

TDA Webinar

A Discussion with FSMC Vendors

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TEXAS DEPARTMENT OF AGRICULTURE
COMMISSIONER SID MILLER

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www.SquareMeals.org



Food and Nutrition Division
Nutrition Assistance Program

ALPHABET SOUP



SFA = School Food Authority



FSMC = Food Service Management Company



CPI = Consumer Price Index



CNP = Child Nutrition Programs



AR = Administrative Review of CNP

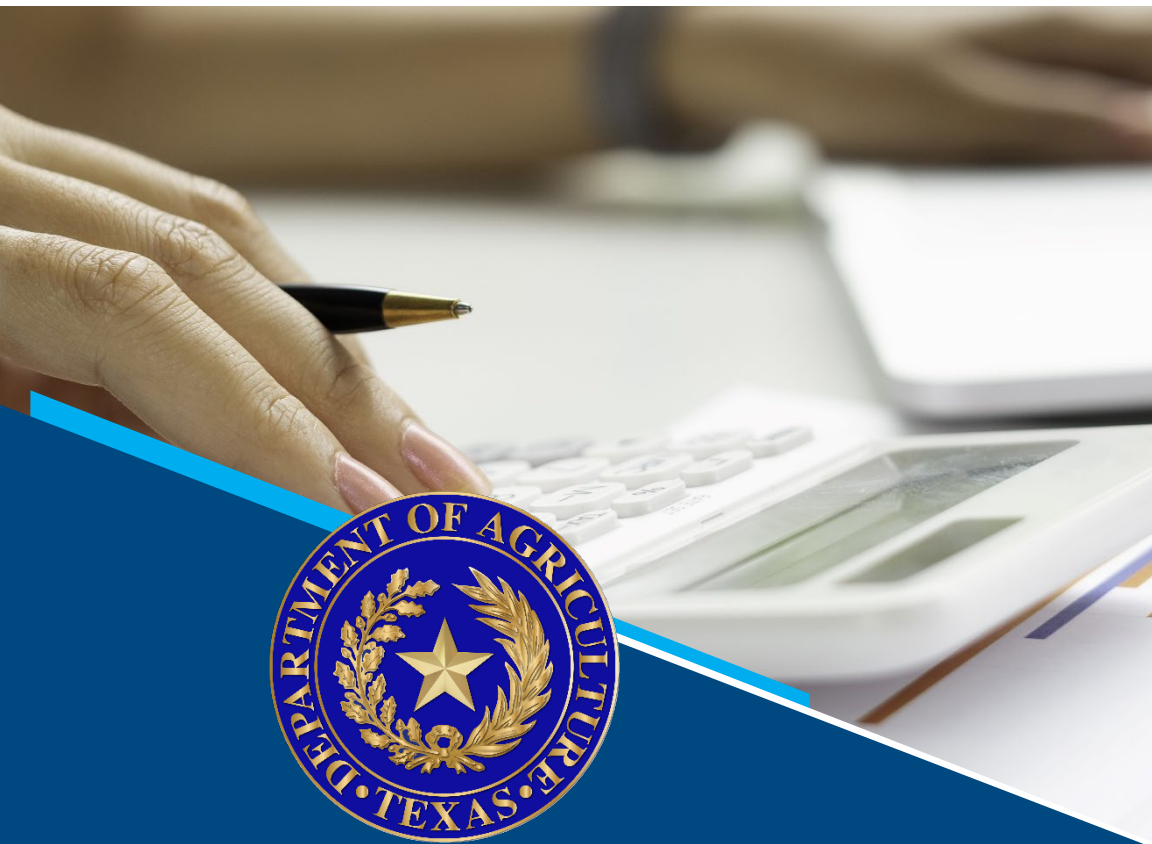


PR = Procurement Review of CNP



RFP = Request for Proposal

OBJECTIVES



Understand district responsibilities if using an FSMC



Understand delineation of roles between districts and FSMCs



Understand expectations for vendor communication



Understand changes to the contract and renewal processes



Understand TDA's position on consultant contracts



Understand expectations during administrative reviews

WHAT IS THE DISTRICT'S PRIMARY ROLE?

The district's primary role when using an FSMC is Contract Management and Oversight.



