

SFA-FSMC Contract Document Checklist: Instructions

General Information

This checklist is based on the requirements contained in 7 CFR Parts 210, 3016, 3017, 3018 and 3019. This checklist does not include all of the requirements applicable to those FSMCs subject to the provisions of 7 CFR 250.30, State processing of USDA donated food. For information regarding those requirements, the SFA should contact the State Distributing agency. The SFA must ensure that the State Distributing agency has reviewed and approved any processing agreement prior to the delivery of commodities for processing.

Though the checklist identifies certain unallowable SFA-FSMC contract document provisions (page 9) and advisable contract document provisions (pages 10 and 11), it is in no way inclusive of all such provisions. The State agency (SA) **must** carefully examine the contract document(s) to ensure that it **does not** contain other unallowable contract document provisions as well as provisions that are **not** in the best interest of the SFA. Careful scrutiny of the contract document(s) is required to ensure that there are no provisions that have the effect of restricting competition. If States have additional contractual requirements, an addendum to the checklist may be attached.

Contract Document Review

State Agency reviews are required of all IFBs/RFPs, completed IFBs/RFPs that become signed contracts, contracts, and all contract renewals. This checklist should be completed by the SFA and submitted with the reviewed document(s) to the SA within the timeframe established by the SA. In the blanks provided, for each of the required provisions contained in the checklist, the page number(s) in the document(s) where the provision is contained is to be indicated.

Initial Contract – The State Agency must review proposed IFBs/RFPs, as well as proposed contracts developed by SFAs.

Contract Renewal – if the option for the yearly renewal of a contract is exercised, the SFA should include a copy of the checklist which was submitted with the initial contract, and a new checklist cover sheet, when submitting the extension agreement to the SA. The initial checklist should include notation(s) where changes have occurred. The basis for renewing the contract, as well as the basis for any fee increases or decreases, if applicable, should be noted. ***Any changes in the fees are considered a substantive change and require the contract to be re-bid.***

The addendums covering debarment/suspension, lobbying, energy conservation and independent price certification must be signed, dated and included with each contract renewal.

Awarded Contracts or Contract Renewals

The following sections should be completed or updated, as applicable:

- A. **Cover Sheet**, page 1
- B. **SFA Responsibilities**, pages 2 and 3
- C. **FSMC Responsibilities**, page 4
- D. **General Terms – All SFA-FSMC Contracts**, page 5

The following section(s) should be completed or updated, as applicable (in the case of a cost-reimbursable contract, the total value of the contract must reflect the management fees as well as the direct costs incurred by the FSMC which are billed to the SFA such as food and labor):

- E. **SFA-FSMC Contracts in Excess of \$2,500**, page 5
- F. **SFA-FSMC Contracts in Excess of \$10,000**, page 5
- G. **SFA-FSMC Contracts - \$25,000 or More**, page 6
- H. **SFA-FSMC Contracts in Excess of \$100,000**, page 6
- I. **SFA-FSMC Contracts Involving Research, Developmental, Experimental and Demonstration Work**, page 6

The following section should be completed or updated:

- J. **Unallowable SFA-FSMC Contract Document Provisions**, page 7

A review of the document(s) should also include **Section K, Advisable Inclusions**, pages 8 and 9.

SFA-FSMC Contract Document Checklist
Section A - Cover Sheet

School Food Authority: _____

School Name(s): _____

SFA Use: Review of the following attached document(s) was completed relative to the applicable requirements contained in this checklist:

Proposed Documents:

Invitation for Bid (IFB) Request for Proposal (RFP)

Contract

Completed Documents:

Bid Documents (IFB/Signed Contract) Bid Documents (RFP/Signed Contract)

For Awarded Contract (please attach sheet if additional space is needed):

Name of FSMC: _____

Agreement No.: _____ Contract Value: _____
(Including Management Fees)

Period Covered by Contact: From: _____ To: _____
(Date) (Date)

Contract Renewal:

Contract Renewal: Indicate basis for both renewal and fee increases* or decreases, if applicable: _____

* [increase in fee is considered a substantive change to the contract which requires the contract to be re-bid]

1st Renewal 2nd Renewal 3rd Renewal 4th Renewal

Period Covered by Renewal: From: _____ To: _____
(Date) (Date)

SFA Authorized representative: _____ Date: _____
(Signature)

State Agency Use

Date Received: _____

Action Taken:

Approved Revision Required Not Approved Other:

State Agency Reviewer: _____ Date: _____
(Signature)

Section B – SFA Responsibilities

Page No.

