

Food Service Facts

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14. Food Service Management Companies

Sponsors considering contracting for food service with a private "for profit" food service management company (FSMC) are required to contact Child Nutrition & Wellness, KSDE before initiating the procurement process. Federal and state requirements for the contract must be followed. KSDE provides technical assistance to the sponsor to assure that the regulations and requirements are met.

Considerations in Deciding Whether to Contract for Food Service Management

Before deciding to contract with a FSMC, KSDE encourages the sponsor to carefully consider the pros and cons of a self-operated program versus a contracted one. Contracting with a FSMC is not a "magic bullet" that will solve all problems. Here is a brief look at some of the issues that should be thoroughly analyzed before a decision is made.

Management

The knowledge, skills and experience of the food service director are some of the best indicators of program success. One of the main benefits offered by a FSMC is professional management. However, a sponsor can also hire its own highly effective professional management.

Carefully consider the management concerns that have caused the sponsor to consider using a FSMC. Does the sponsor currently employ a qualified director? If so, has the food service director had the opportunity to address these concerns and present a management plan to solve the problems? If the sponsor does not currently employ a qualified director, could one be employed? If the sponsor is too small to employ a full-time director, could a director be shared with another sponsor?

If a FSMC is used, will the sponsor be able to interview the FSMC director/manager before an assignment is made? If the assigned director/manager is unacceptable, what opportunities will the sponsor have for replacement? How much supervision from the parent company will be provided for local FSMC staff?

Quality

Student participation is one of the best indicators of program quality. If participation is low or declining, it is an indicator of customer dissatisfaction with one or more aspects of the program. What student, parent and teacher involvement is there with the current program? Have students, parents and teachers been involved in selecting new food items and recipes, planning menus and evaluating meal acceptability, food quality and variety? Have their suggestions and ideas been used? What promotional and marketing tools have been used to attract customers? Is the food service environment pleasant for students and teachers? Do students have adequate time to enjoy eating their meals?

Costs

There are many tools that a local sponsor can use to control its food service costs and operate within its budget. For example, purchasing practices can be made more competitive and cost effective. Better scheduling of employees can often save money. While a FSMC may be able to reduce costs in some areas, the sponsor will be paying the company a fee to do so. Will the sponsor be better off investing money in the FSMC or in the sponsor's operation? It is also important to evaluate the long-term costs of doing business with a FSMC. Contracting may be more cost effective in the short-term, but more costly in the long run.

On-Site Visits

Prior to selecting a FSMC, the sponsor's personnel are strongly encouraged to visit one or more school sites managed by each of the FSMCs under consideration. It is important to observe the operation on a typical day. Therefore, these visits should be unannounced to the food service site manager. Evaluate the sanitation, staffing, food production, food quality and student acceptability. Compare these to the current practices in the sponsor's food service program. If the FSMC operation is judged to be superior, what were the noticeable differences? What would it take to make similar changes in the sponsor's current program?

KSDE can help with the decision-making process by providing assistance in evaluating the sponsor's options. Contact Child Nutrition & Wellness, KSDE for further information regarding contracting with a FSMC.

Sponsor Must Retain Many Responsibilities

When contracting with a FSMC, many of the sponsor's food service responsibilities continue and a few new ones are added. Some of these responsibilities are listed below.

General Administration

1. Complete annual program renewal documents with KSDE.
2. Complete KSDE's FSMC procurement process for the initial contract and each annual renewal.
3. Oversee the ongoing implementation of the contract's terms and monitor the FSMC's performance using the FSMC Monitoring Form (14-A) twice each school year for each meal service site.
4. For multi-site sponsors, conduct on-site reviews using Form 9-G of meal counting and claiming procedures at all sites by February 1 of each year. This includes completing written documentation of the visit, developing corrective action plans as needed, and conducting follow-up reviews.

Reduced Price and Free Policy Administration

1. Retain signature authority on the program agreement with KSDE, reduced price and free policy statement and the claims for reimbursement.
2. Coordinate a food service advisory committee composed of parents, teachers and students to assist with menu planning.
3. Appoint and train determining official(s) and the hearing official.
4. Distribute Application for Free and Reduced Price School Meals and related information to parents and guardians.
5. Collect applications submitted for free and reduced price school meals.
6. Process applications, including approval/denial and follow-up to obtain complete information.
7. Enter data into computer, if computer system automatically determines eligibility.
8. Administer the Direct Certification process.
9. Notify parent/guardian of application status.
10. Administer all aspects of the meal eligibility verification process.