FSMCs Operating in Texas

Registration is Required

- ◆ Districts may not award FSMC contracts to entities that are not registered and approved in Texas prior to solicitation issuance.
- ◆ Registration as a Texas vendor is not permanent – vendors can be removed due to systemic or continued non-compliance.
- ◆ Must be renewed every 3 years. Renewal will not be approved if there is systemic or continued non-compliance by the vendor.
- ◆ The new registration and renewal process for current vendors has been modified to allow TDA to better assess compliance and fidelity.

FSMC or Self-Op?

Local Decision



RESPONSIBILITIES

What Cannot Be
Outsourced?



What Cannot Be Outsourced to an FSMC?

- ◆ Oversight and performance monitoring of the contracted FSMC vendor
- ◆ Signature authority
- ◆ Annual USDA Foods Reconciliation
- ◆ Student Eligibility
 - Free and reduced-priced application processing
 - Direct certification processes
 - Data entry on student eligibility in district POS

What Cannot Be Outsourced to an FSMC?

- ◆ On-site reviews of meal counting and claiming procedures
- ◆ Claims submissions
- ◆ District managed food service fund for revenue and/or expenses
- ◆ Financial reconciliation of billing
- ◆ Advisory committees

Signature Authority Example – SSO 2021-22

- ◆ District decision, not FSMC decision
- ◆ District determines whether they want all kids to eat free or operate NSLP
- ◆ Does the contract support district's decision?
- ◆ Legal Opinion - Emergency Procurement, if needed
- ◆ Application in TX-UNPS

COMMUNICATION

District Personnel or
FSMC Personnel?



PROTOTYPE TEMPLATE



REQUIREMENTS FOR CONTRACTING AN FSMC

- ◆ When procuring services, districts must ensure free and open competition
- ◆ If an FSMC is going to submit a proposal, they cannot have ANY part in the solicitation development
- ◆ Under no circumstances is it okay for the district to discuss the FSMC solicitation process with the current FSMC.



FULL AND OPEN COMPETITION

- ◆ All FSMCs are on a level playing field and have the same opportunity to compete.
- ◆ Procurement procedures and specification requirements do not unduly restrict or eliminate competition.
- ◆ Fairness and integrity in all aspects of the procurement process must be followed.
- ◆ The SFA must provide the RFP to all TDA registered FSMCs.

EVALUATING RFPs



EVALUATION DOCUMENTATION

Justification for Scoring



Formula where cost is the heaviest evaluation factor.



Scoring for objective criteria such as years of experience should be defined. For example: 1 years = 1 point; 3 years = 3 points; more than 10 years = 10 points.



The FSMC may not charge the SFA any fee other than a meal x rate.

No additional administrative, POS, delivery, late fees, or any other fees are allowable.



EVALUATION DOCUMENTATION

Continued

- ◆ Evaluation documents for awarded and non-awardees must be provided to TDA with contracts for review.
- ◆ If detailed evaluation and justification information is not provided; TDA cannot approve the contract.
- ◆ The SFA may not use the contract until it is approved by TDA.



GUARANTEE

Definition: An FSMC commitment to meet fiscal goals specified by the SFA.



Districts set guarantees, not the vendor. Districts must make sure that any guarantees are based on realistic projections.



A “Guarantee” is not the price of the proposal.



If the guarantee is to be part of the evaluation, it must be defined in the solicitation as part of the pricing criteria.



EQUIPMENT PURCHASE REQUEST PROCESS

- ◆ FSMC can only purchase equipment on the SFA's behalf if the SFA makes the request in the RFP.
- ◆ Any equipment purchases over \$5,000 (per item) must be approved by TDA prior to purchase. Inclusion in the contract is not the required TDA approval.
- ◆ Procurement regulations must be followed.
- ◆ Title to all equipment must be retained by the SFA.
- ◆ Equipment expense cannot be part of the price per meal in the Fixed Price contract but must be billed as a separate line item.



FOOD TRUCK APPROVAL PROCESS



IMPORTANT NOTE!

SFAs cannot request and FSMCs cannot offer “value added” incentives such as scholarships, donations, grants, **free** services, **free** equipment, etc.



SELECTING AN FSMC



SELECTING AN FSMC



- 01** SFA's must award contract to the responsible FSMC whose proposal, based on scoring and ranking, is most advantageous to the SFA, with **price as the primary factor** and other factors considered.
- 02** Scoring and evaluation material must be kept on file and available for review by TDA upon request.
- 03** All scoring and evaluation material must be sent to TDA as part of the pre-approval process.

SELECTING AN FSMC

All initial contracts and renewal contracts must be received and approved by the State Agency **BEFORE** the contract period begins!