_____ 1. **Provisions Under Program Agreement, §210.16(a)(2)** – ensure that the food service operation is in conformance with the SFA’s agreement under the program.

_____ 2. **Signature Authority, §210.16(a)(5)** – retain signature authority on the SA-SFA agreement, free and reduced price policy statement and Claims for Reimbursement.

3. **Control of the School Food Service Account and Overall Financial Responsibility**

_____ a. **§210.16(a)(4)** – retain control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation; and

_____ b. retain control for the establishment of all prices, including price adjustments, for meals served under the nonprofit school food service account, e.g., pricing for reimbursable meals, a la carte service including vending machines, and adult meals.

4. **USDA Donated Foods**

_____ a. **§210.16(a)(6)** – retain title to USDA donated foods; and

_____ b. ensure that all USDA donated foods made available to the FSMC, including processed USDA donated foods, accrue only to the benefit of the SA’s nonprofit school food service and are fully utilized therein. All refunds and rebates received from processors regarding USDA donated foods must be retained by the SFA.

5. **Quality, Extent and General Nature of Food Service**

_____ a. **§210.16(c)(3)** – provide detailed specifications for each food component or menu item as specified in 7 CFR Part 210, and include these specifications in the IFBs or RFPs. Specifications must cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.

_____ b. **§210.16(a)(4)** – retain control of the quality, extent, and general nature of its food service and the prices to be charged for meals .

Section B – SFA Responsibilities (Continued)

Page No.

5. Quality, Extent and General Nature of Food Service (Continued)

- _____ c. **§210.16(c)(3)** -- make no payment for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications or do not otherwise meet the requirements of the contract.
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- _____ 6. **Health Regulations, §210.16(a)(7)** – maintain all applicable health certifications and assure that all State and local regulations are being met by a FSMC preparing or serving meals at a SFA facility.
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- _____ 7. **Monitoring Responsibilities, §210.16(a)(3)** – monitor the food service operation through periodic on-site visits to ensure the food service is in conformance with program regulations.
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- _____ 8. **Use of Advisory Board, §210.16(a)(8)** -- establish and maintain an advisory board composed of parents, teachers, and students to assist in menu planning.
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- _____ 9. **21-Day Cycle Menu, §210.16(b)(1)** – include a 21-day cycle menu developed in accordance with the meal pattern requirements specified in 7 CFR Part 210.

Section C – FSMC Responsibilities

Page No.

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- _____ **1. Health Certification, §210.16(c)(2)** – maintain all applicable State and/or local health certification(s) for the duration of the contract for any facility outside the school in which it proposes to prepare meals. The FSMC must meet all applicable State and local health regulations in preparing and serving meals at the SFA facility.
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- _____ **2. 21-Day Cycle Menu, §210.16(b)(1)** -- adhere to the 21-day cycle menu which was included in the IFB or RFP for the first 21 days of meal service. Changes thereafter may only be made with the approval of the SFA.
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- _____ **3. Provision of Free and Reduced Price Meals, §210.16(a)** – in order to offer a la carte food service, the FSMC must also offer free, reduced price and paid reimbursable meals to all eligible children.
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- _____ **4. USDA Donated Foods, §210.16(a)(6)** – ensure that all federally donated foods received by the school food authority and made available to the food service management company accrue only to the benefit of the SFA’s nonprofit school food service and are fully utilized therein.
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- _____ **5. Recordkeeping, 7 CFR Part 3016.42 and Part 3019.53 and 210.16(c)(1)** -- maintain records to support the SFA’s Claim for Reimbursement; make all records available to the SFA upon request; and retain all records for a period of three (3) years after the SFA submits the final Claim for Reimbursement for the fiscal year for inspection and audit by representatives of the SFA, SA, USDA and Comptroller General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be retained beyond the 3-year period until resolution of the issues raised by the audit.
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- _____ **6. Reporting, §210.16(c)(1)** – report the claim information to the SFA promptly at the end of each month or more frequently as specified by the SFA.
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- _____ **7. Discounts, Rebates and Credits 210.21(f)(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 to or received by the contractor to the extent the those credits are allocable to the allowable portion of the costs billed to the school food authority.
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- _____ (ii) **A** Contractor must separately identify for each cost submitted for payment to the SFA the amount of that cost that is allowable and the amount that is unallowable; or
- _____ **B**, the contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs., including directly associated costs in a manner suitable for contract cost determination and verification.

