



AGREEMENT		
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**FOOD SERVICE MANAGEMENT COMPANY
 CONTRACT CHECKLIST**
 To be completed by Local Education Agency (LEA)

LOCAL EDUCATION AGENCY _____

SCHOOL YEAR _____

FOOD SERVICE MANAGEMENT COMPANY _____

CONTRACT NUMBER _____

This checklist is based on the requirements contained in Federal Regulation 7 CFR Parts 210, 215, 220, 3016, 3017, 3018, and 3019. These provisions must be included in the Food Service Management Company (FSMC) contract in order to comply with state and federal regulations. In the blanks provided, indicate the page number on the FSMC contract where the provision is included.

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- _____ LEA Agreement: The food service operation is in conformance with the Local Education Agency's (LEA's) agreement under the program. (7 CFR 210.16(a)[2])
- _____ Agreement Term: One year with four one-year renewal options. (7 CFR 210.16(d)) Initial contract year is _____.
- _____ Health Benefits: Specific clause indicating this work has previously been performed by classified LEA employee(s) and that health benefits are similar to those provided for LEA employees who would otherwise perform the work. (Initial contract year only.) (RCW 28A.400.285.) See OSPI Bulletin No. 101-99 Education Support, dated December 27, 1999.
- _____ Menu: 21-day cycle menu to be observed for first 21 days. To be submitted with RFP. Changes thereafter require LEA approval. (Initial contract year only.) (7 CFR 210.16(b)(1))
- _____ Termination: Clause for 60-day notification of termination with cause, specifying manner of notification. (7 CFR 210.16(d))
- _____ Commodities: Ensure that USDA commodities received by the LEA and made available to the FSMC accrue only to the benefit of LEA's nonprofit school food service. (7 CFR 210.16(a)(6))
- _____ Nonpayment for Meals: LEA is not to pay for meals that are spoiled at delivery, do not meet National School Lunch Program (NSLP) requirements, or otherwise do not fulfill specifications of agreement. (7 CFR 210.16(c)(3))
- _____ Advisory Board: LEA to establish advisory board of parents, teachers, and students to assist in menu planning. (7 CFR 210.16(a)(8))
- _____ Records: FSMC to maintain records the LEA will need to support reimbursement claims. FSMC should report to LEA at the end of each month. (7 CFR 210.16(c)(1))
- _____ Record Retention: FSMC to retain records for three years plus the current year. Also make them available to appropriate agencies. (7 CFR 210.23(c))
- _____ Food Preparation: If food is prepared in facility not located on LEA premises, the FSMC shall ensure health certification of facility and assure all state and local regulations are being met. If food preparation is at a LEA facility, the school district shall ensure health certification requirements are met. (7 CFR 210.16(a)(7) and 7 CFR 210.16(c)(2))

_____ Monitoring: LEA shall monitor food service operations of FSMC through periodic on-site visits. (7 CFR 210.16(a)(3))

_____ Control: LEA shall retain control of the quality, extent, and general nature of its food service and prices to be charged. (7 CFR 210.16(a)(4))

_____ Signature Authority: LEA shall retain signature authority for the Child Nutrition Program Food Services Agreement, Free and Reduced-Price Policy Statement, and any and all claims made for reimbursement. (7 CFR 210.16(a)(5))

_____ Free and Reduced-Price Meal Process: LEA shall maintain approval and signatory responsibility for free and reduced-price meals and free milk in accordance with 7 CFR Part 245. Such responsibilities include the approval of applications for such meals and/or milk, conduct of any hearings related to such determinations, and verification of applications for free and reduced-price meals.

_____ Energy Policy: Contracts shall recognize mandatory standards and policies relating to energy efficiency. (7 CFR 3016.36(i)(13)).

_____ Payment Types: a) Allowable (7 CFR 210.16(c))

- _____ 1) Fixed Price/Fee—per specific time period (fee covers all management and administrative costs, no additional charges to LEA; includes consultant fee).
- _____ 2) Fixed Fee—based upon per meal fees. Includes student and converted meals.
- _____ 3) Fixed Fee—covers administrative and/or management fees.
- _____ 4) Incentive Fee—higher unit fee based upon higher level of participation.
- _____ 5) Cost Reimbursable—goods and/or services at unit cost plus fixed or flat fee.
- _____ 6) Other—describe _____

b) Nonallowable (7 CFR 210.16(c), 7 CFR 3016.36(f)(4))

- _____ 1) Cost plus a percentage of cost.
- _____ 2) Cost plus a percentage of income.