Reimbursement Claims

1. Complete and submit the monthly claim.
2. Maintain a separate Food Service Fund to which reimbursement and other food service revenues are posted and expenses are paid.

FSMC Procurement Timetable

For a schedule of the steps in procuring a FSMC **contract**, refer to “Procedure for Procuring a Food Service Management Company (FSMC) **Contract**” on page 14-11.

- ◆ The **procurement** process and contract approval process require approximately six (6) months before the effective date of the contract. The effective date of all contracts is recommended to be July 1 or the beginning of the school year.
- ◆ Contracts are written for **up to** one (1) year with the option to renew the contract for an additional four (4) **consecutive** years. **Regardless of the start date of the contract** all contracts end on June 30.
- ◆ If the sponsor uses the option to renew the contract, the renewal is for one year starting July 1 and ending June 30. The sponsor and the FSMC will establish an addendum to the contract that extends the contract for the additional school year. For further information, refer to “Contract Renewal for One-Year Term” later in this chapter.
- ◆ If the contract is still in effect during its fifth year, KSDE will notify the sponsor that a new contract must be procured for the coming school year if the sponsor wishes to continue contracting with a FSMC.

Process to Procure & Contract for FSMC Services

Any sponsor that contracts with a FSMC must adhere to procurement standards specified in the National School Lunch Program regulations and with the procurement procedures established by KSDE. **Only fixed-price contracts are allowed.** Following are the steps for procuring and contracting for FSMC services.

1. Attend training on FSMC procurement and contract oversight regulations offered by KSDE.
2. **Approximately six months prior to the effective date of the contract** obtain from KSDE the following references and documents regarding contracting with a FSMC:
 - ◆ Request for Proposal (RFP) **to Manage a School Food Service Program**
 - ◆ Sponsor Exhibits (A-I)
 - ◆ Contractor Exhibits (J-Q)
 - ◆ Instructions for Completing the Request for Proposal and Exhibits
 - ◆ FSMC Proposal Evaluation Guide
 - ◆ KSDE Suggested FSMC Contract Procurement Timeline
 - ◆ *Contracting with Food Service Management Companies: Guidance for School Food Authorities*, USDA. Available at www.kn-eat.org, School Nutrition Programs, Food Service Facts, Chapter 14 Related Forms.
3. The sponsor’s officials completing the procurement process should study the USDA publication, *Contracting with Food Service Management Companies: Guidance for School Food Authorities*. Contact KSDE with any questions concerning the FSMC procurement process and contract implementation procedures.

