



Food and Nutrition Service

Braddock Metro Center

1320 Braddock Place Alexandria, VA 22314

DATE: June 3, 2020

MEMO CODE: SP 21-2020, CACFP 12-2020, SFSP 12-2020

SUBJECT: Questions and Answers related to Food Service Management Company Contracts and Allowable Costs during the COVID-19 Pandemic<sup>1</sup>

TO: Regional Directors  
 Special Nutrition Programs  
 All Regions

State Directors  
 Child Nutrition Programs  
 All States

State Directors  
 Food Distribution Programs  
 All States

<b>Issuing Agency/Office:</b>	FNS/Child Nutrition Programs
<b>Title of Document:</b>	Questions and Answers related to Food Service Management Company Contracts and Allowable Cost during the COVID-19 Pandemic
<b>Document ID:</b>	
<b>Z-RIN:</b>	
<b>Date of Issuance:</b>	06/03/2020
<b>Replaces:</b>	N/A
<b>Summary:</b>	This memorandum provides clarification on questions related to the operation of Food Service Management Company contracts, monitoring during Administrative Reviews, and allowable costs
<b>Disclaimer:</b>	The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.
Body of guidance document follows.	

This memorandum includes questions and answers for State agencies and local Program operators on flexibilities available under the Child Nutrition Programs during the novel coronavirus (COVID-19) pandemic.

The attached questions have been grouped under three headings: Food Service Management Company (FSMC) Contracts and Other Contracted Suppliers, Monitoring, and Allowable Costs.

<sup>1</sup> Pursuant to the Congressional Review Act (5 U.S.C. §801 et seq.), the Office of Information and Regulatory Affairs designated this memo as not major, as defined by 5 U.S.C. § 804(2).

The questions include further guidance related to the flexibility provided under *COVID-19: Child Nutrition Response #19, Nationwide Waiver of Food Service Management Contract Duration in the National School Lunch Program and Summer Food Service Program (SFSP)*, specifically regarding contract duration requirements, maintenance fees, contract modifications, billing of additional costs, and extension of supplier contracts. Additional questions address documentation requirements for food safety inspections, as well as allowable costs as they pertain to personal protective equipment, provision of non-congregate meal service, staff salaries, State Administrative Expense funds, and non-refundable program costs.

FNS appreciates the exceptional effort of State agencies and local Program operators working to meet the nutritional needs of child and adult participants during a challenging time. State agencies are reminded to distribute this memorandum to Program operators immediately. Program Operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

**Original Signed**

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## **Food Service Management Company (FSMC) Contracts and Other Contracted Suppliers**

### **1. Why is CACFP not included in the food service management company (FSMC) contract Nationwide Waiver?**

On April 24, FNS issued the Nationwide Waiver of Food Service Management Contract Duration in the National School Lunch Program and Summer Food Service Program (SFSP) waiving, for all State agencies, school food authorities (SFAs), and SFSP sponsors the FSMC contract duration requirements at 7 CFR 210.16(d) and 225.6(h)(7). FSMC contracts that may expire by or around June 30, 2020, may be extended through school year 2020-2021 (June 30, 2021). To ensure Program integrity during this time, extended FSMC contracts are limited to one-year only.

Additionally, Child Nutrition operators may, pursuant to 2 CFR 200.320(f)(2), use emergency noncompetitive procurement to negotiate a new contract for school year 2020-2021. To ensure program integrity moving forward, contracts resulting from noncompetitive proposals may not exercise renewal options.

CACFP was not included in this Nationwide waiver because CACFP regulations do not have similar restrictions on the duration of FSMC contracts. Although flexibilities provided at 2 CFR 200.320(f)(2) (noted above) apply to all Child Nutrition Programs, including CACFP.

### **2. If an SFA or SFSP sponsor with a FSMC contract is closed and not serving meals, can a FSMC continue to charge maintenance fees?**

Maintenance fees using a ‘meals x rate’ price are not eligible for payment when Program meals are not served. Other maintenance fee payment provisions that may exist are subject to State or local legal counsel review and feedback for compliance with Federal, State, and Local procurement standards.

