissioner of Education (8 NYCRR Part 114). Competitive bidding for all food and non-food items is a way of confirming that the FSMC takes advantage of the best price the marketplace has to offer.

1. The SFA must advertise bids in the official paper, or newspaper with general circulation in the community.
2. The SFA must open and read bids in the place and time advertised.
3. The FSMC can submit a bid to supply any food or non-food item.
4. Title to all purchased foods remains with the FSMC.

We recommend the SFA indicate food service management bids will be accepted on either an annual fee or a per meal fee basis, prior to bidding. However, should the SFA decide to accept both annual and per meal bids, the per meal bids will be annualized and the award based on the annual fee.

CONTRACT TYPE IV

AWARD BASIS - MAXIMUM PER PERSON, PER DAY COST

The **Type IV** contract is awarded on the basis of a maximum per person, per day cost to the FSMC for direct costs (food, labor and miscellaneous expenses) and administrative fee. Because day students would not receive three meals per day, this contract should be used by residential child care institutions (RCCIs), Jails, Detention Facilities, etc. that have a majority of their students residing on the premises. The maximum per person fee is composed of:

- (1) The administrative fee and
- (2) The direct cost of operations (food, labor and miscellaneous expenses) per person per day.

(For Example)

Administrative Fee	\$ 0.50
Direct Cost of Operations	+ 0.25
Maximum Per Meal Cost	\$10.75*

*** The \$10.75 figure (in this example) is the bid price the FSMC would write on the bid form.**

Although the maximum per meal cost is the bid price, payment to the FSMC is contingent upon the following:

Annual direct cost of operations, as audited and approved by SFA personnel.

Menus used for breakfast and lunch must be for 21 days, meet the requirements of the programs and include student choices in the selections. Include all items that should be available to students at their meal service. Also, you should include a dinner and snack menu for 21 days and any special functions the SFA would like the FSMC to perform. For example, picnic lunches, award dinners, and holiday celebrations should be spelled out in the specifications. The menu must be used by the FSMC for the first 21 days of service. It sets the quality standards for future menus. Bidders use the information contained on the menu to calculate the food cost. It would be difficult for the FSMC to expand the food service program selections after the bid is awarded.

Special Functions:

Any district approved non-contractual (not specified in the original bid) special function, or catered event that is outside the child nutrition program operation, and is provided by the food service contractor, must be billed outside the contract. The SFA has an obligation to reimburse the FSMC out of the General Fund account, not the school lunch account, for the cost of these services.

Extending Contracts

Upon contract renewal, the increase in the bid price (extension price) is limited to any increase in the NY, Northeastern New Jersey Consumer Price Index (CPI-U) for all urban consumers for the twelve month period immediately proceeding the month in which the contract terminates

ACRONYMS

AR – Administrative Review	CACFP - Child and Adult Care Food Program
CFR – Code of Federal Regulations	CNPA – Child Nutrition Program Administration
CPI-U – Consumer Price Index for Urban Consumers	DOH – Department of Health
FNS – Food and Nutrition Services	FSMC – Food Service Management Company
HACCP – Hazardous Analysis Critical Control Point	HHFKA – Healthy Hunger Free Kids Act
LEA – Local Education Agency	NFSMI – National Food Service Management Institute
NSLP – National School Lunch Program	NSMP – Nutrient Standard Menu Planning
NYSED – New York State Education Department	OGS – Office of General Services
OIG - Office of the Inspector General	SBP - School Breakfast Program
SFA – School Food Authority	SFSP - Summer Food Service Program
USDA – United States Department of Agriculture	

Important Phone Numbers and/or Web Addresses

Child and Adult Care Food Program – 1-800-942-3858

USDA Foods – (518) 474-5122 or <http://www.ogs.ny.gov/BU/SS/GDF>

Local Wellness Policy Information – <http://www.nysed.gov/cn/cnms.htm>

Excluded Parties List System – <http://www.epls.gov>

Food and Nutrition Services – <http://www.fns.usda.gov>

National Food Service Management Institute (School Food Safety Plan Information) – www.nfsmi.org

NYSED Child Nutrition Program Administration – (518) 474-3956 or <http://www.nysed.gov/cn/cnms.htm>

NYSED Summer Food Service Program Office – (518) 486-1086

United States Department of Labor: The Bureau of Labor Statistics – (646)264-3600 or <http://www.bls.gov/ro2/cpinyj.htm>

Important Regulatory References

Federal Regulations 7 CFR Part 210.15 – Allows SFAs to use a FSMC

Federal Regulations 7 CFR Part 210.16 – Changes made by the SFA or a FSMC to NYSED Prototype contracts must be approved in writing before contract execution, addresses allowable costs, discounts, rebates and other applicable credits on bills and invoices to the SFA, Method A or Method B, source documentation, states that when expenditures and payments are not to be made from non-profit school food service account, full implementation of new rule beginning July 1, 2009, and sets related contract terms pertaining to new rule

Federal Regulations 7 CFR Part 210 – National School Lunch Program

Federal Regulations 7 CFR Part 210.10 a(j) and 201.10 (n) – After school care snack provision