_____ Procurement:

_____ Are all purchased goods and services paid by district or FSMC?
_____ Buy American Provision: LEA or FSMC agrees to purchase to the maximum extent practicable, domestic commodities or products. (7 CFR 210.21(d)(2))

Contract Exceeding \$2,500

_____ Provision for compliance with Section 103 and 107 of the Contract Work Hours and Safety Standards Act, which addresses overtime and compensation. (7 CFR 3016.36(i)(6), 7 CFR 3019 Appendix A (4))

Contract Exceeding \$10,000

_____ Provisions for termination specifying manner and basis for settlement. (7 CFR 3016.36(i)(2), 7 CFR 3019.48(b)).

_____ Provision for compliance with Executive Order 11246 - Equal Employment Opportunity, (7 CFR 3016.36(i)(3), 7 CFR 3019 Appendix A (1)).

Contract Exceeding \$25,000

_____ Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (applies only to lower tier covered transactions). (7 CFR 3017.510, 7 CFR 3019 Appendix A (8)).

Contract Exceeding \$75,000 (Public school districts only per RCW 28A.335.190)

_____ Contract bid package. Copy to be submitted with new agreements.

_____ Sealed bid _____ Negotiation

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Contract Exceeding \$100,000

_____ Sanctions for violation or breach of the contract and benefits thereof.
(7 CFR 3016.36(i)(1), 7 CFR 3019.48(a)).

_____ Provision requiring compliance with Section 306 of the Clean Air Act, Section 508 of the Clean
Water Act, and EPA regulations. (7 CFR 3016.36(i)(12), 7 CFR 3019 Appendix A (6)).

_____ Environmental violations will be reported to FNS and vendor/FSMC will not utilize a facility listed on
the EPA List of Violating Facilities. (7 CFR 3019 Appendix A (6)).

_____ Certification Regarding Lobbying. (7 CFR 3018, 7 CFR 3019 Appendix A (7)).

_____ Contract bid package. Copy to be submitted with new agreements. (7 CFR 3016.36(d))

_____ Sealed bid _____ Negotiation

Reviewed _____ Date _____

Notes:

_____ OSPI will review to ensure guaranteed return provisions do not require repayment from the non-profit food
service account in subsequent years.

_____ OSPI will review to ensure contract was signed by both parties prior to the effective date of the contract.

Log of Actions Taken. Show date, contact person, subject matter.

ADVISABLE INCLUSIONS

Though the items below are not regulatory in nature, they have been included to offer technical assistance to the Local Education Agency (LEA) in developing contractual language that will ensure the best interest of the LEA is served by the contract. In the blanks provided, indicate the page number of the Food Service Management Company (FSMC) contract where the provision is included.

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- _____ 1. **Compliance with Program Regulations**—The FSMC must conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 3016, 3017, 3018, 3019 and the LEA's agreement with OSPI.
- _____ 2. **United States Department of Agriculture (USDA) Donated Foods**
- _____ a. Delineate how the FSMC will pass the value of USDA donated foods used to the LEA.
- _____ b. 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**—Indicate the method used to allocate costs 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, include a breakdown of administrative and management fees in order to prevent double billing.
- _____ b. Indicate the basis for fee adjustments.
- _____ 5. **Purchasing**
- _____ a. In a cost-reimbursable contract, if the FSMC makes purchases, the prices charged the LEA must be reasonable and necessary.
- _____ b. 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 LEA are to be used.
- _____ 6. **Certification of Independent Price Determination**—This certification may be met through the use of the Certification of Independent Price Determination form.
- _____ 7. **Civil Rights Compliance**—The FSMC will conform with all civil rights requirements applicable to the LEA.
- _____ 8. **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 LEA'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.
- _____ 9. **Location of Records**—All FSMC records pertaining to the LEA should be maintained at the LEA while the contract is in effect and for the required retention period.
- _____ 10. **Nutrition Education**—The FSMC is responsible for nutrition education activities, as outlined.

UNALLOWABLE LOCAL EDUCATION AGENCY- FOOD SERVICE MANAGEMENT COMPANY CONTRACT DOCUMENT PROVISIONS

The following indicate problem areas that have been identified in LEA-FSMC contract documents. The contract documents must be thoroughly checked, regardless of the procurement method used, to ensure these areas have not been included in any form.

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 LEA 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. **Interest Payments**—interest payments to the contractor, however represented, including interest payments for equipment purchases.
6. **Guaranteed Return**—“guaranteed return” provisions unless the “return” remains in the nonprofit food service account. “Returns” cannot be contingent upon multi-year contract duration.
7. **Delegation of LEA Responsibilities**—FSMC responsibility for any of the functions that must be retained by the LEA.
8. **Automatic Renewal**—provisions which automatically renew the contract.
9. **Processing Contracts**—contract document language that permits the FSMC to subcontract USDA donated foods for further processing.