



Food and  
Nutrition  
Service

DATE: May 05, 2016

Park Office  
Center

MEMO CODE: SFSP 12-2016

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SUBJECT: Summer Food Service Program Participation by Higher Education Institutions, Hospitals, and other Non-Profit Organizations under Contract with a Food Service Management Company

TO: Regional Directors  
Special Nutrition Programs  
All Regions

State Directors  
Child Nutrition Programs  
All States

This memorandum provides guidance to State agencies administering the Summer Food Service Program (SFSP) that are seeking to approve non-profit organizations such as higher education institutions and hospitals (referred to collectively herein as “Organizations”) that are under contract with a food service management company (FSMC) to provide food service operations. These Organizations offer a unique opportunity for SFSP participation, as they are found in communities nationwide and already provide meal service year-around to students, patients, and others. As SFSPs operate for a short duration, the reimbursable meals served would likely constitute a small proportion of the overall value of the year-round food service operations contract. With that in mind, it would be unlikely that an Organization’s approval to participate in the SFSP would result in a material change to their FSMC contract. However, the Organization needs to consider the change in the context of the solicitation and the resulting contract. The ultimate decision, however, lies with the Organization and the decision must be documented along with the rationale to support their decision. A material change is defined as a change made to a contract after award that alters the terms and conditions of that contract substantially enough that, had other bidders known of these changes in advance, they could have bid differently and more competitively.

During discussions with potential SFSP Organizations, States must first ascertain whether the Organization has an existing FSMC contract for food service operations. If so, the State agency must:

- Confirm that the Organization engaged in a competitive procurement process is in compliance with Federal, State, and local procurement standards.
- Confirm that the Organization entered into a fixed-price or cost-reimbursable contract with the FSMC.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

- Determine the overall value of the FSMC contract for food service operations.
- Work with the Organization to estimate the potential value of the SFSP meals to be served.
- Work with the Organization to determine if the potential value of the SFSP meals to be served would result in a material change to the existing FSMC contract for food service operations. If a material change is expected, the State agency must:
  - require the Organization to initiate a new procurement for a FSMC to provide food service operations which:
    - includes service of reimbursable meals under the SFSP, and
    - complies procurement standards and contains the standard contract provisions in 7 CFR 225.6(h)(2) and 225.15(m)(5-7).

This new procurement could be a separate FSMC contract solely for SFSP or a contract for all specifications under the existing contract plus the SFSP.

- If no material change is expected to result, the State agency must:
  - obtain confirmation from the Organization of an amendment to the existing FSMC contract for food service operations to include service of SFSP unitized meals per 7 CFR 225.6(h)(3) and
  - consult with the Regional Office to determine when a new procurement process must occur, which must then include the required procurement and SFSP provisions.

State agencies must distribute this memorandum to Program operators. Program operators with questions should contact their State agency. State agencies with questions may contact their appropriate FNS Regional Office.

Sincerely,

**Original Signed**

Sarah E. Smith-Holmes  
Director  
Program Monitoring and Operational Support Division  
Child Nutrition Programs