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4. Prepare the RFP and exhibits. The KSDE prototype RFP and exhibits **MUST** be used for all FSMC contract procurements. Follow the instructions for completing the RFP entitled “Instructions for Completing the Request for Proposal and Exhibits”. The sponsor’s legal counsel should review the RFP and exhibits. Care should be given to the development of the 21-day cycle menu of breakfasts and lunches. The FSMC may develop the 21 day cycle menu, if indicated on the Sponsor Exhibit B. The menus must be followed for the first 21 days of the contract. If assistance is needed in reviewing the menus, contact the sponsor’s KSDE area child nutrition consultant.
5. Submit the RFP and exhibits to KSDE for approval, allowing up to three (3) weeks for follow-up and approval.
6. After receiving **written** approval from KSDE for the RFP and its exhibits:
 - ◆ Solicit proposals directly from **all registered FSMCs**. **KSDE sends a a list of FSMCs that are registered once the RFP is approved**. All registered FSMCs should receive **the announcement of the Request for Proposals**. **Proof that the Sponsor directly solicited proposals from all registered FSMCs is required to be submitted to KSDE**.
 - ◆ The RFP must be publicly advertised in a newspaper with state or regional distribution for a recommended duration of five (5) days. The advertisement should include the RFP number and date, a brief description of what is being proposed for procurement and instructions for obtaining a copy of the RFP. A copy of the proof of advertisement **must** be submitted to KSDE within two (2) weeks of the advertisement.
 - ◆ Allow a minimum of 45 days up to a recommended 60 days from the date the **proposals** are solicited until the date the proposals are due. **It is imperative and to the Sponsors advantage that potential offerors are allowed a sufficient amount of time to prepare their proposals**.
7. All proposals must be sealed. **Proposals are not required** to be opened publicly at the time-stated in the RFP. **If proposals are publicly opened then the only information that may be disclosed is which offerors submitted a proposal**. A scoring system **must** be established to evaluate the selection criteria as described in the **Sponsor Exhibit F**. An evaluation team **must** be appointed. All RFP responses **must** be evaluated and the proposal awarded to the FSMC whose proposal will be most advantageous to the sponsor. Negotiations are conducted with FSMCs who are determined to be responsible bidders and whose proposals address all requirements stated in the RFP. **Sponsors shall** fully document the selection criteria scoring and the reasons why each proposal was or was not selected using **Exhibit F**. Sponsors must maintain records sufficient to detail the significant history of the procurement for five (5) years beyond the last year of the contract. Written notice must be sent to the responsible bidder whose proposal is accepted **as well as to any unsuccessful offerors**.
8. Prepare the KSDE prototype agreement between the sponsor and the FSMC. **The agreement is located within the RFP**. Any changes or additions to the agreement must be in the form of an addendum to the agreement. Addendums must be initiated by the sponsor. They cannot be written by the FSMC.

9. Submit the completed agreement **section** to KSDE for approval; allow up to three (3) weeks for approval. The completed contract includes:
 - ◆ A copy of the **approved RFP (with completed agreement section)**, Exhibits A-I and J-Q and any addendum(s), if applicable
10. After KSDE has approved the contract, it should be submitted to the sponsor's school board for approval. The signed board minutes indicating the board's approval must be submitted to KSDE.
11. The contract must be signed by the officials of the sponsor and the FSMC prior to its effective date.

Contract Requirements

The KSDE prototype contract includes all requirements established by federal regulations. These requirements include but are not limited to the following:

1. Contracts that permit all receipts and expenses to accrue to the FSMC and "cost plus a percentage of cost" and "cost plus a percentage of income" are prohibited.
2. Contracts that stipulate management fees on a per meal basis are allowed.
3. Contractual agreements with food service management companies must include the following stipulations and assurances:
 - ◆ The sponsor, not the FSMC, retains responsibility for:
 - Signature authority on the Program Agreement
 - Controlling the quality, offerings and prices charged in the food service program
 - Approving applications for Child Nutrition Program benefits
 - Verifying applicants' eligibility
 - Controlling the nonprofit Food Service Fund
 - Receipting funds to the nonprofit Food Service Fund
 - Completing and submitting reimbursement claims
 - Establishing an advisory committee composed of parents, teachers and students to assist in menu planning
 - ◆ A 21-day cycle menu (included in the RFP) will be used as a standard for comparing proposals and estimating average cost per meal. If the sponsor is unable to prepare a cycle menu, each FSMC may include a 21 day cycle menu planned to meet the USDA meal requirements. The FSMC must adhere to the cycle for the first 21 days of meal service. After that, changes may be made with the approval of the sponsor.
 - ◆ The FSMC will operate the food service program in compliance with the sponsor's agreement with KSDE.
 - ◆ The food service program will be monitored through periodic on-site visits **for each meal service site** using Form 14-A at least twice each year.