CONTRACT DURATION

The SFA and FSMC must sign the RFP/FSMC Contract Template and all related documents by April 1.



- ◆ All renewals are for one-year terms.
- ◆ The SFA and/or FSMC can decide to not renew the contract.
- ◆ Except for the fee or price increasing by the provided CPI percentage, no other changes are allowed for an addendum.

CONTRACT DURATION continued



- 01** Maximum contract period is 5 years.
- 02** SFA may not allow FSMC to begin operations without TDA approval.
- 03** All contracts end on June 30 each year.

CONTRACT MANAGEMENT



ANNUAL CONTRACT RENEWALS

- ◆ Contact term is July 1 – June 30.
- ◆ Renewal final information is due by April 1 each year.
- ◆ Changes in fees are limited to the Consumer Price Index (CPI) increase or decrease.
- ◆ An explanation of the fee change methodology is required.
- ◆ TDA must approve the renewal for Child Nutrition fund use.

MATERIAL CHANGES

Definition: Any change made to a contract after it has been awarded that alters the terms and conditions of that contract substantially enough that had other respondents known of these changes in advance, they could have bid differently and more competitively.



CONSULTANT CONTRACTS



- ◆ Districts may **NOT** hire an FSMC vendor as a consultant and subsequently award a contract to them.
 - Unfair advantage
 - Conflict of interest

- ◆ Districts must disclose to TDA their use of any FSMC vendors as a consultant.

- ◆ It is the district's responsibility not to recommend award to these vendors, as related costs will be unallowable.

ADMINISTRATIVE REVIEW FINDINGS



WHAT'S NEW FOR 21-22



Procurement
Timeline for FSMC
Contracts and
Renewals



Documentation &
Evaluation Required
for Renewals



Additional Training on
FSMC Oversight





2020-2021 TIMELINE

Submit completed contract package and evaluation documents to TDA for approval before May 1. Contracts may not be executed prior to TDA approval.

Schedule pre-proposal conferences. Must be 2-3 weeks after RFP is issued and 3-4 weeks before submissions are due

Complete Prototype for Solicitation

Review FSMC Guidance



Meals cannot be claimed without an approved, signed contract on file by July 1.

RFP Openings Independent Team Evaluations

Template due date extended to February 25th or March 8th, depending on the circumstances.

Download and review prototype

Inform TDA of FSMC interest



NEW TIMELINE (2021-2022)

Review FSMC
Guidance

Complete
Prototype for
Solicitation &
Submit for
Approval

Publish RFP and
Evaluate
Responses

Meals cannot be claimed
without an approved,
signed contract on file by
June 1.



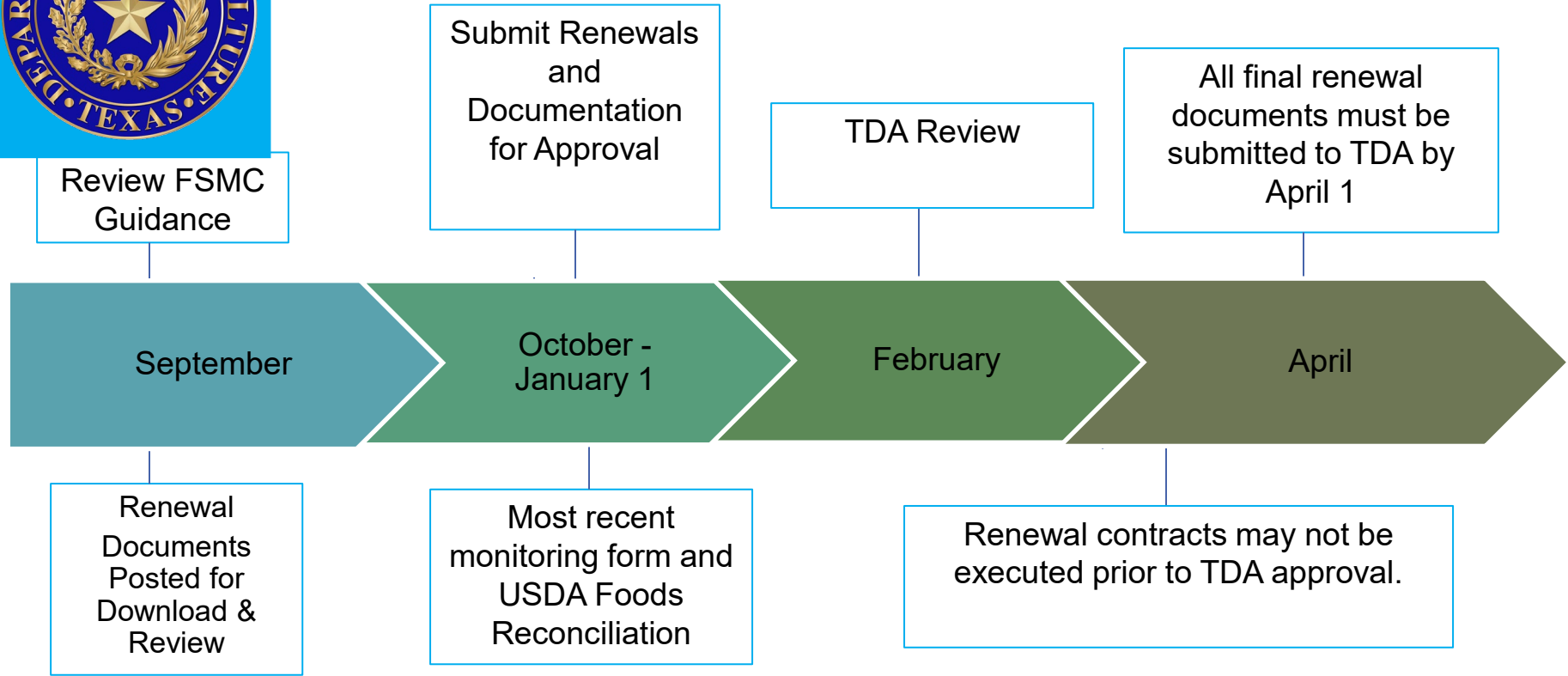
Solicitations
Documents
Posted for
Download &
Review