- (iii) Contractor's determination of its allowable costs must be made in compliance with applicable departmental and program regulations and OMB Cost circulars.

- _____ (iv) The contractor must identify the amount of each discount, rebate, and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate or other applicable credits, the nature of the credit. If approved by the State Agency, the SFA may permit the contractor to report this information on a less frequent basis than monthly, but not less frequently than annually.

- _____ (v) The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to the conclusion of the contract.

- _____ (vi) The contractor must maintain documentation of costs and discounts, rebates and other applicable credits and must furnish such documentation upon request to the school food authority, the State Agency, or the Department.

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- _____ **8. Contract Provisions 250.53** – These provisions are required in all fixed price contracts and in all procurement documents. The required provisions are:
- _____ a. **(a)(1)**The FSMC must credit the recipient agency for the value of all donated foods received for use in the school food service program in the school year or fiscal year, including entitlement and bonus commodities, and the value of donated foods contained in processed end products.
 - _____ b. **(a)(2)**The method and frequency by crediting will occur, and the means of documentation that will be used to verify the value of all donated foods has been credited.
 - _____ c. **(a)(3)**The method of determining the value of donated foods to be credited or the actual donated food values.
 - _____ d. **(a)(4)** Any activities relating to donated foods that the FSMC will be responsible for, in accordance with §250.50(d), and assurance that such activities will be performed in accordance with applicable requirements in 7 CFR 250.

- _____ e. **(a)(5)** The FSMC will use all donated ground beef and ground pork products, an all processed end products in the school food service program.
- _____ f. **(a)(6)** The FSMC will use all other donated products, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods in the school food service program.
- _____ g. **(a)(7)** The procurement of processed end products on behalf of the recipient agency, will ensure compliance with the requirements in subpart C of 7 CFR part 250 and with the provisions of the distributing or processing agreements, and will ensure crediting of the school food service program for the value of donated foods contained in such end products at the agreement value.
- _____ h. **(a)(8)** The FSMC shall not enter into a processing agreement with the processor.
- _____ i. **(a)(9)** The FSMC shall comply with storage and inventory requirements for donated foods.
- _____ j. **(a)(10)** Onsite reviews may be conducted at any time by the distributing agency, USDA, or other authorized representatives to ensure compliance with requirements.
- _____ k. **(a)(11)** The FSMC shall maintain records to document compliance with requirements relating to donated foods.
- _____ l. **(a)(12)** Extensions or renewals of the contract, if applicable, are contingent up on the fulfillment of all contract provisions relating to donated foods.
- _____ m. **Cost Reimbursable Contracts – (b)**The FSMC must credit the recipient agency for the value of all donated foods for use in the SFA's meal service program in the school year or fiscal year, and include the value of donated foods contained in processed end products.
- _____ n. The FSMC must ensure that its system of inventory management will not result in the SFA being charged for donated commodities.

Section D – General Terms – All SFA-FSMC Contracts

Page No.

1. **Contract Duration**

- _____ a. **§210.16(d)** -- contracts must be of duration no longer than one (1) year.
- _____ b. **§210.16(d)** – options for the yearly renewal of a contract may not exceed four (4) additional one-year extensions.
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_____ 2. **Energy Policy and Conservation Act, Part 3016.36(i).**

- _____ 3. **Termination Clause, §210.16(d)** – either party may cancel for cause with 60-day notification.
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- _____ 4. **Nonperformance Sanctions – Part 3016.36(i)** provisions allowing for administrative, contractual, or legal remedies in instances where the FSMC violates or breaches contract terms, and providing for such sanctions and penalties as may be appropriate. (Exception: small purchases)
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Section F – SFA-FSMC Contracts in Excess of \$10,000

Indicate with a check mark (✓) in the block if the following provisions are not applicable.

Page No.

_____ 1. **Termination Clause – Part 3016.36 (i).**

_____ 2. **Equal Employment Opportunity – Part 3016.36(i).**

- _____ 3. **Debarment, Suspension, Ineligibility and Voluntary Exclusion, 7 CFR 3017.300** – The SFA must check the Excluded Parties List System (EPLS), collect a certification, or include a clause in the contract.