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- ◆ The FSMC will maintain employee health certification in compliance with state and local regulations and policies.
 - ◆ The FSMC will maintain all records needed to complete and document the sponsor's claim for reimbursement; and the FSMC will report claim information to the sponsor at the end of each month.
 - ◆ The FSMC will maintain state or local health certification for any facility outside the school in which it proposes to prepare meals; and that the FSMC will maintain this health certification for the duration of the contract.
 - ◆ No payment will be made for meals that are spoiled or unwholesome at the time of delivery, do not meet specifications (e.g., grade, purchase units, style, condition, weight, ingredients, formulations and delivery time) as developed by the sponsor for each food component, or do not otherwise meet the requirements of the contract.
 - ◆ The contract shall be no longer than one (1) year, with options for no more than four (4) **subsequent** one-year renewals.
 - ◆ All contracts shall **include language regarding termination without cause, material breach and intent not to renew.**
 - ◆ All contracts shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
 - ◆ All contracts shall grant to the sponsor, KSDE, USDA, Comptroller General of the U.S., or any of their duly authorized representatives access to any books, documents, papers and records of the FSMC that are directly pertinent to the specific contract.
 - ◆ Contractors shall be required to retain all records for a period of five (5) years after the end of the contract year **on Sponsor premises.** If audit findings have not been resolved, the records shall be retained beyond five (5) years or as long as required for the resolution of the issues raised by the audit.
4. Provisions or conditions will be included that will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and shall provide for such sanctions and penalties as may be appropriate.
5. A provision will be included whereby the sponsor has and reserves a right to make claims against other persons to whom donated commodity foods are delivered for care, handling and distribution. Sponsors will take action to obtain restitution in connection with claims arising in their favor for improper distribution, use or loss of, or damage to donated foods.

Contact KSDE for more information, including the KSDE prototype RFP and Exhibits and a complete list of contract requirements.

Contract Renewal for One-Year Term

The sponsor has the option to renew the contract annually for an additional four (4) years beyond the original contract year. If the sponsor uses the option to renew the contract, the following information must be submitted to KSDE with the Program Agreement documents prior to the beginning of each school year:

- ◆ An addendum to the original contract, which extends the contract for the school year. The renewal date should occur on or prior to July 1. The addendum may, if applicable, include provisions that do not make substantive changes to the original contract. Examples of non-substantive changes are increases in contract fees as limited by a third party price index change, changes in enrollment, etc. The addendum must be signed and dated by officials of the sponsor and the FSMC.
- ◆ Board minutes indicating that action was taken to extend the contract for another school year.
- ◆ All companies wishing to enter into a contract or renew a contract with a Kansas Sponsor must be registered with KSDE. KSDE will contact the FSMC directly and request other required documents. These documents include: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion; Certification Regarding Lobbying; and Disclosure of Lobbying Activities.

Contract Monitoring Requirements

Regulations require that the sponsor retain control of the quality, extent and general nature of the food service operation. This requires that the sponsor exercise financial and operational oversight by monitoring the FSMC and the execution of the contract. The sponsor shall supervise and monitor the food service program to ensure compliance with all applicable rules and regulations of KSDE and USDA.

At a minimum, the sponsor should monitor the program to assure:

- ◆ The FSMC has followed the 21-day cycle menu, as described in Exhibit B of the contract, for the first 21 days of the contract.
- ◆ All changes in menus following the first 21 days of the contract have been approved.
- ◆ Menu requirements are met and food production records are completed each day for all reimbursable meals.
- ◆ Regulations are followed concerning the Nutrition Standards for All Foods Sold in Schools, the current vending guidelines, the KS Food Code, and the local wellness policy.
- ◆ Meals are monitored after the last food item or menu item is served/selected to ensure that only reimbursable meals are claimed.
- ◆ Food quality specification standards meet those described in the contract.

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- ◆ The daily meal count records accurately reflect the counts of student and adult meals by meal type and eligibility category.
- ◆ The daily income records accurately reflect the revenue received by meal type and eligibility category.
- ◆ All bills are monitored prior to payment to assure that the FSMC has not double-billed or included costs that are not allowed by the contract.
- ◆ Facilities and equipment are adequately maintained for safety and sanitation.
- ◆ Employees practice safe food handling procedures and have received required food safety training.
- ◆ KDA health licenses are maintained as required by the contract.
- ◆ The advisory committee of parents, students and teachers has met at least twice per year to assist in menu planning and those meetings are documented.
- ◆ All corrections have been made as required if problems were noted during a sponsor review, the KSDE Administrative Review or a program audit.
- ◆ All responsibilities of the sponsor and the FSMC have been implemented as defined by the terms of the contract.
- ◆ The FSMC staffing plan has been approved.