Proposed RFP
submissions may be
submitted starting October
1st and no later than
January 31st

Submit proposed awarded vendor's RFP
and all vendor evaluation documents to
TDA for approval before April 1.
Contracts may not be executed prior to
TDA approval.



RENEWALS



Submit early in case full procurement is required.

REQUIRED MONITORING FORM

Department of
Agriculture

Form | Monitoring | FSMC
February 23, 2017

Directions: Food Service Management Company (FSMC) Monitoring Form

Purpose

This form is intended to be used routinely to assist the CE in onsite monitoring an FSMC's operation of the program. A CE may use this form or another form that addresses the same issues.

The monitoring reviews should be conducted by the School Nutrition Program (SNP) director or designee.

For additional guidance for the issues included in this form, see *Administrator's Reference Manual*.

Directions for Completing This Form

General Information

- **Contracting Entity (CE) Name:** Record the name of the CE in the designated space.
- **CE ID Number:** Record the ID number of the CE in the designated space.

Use of This Form	
Frequency	Routinely throughout the year.
Required Form Format	Use this form or a similar reporting instrument.
Record Retention	<p>Completed forms kept onsite and made available on request.</p> <p>Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.</p> <p>Private schools, other nonprofit organizations, and residential child care institutions (RCCIs) are required to keep documentation for 3 years.</p>

- I. Eligibility and Verification
- II. Menu Cycle/Meal Pattern
- III. Competitive Foods
- IV. USDA Foods
- V. Inventory
- VI. Meal Count System
- VII. Financial Accounting
- VIII. Financial Procurement
- IX. Facilities
- X. Wellness
- XI. Staffing
- XII. Record Retention



**CONTRACT IS
VOIDED AND
RE-SOLICITATION
IS REQUIRED.**

**WHAT HAPPENS WITH
NON-COMPLIANCE?**



CHILD NUTRITION

NATIONAL SCHOOL LUNCH PROGRAM

- **Administrator's Reference Manual, Section 22. Food Service Contracts located at www.squaremeals.org > Programs > National School Lunch Program > NSLP Policy & ARM**
- **USDA Contracting With Food Service Management Companies: Guidance for School Food Authorities**



United States
Department of
Agriculture

Food and
Nutrition
Service

**Contracting with Food Service
Management Companies:**

Guidance for School Food Authorities

Presentation Supporting Resource

Changes in Proposal Processes

- Affirmations of no-communication during the RFP period
- Only documents in the proposal template will become part of the contract.
- Activities suggested beyond RFP requirements may be deemed non-responsive.



Questions?

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1400 Independence Avenue, SW
Washington, D.C. 20250-9410;

fax: (202) 690-7442; or email: program.intake@usda.gov.
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