- _____ 4. **Disclosure of Lobbying Activities, 7 CFR Part 3018** – lobbying activities in connection with school nutrition programs must be disclosed. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis. (Only required if money is spent on lobbying activities)

- _____ 5. **Clean Air Act, Clean Water Act, and Environmental Protection Agency Regulations, Part 3016.36(i)**
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Section G – Unallowable SFA-FSMC Contract Document Provisions

The following indicate problem areas that have been identified in SFA-FSMC contract documents. The contract documents must be thoroughly checked, regardless of the procurement method used, to ensure that these areas **have not** been included, in any form. Indicate with a check mark (√) in each block that the review of the document(s) indicates that there are no such provisions in the reviewed document(s), unless specified below.

Check (√) as described above.

- 1. Cost Plus a Percentage of Cost/Income** – cost plus a percentage of cost/income to the FSMC, however represented.
- 2. Duplicate Fees** – fee structures that permit a FSMC to bill management fees and charge the same costs as cost-reimbursable expenses.
- 3. Purchasing** – if the SFA does the purchasing, clauses that limit the selection of vendors to only FSMC approved vendors.
- 4. Acceleration Clause** – provisions (multi-year) that require full payment (e.g. program equipment purchases) if the contract is not renegotiated.
- 5. Guaranteed Return** – “guaranteed return” provisions, unless the “return” remains in the nonprofit food service account. “Returns” cannot be contingent upon multi-year contract duration.
- 6. Delegation of SFA Responsibilities** – FSMC responsibility for any of the functions that must be retained by the SFA.
- 7. Automatic Renewal** – provisions which automatically renew the contract.
- 8. Processing Contracts** – contract document language that permits the FSMC to subcontract USDA donated foods for further processing.

For the item(s) above not checked (√), indicate item number(s) with corresponding page number(s) of document(s) where provision(s) appears.

Item Number(s)	Page Number(s)
_____	_____
_____	_____
_____	_____

Section H– Advisable Inclusions

Though the items below are not regulatory in nature, they have been included to offer technical assistance to the SFA in developing contractual language that will ensure that the best interest of the SFA is served by the contract.

Page No.

_____ **1. Compliance with Program Regulations** – requirement that the FSMC conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 245 and 250; and FNS instructions and policy.

2. USDA Donated Foods

_____ a. Method which delineates how the FSMC will pass the value of USDA donated foods used to the SFA.

_____ b. Specific statement that USDA donated foods are not to be used for special functions conducted outside the nonprofit school food service (e.g., catered meals).

_____ **3. Special Functions** – method which delineates the cost allocation for special functions conducted outside the nonprofit school food service. The method should demonstrate that labor costs are not being double billed for program meals and special function meals.

4. Fee Structure

_____ a. In a cost-reimbursable contract, requirement for breakdown of administrative and management fees in order to prevent double billing.

_____ b. Basis for fee adjustments.

5. Purchasing

_____ a. In a cost-reimbursable contract, if the FSMC makes purchases, the prices charged the SFA must be reasonable and necessary.

_____ b. A provision stating that any silence, absence or omission from the contract document specifications concerning any point shall be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the SFA are to be used.

Section H – Advisable Inclusions (continued)

Page No.

_____ **6. Certification of Independent Price Determination** – certification regarding non-collusion. This certification may be met through the use of the Certification of Independent Price Determination form (Appendix D).

_____ **7. Civil Rights Compliance** – assurance that the FSMC will conform with all civil rights requirements applicable to the SFA.

_____ **8. Buy American Provision** – compliance with the Buy American provision under 7 CFR Part 250.

9. Claim Liability

_____ a. The FSMC accepts liability caused by FSMC negligence for claims assessed as a result of Federal/State reviews/audits, corresponding with the SFA's period of liability.

_____ b. The FSMC accepts liability for any negligence on its part that results in any loss of, improper use of, or damage to USDA donated foods.

_____ **10. Location of Records** – all FSMC records pertaining to the SFA should be maintained at the SFA while the contract is in effect, and preferably for the required retention period.

_____ **11. Nutrition Education** – FSMC responsibility for nutrition education activities, as applicable.