Sponsors should document that the monitoring requirements have been met. Refer to the Food Service Management Company Monitoring Form (14-A). The form should be completed at least two (2) times each school year. The first monitoring should be completed **and sent to KSDE by December 1**. The second copy should be completed and submitted to KSDE by **April 1**. A copy of forms for the first and second monitoring should be maintained in the sponsor's files for review or audit.

FSMC Registration

All FSMCs that wish to contract with Kansas schools and institutions that participate in the USDA Child Nutrition Programs are required to formally register with Child Nutrition & Wellness, KSDE. Sponsors that have requests from FSMCs that are not included on the list of Kansas Registered FSMCs should contact Child Nutrition & Wellness, KSDE. **KSDE will then assist the FSMC with the registration process.**

Failure to complete the required annual registration may result in the inability of the FSMC to execute contracts with a Kansas sponsor. To register, the FSMC must submit the following to KSDE:

- ◆ FSMC Application for Registration
- ◆ A current Certification Regarding Lobbying
- ◆ A Disclosure of Lobbying Activities to be used if material changes have been made in the initial filing

The FSMC may request this information by contacting KSDE. At any time a sponsor may request the list of registered FSMCs from KSDE.

Allowing Adequate Time to Complete Contract Procurement

Q *If a sponsor wishes to contract for Food Service Management Company (FSMC) services for the following school year that begins July 1, when should the process begin?*

A It is recommended that the sponsor attend training offered in late fall by KSDE prior to starting the procurement process. Any sponsor interested in procuring a FSMC contract should contact KSDE for more information so that in January they can begin preparing the procurement documents. KSDE will provide assistance with completing the prototype procurement documents.



Menu Advisory Groups

Q *Are advisory groups required for all Sponsors contracting with a FSMC?*

A Yes. These groups should include students, parents and staff members. Sponsors of RCCIs and juvenile correction facilities should include residents and adult staff members. Documentation should include the dates of meetings, persons present, menu suggestions and other comments.

Procedure for Procuring a Food Service Management Company (FSMC) Contract

Suggested Timeline	What	Requirements
November	<ul style="list-style-type: none"> Training for Sponsors considering contracting with a FSMC 	<ul style="list-style-type: none"> Attend training
December – January	<ul style="list-style-type: none"> Prepare RFP 	<ul style="list-style-type: none"> Use the MS Word enterable version of the KSDE prototype RFP, and Sponsor and Contractor Exhibits.
February	<ul style="list-style-type: none"> KSDE reviews and approves RFP 	<ul style="list-style-type: none"> KSDE must approve the RFP and Exhibits before proposals are solicited.
March	<ul style="list-style-type: none"> Advertise RFP and directly solicit proposals from FSMCs 	<ul style="list-style-type: none"> Advertise in major newspaper, allowing a minimum of 45 days up to a recommended 60 days, prior to the date that the proposals are due. Directly solicit proposals from all registered FSMCs. Refer to Kansas FSMC Registry. Provide to KSDE proof of formal advertising and direct solicitation to registered FSMCs.
Mid-March	<ul style="list-style-type: none"> Pre-proposal conference On site visitation by potential offerors 	<ul style="list-style-type: none"> The pre-proposal conference is usually held 2-3 weeks after the solicitation period begins.
May	<ul style="list-style-type: none"> Deadline for proposals Proposal opening 	<ul style="list-style-type: none"> Proposals are opened by the sponsor at date/time listed in RFP.
May	<ul style="list-style-type: none"> Use of selection criteria for determining contractor Contract negotiations (if applicable) Preparation of the agreement 	<ul style="list-style-type: none"> All proposals that contain requirements should be reviewed based on proposal selection criteria. All proposals should remain on file for 5 years. Use of KSDE prototype agreement is required.
Late-May Early-June	<ul style="list-style-type: none"> KSDE reviews contract (RFP, Exhibits, Agreement, Addendum) 	<ul style="list-style-type: none"> KSDE must approve the contract before contract signing.
Early-June Mid-June	<ul style="list-style-type: none"> Award of contract 	<ul style="list-style-type: none"> Contract will be awarded for up to one year with up to 4 one-year renewals. Regardless of contract start date, all contracts will end June 30. Reimbursement cannot be paid for meals provided by the FSMC prior to award of the contract.