Federal Regulations 7 CFR Part 220 – School Breakfast Program

Federal Regulations 7CFR Part 225 & 7 CFR Part 3016 – Summer Food Service Program

Federal Regulations 7CFR Part 250 – USDA donated commodities as they pertain to SFAs contracting with a FSMC

General Municipal Law § 103 – Bidding requirements/advertisements

NYS Education Commissioner's Regulations Part 114.2 – Solicitation of Contracts

NYS Education Law § Law 305.14a – Contract Terms

Federal Regulations 7CFR Parts 210 & 220 – HACCP/Food Safety Plan

DEFINITIONS

In an effort to assist school administrators, the following definitions have been developed which should be referred to when questions arise:

Administrative Service Fee is defined as all other costs except food, labor, and miscellaneous costs as defined herein.

Allowable Direct Costs are those costs that are incurred solely for the SFA's on-site operation, net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract; to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority such as:

Labor is defined as and limited to on-site employees responsible for the management, preparation, service, and clean up of meals.

Food is defined as and limited to those items purchased for use in the preparation and service of student, a la carte, adult and special event meals as specified.

Miscellaneous Expenses are defined as paper supplies (including decorations), equipment rental, cleaning materials, commodity handling and warehousing charges, travel as required for effective program management, and as agreed upon by the SFA (*see below), uniforms, menu paper and printing, taxes and licenses, laundry, insurance and other costs as contractually obligated herein.

Note: *Allowable direct cost of operations is defined as labor, food and miscellaneous expenses. All program expenses not otherwise defined in the contract will be assumed by the FSMC under the administrative fee.*

End Product is a finished product containing any amount of USDA donated food that has been commercially processed.

(Examples)	<u>Basic USDA Foods</u>	<u>Processed End Products</u>
	Beef	Charbroiled Patties, Cooked Crumbles or Meatballs
	Pork	Shredded Pork or Cooked Crumbles

Material Change is a change made by one party or both parties to the terms and conditions of the contract that significantly impacts the compensation given to the bidder. Adding the Summer Food Service Program; vending; increasing costs, adding another school that is not a part of your organization are considered material changes. If you are adding another building or program which is already a part of your SFA, it is not considered a material change. Consult your school attorney, to determine what other areas are considered material changes to the contract.

Method A requires that FSMC certify and separately identify allowable and unallowable costs for the SFA to review. Unallowable costs are costs that cannot be paid from the nonprofit school food service account.

Method B requires that the FSMC exclude unallowable costs and certify that the costs reported are allowable. The FSMC must maintain source documents for all allowable and unallowable costs. The SFA may want to review the unallowable costs to determine if in fact they are unallowable costs and what rebates, discounts or credits are attached to these costs.

Program Income is defined as monies generated by the sale of meals to children, accrued State and federal reimbursement and student and adult a la carte sales, less the annual guaranteed return to district, if applicable.

Travel as required for effective program management and as agreed upon by the SFA is defined as

Travel as required:

- Travel of the manager from one building to another in the district.
- Travel to State sponsored meetings.

Travel as agreed upon:

- Travel to special meetings.
- Travel of regional chef, dietician, etc. if the SFA deems such visits necessary for the efficient operation of the program.

Management Company Listing for 2013-2014

The New York State Education Department does not endorse any of the companies listed.

* These FSMCs with asterisks do not, at this time, appear on the Excluded Parties List System for companies debarred by the federal government. However, it is your responsibility to check the list before submitting your contract or extension for approval. Therefore, a Debarment A or Debarment B form must be submitted with your contract or extension. See the NYSED Bid Memo 2012-2013 for more information.

***The Abbey Food Service Group**

Scott Choiniere
Vice President of Operations
6212 VT- Route 105
Enosburg Falls, VT 05450-9742
(800) 696-4748

***Academy School Food Service**

Peter Pirozzi
Vice President
6 Arbutus Path
Belle Terre, NY 11777
(631) 928-3688

***Aladdin Food Mgmt Svc, Inc.**

Bonnie Bland
Dietician
21 Armory Drive
Wheeling, WV 26003
(304) 242-6200

***Aramark, Corp.**

Steve Weiser
Regional Vice President
Program Management Office -23rd floor
Aramark Education
1101 Market Street
Philadelphia, Pa 19107
(215) 409-7990

***AVI Food Systems, Inc.**

Rick Seavey
Director of Sales
2590 Elm Road, NE
Warren, OH 44483
(330) 372-6000 x2266

***Canapé Connections**

A Division of Albany ARC
Brian Hayes
Food Services Coordinator
334 Krumkill Road
Slingerlands, NY 12159
(518) 459-0750

***Chartwells NY Metropolitan Area**

David DeScenza
Vice President for Sales
804 Broadway
West Long Beach, NJ 07764
(732) 222-9220

***Culinary Management Corp.**

Edward R. Bowers
President
P. O. Box 401
Woodbury, NY 11797-0401
(631) 692-0363

***CulinArt, Inc**

Bob Kelly
Director Business Development
175 Sunnyside Boulevard
Plainview, NY 11803
(516) 437-2700 x 2748

***Flik International/Compass Group**

Ray Mulligan
President
3 International Drive
Rye Brook, NY 10573
(800) 846-4611

***Five Star Caterers**

Daniel Schreiber
President
195 West Englewood Avenue
Suite 107
Teaneck, NJ 07666
(201) 833-0889

***Frontier Foods**

Arthur Christy
President
P.O. Box 903
West Seneca, NY 14224
(716) 674-4455

***Hollywood Distributor, LLC**

Victor Ferrante
Vice President
42-07 19th Ave.
Astoria, NY 11105
(718) 274-0892

***Lackman Food Service**

Jennifer Moschitta
Director of Sales Development
303 Crossways Park Drive
Woodbury, NY 11797
(516) 364-2300

***Lessing's**

Kevin Lessing
Director of Business Development
3500 Sunrise Highway
Building 100, Suite T100
Great River, NY 11739
(631) 567-8200

Maschio's Food Service Inc.

Ken Torchia
525 East Main Street
Chester, NJ 07930
(973) 598-0005

***Pomptonian**

Howard Grinberg
Director of Operations
3 Edison Place
Fairfield, NJ 07004
(973) 882-8070

***Personal Touch Food Svc, Inc.**

David A. Cervi
Vice President
464 Franklin Street
Buffalo, NY 14202
(716) 883-1998

***QUALITY IN HOUSE CATERING, INC.**

John Seier
President
371 Sproutbrook Road
Garrison, NY 10524
(845) 736-4046

***Taher Inc.**

Bruce Taher
Chief Executive Officer
5570 Smetana Drive
Minnetonka, MN 55343-9022
(952) 945-0505

***Sodexo School Services**

Christine Mangio
District Manager
P.O. Box 352
Buffalo, New York 14240
(716)-650-6605

***SummerTime Food Co.**

Alejandro Blanco
President
150 Prospect Park West Apt 4E
Brooklyn, NY 12215
(347) 385-7132

***Watson Services, Inc**

Ronald G. Ward
Vice President
47 Grand St
Newburgh, NY 12550
(845) 561-3000

***Whitson's Culinary Group**

Paul Whitcomb
Vice President
1800 Motor Parkway
Islandia, NY 11749
(631) 750-1414

CHILD NUTRITION PROGRAM ADMINISTRATION

99 Washington Avenue, Room 1623-OCP, Albany, NY 12234
NEW YORK STATE EDUCATION DEPARTMENT
(518) 473-8781 Fax (518) 473-0018
www.nysed.gov/cn/cnms.htm



Paula Tyner Doyle, Coordinator
Sandra Sheedy, School Food Program Specialist 3
Dechelle Johnson, Support Staff

ALBANY REGIONAL OFFICE

Serving schools in the following counties:

Region I and Region II: **Sandra Ragule**
Linda St. Pierre, **Ashlene Regis-Koudoagbo**
(518) 474-3956 – **Dee Krawczyk**- Support Staff
*Albany, Clinton, Columbia, Essex, Franklin, Fulton,
Hamilton, Montgomery, Putnam, Rensselaer, Saratoga,
Schenectady, Schoharie, Warren, Washington*

Region III: **Jamie McMillian**
Michele Beaver, **Tara Sickler**, **Leigh Goldman**
(518) 474-3326 – **Johnathan Finn**- Support Staff
Greene, Westchester

Region IV: **Jamie McMillian**
Michele Beaver, **Tara Sickler**, **Leigh Goldman**
(518) 474-3326 – **Johnathan Finn**- Support Staff
Dutchess, Orange, Rockland, Sullivan, Ulster

Region V: **Sandra Ragule**
Linda St. Pierre, **Meghan Usher**
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Nassau, Suffolk

Region VI, Region VII, Region VIII:
Kimberly Vumbaco
Todd Bradshaw, **Rick Fitzpatrick**, **Janet Micheli**,
Jeannine Katchmar
(518) 474-3326 – **Johnathan Finn**- Support Staff
*Bronx, New York City (Manhattan), Kings (Brooklyn),
Queens, Richmond (Staten Island)*

SUMMER FOOD SERVICE PROGRAM

99 Washington Avenue, Room 1623-OCP, Albany, NY 12234
(518) 486-1086 Fax (518) 474-9920

Kimberly Vumbaco
Monica Lasher, **Chris Cioneck**, **Damian Meehan**,
Marisa Hutson, **Kylie Smith**, **Steven Hanson**

Serving all counties

BUFFALO REGIONAL OFFICE

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(518) 473-0018 - Fax
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Otsego, Schuyler, Seneca, St. Lawrence, Tioga, Tompkins, Wayne,
Yates*

NUTRITION ASSESSMENT TEAM

Jamie McMillian
Michele Beaver, **Stacey Johnson**, **Elizabeth Lattanzio**, **Marybeth Jurica**
Jerry Cioffi, **Diane Carter**
(518) 402-3620 – **Jacquelyn Bolon**- Support Staff
Serving all counties