### **3. If an SFA or SFSP sponsor would like a change to meal service (e.g., begin weekend meal service) which is not captured in an existing FSMC contract, is this a material change to a FSMC?**

Contract modifications are subject to a cost or price analysis found in 2 CFR 200.323(a). *The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications.* Once the cost or price analysis is obtained, the SFA or State agency legal counsel may determine if the change is material. State agency review and approval of such amendments is required prior to execution. 7 CFR 210.19(a)(5)

Alternatively, during COVID-19 operations, SFAs and SFSP sponsors may also use the micro-purchase method in 2 CFR 200.320(a) or non-competitive proposals as explained in 2 CFR 200.320(f)(2) to obtain the additional goods and services needed to offer weekend meal services. When using the micro-purchase method, SFAs and SFSP

sponsors are reminded that while price quotes are not required, prices must be reasonable and purchases equitably distributed among qualified suppliers. To ensure program integrity moving forward, contracts resulting from noncompetitive proposals may not exercise renewal options. All costs must be necessary, reasonable, and allocable to be paid using Federal Funds (2 CFR 200.403).

**4. SFAs and SFSP sponsors with FSMC contracts are having to purchase different items to accommodate grab and go. For the contracts that are fixed-priced, should the cost of the paper products be included or should they bill the school for those additional products?**

Billing of additional costs depends on what costs are included in the existing fixed-price contract. Additional costs amending a SFA-FSMC contract in excess of the Simplified Acquisition Threshold will be subject to 2 CFR 200.323(a), which requires a cost or price analysis in excess of the Simplified Acquisition Threshold, and 7 CFR 210.19(a)(5), which requires State agency review and approval of amendments prior to execution [7 CFR 210.19(a)(5)].

During the COVID-19 operations, SFAs and SFSP sponsors may use the micro-purchase method in 2 CFR 200.320(a) or a non-competitive proposal as explained in 2 CFR 200.320(f)(2) to obtain the additional goods. SFAs and SFSP sponsors may obtain additional services using these same procurement methods, if applicable. To ensure program integrity moving forward, contracts resulting from noncompetitive proposals may not exercise renewal options. All costs must be necessary, reasonable, and allocable to be paid using Federal Funds (2 CFR 200.403). When using the micro-purchase method, SFAs and SFSP sponsors are reminded that while price quotes are not required, prices must be reasonable and purchases equitably distributed among qualified suppliers. Amending contracts executed using non-competitive proposals in 2 CFR 200.320(f)(2) must follow 2 CFR 200.323(a) as applicable, and as noted above, obtain State agency prior review and approval prior to execution.

**5. Can SFAs or SFSP sponsors extend contracts with food distributors and milk, dairy, and other suppliers with contract duration periods ending on or around June 30, 2020?**

USDA does not have authority over the duration of Child Nutrition Program operator contracts, except for FSMC contracts in 7 CFR 210.16(d) and 225.6(h)(7). Program operators seeking to extend supplier contracts expiring on or before June 30, 2020, will need to consult State and local procurement standards to determine if contract extensions are allowable. In the event that contracts expire, however, Federal regulations allow Program operators to use a non-competitive proposal in 2 CFR 200.320(f)(2) to negotiate one-year contracts given the public health emergency.

### **Monitoring**

**6. What documentation must an SFA have during an administrative review if they are unable to obtain a food safety inspection during the COVID-19 emergency?**

If an SFA is unable to obtain a food safety inspection because the State or local health department has suspended inspections due to the COVID-19 emergency, an SFA would need documentation (e.g., a letter) from the health department that these inspections have been suspended. If the SFA was unable to obtain a food safety inspection because the SFA is closed, the SFA would just need to show that the SFA was closed and therefore unable to obtain the food safety inspection. Both of these circumstances would be outside of the control of the SFA and therefore would not be held against them during an administrative review.

### **Allowable Costs**

**7. Is the purchase of personal protective equipment or other supplies that are intended to prevent or reduce the spread of COVID-19 an allowable cost?**

Yes. Personal protective equipment (e.g., gloves and face masks) as well as cleaning and sanitary supplies are allowable costs during the current public health emergency, provided that such purchases are made in support of Child Nutrition Program operations. All purchases must continue to meet the required criteria of being reasonable, allocable, and necessary (refer to 2 CFR 200.404 and 200.405). State agencies are reminded that State Administrative Expense (SAE) funds may not be used for local level purchases of protective equipment, cleaning, or other sanitary supplies.

**8. May funds from the nonprofit food service account be used to cover meal delivery costs and/or the purchase of supplies to facilitate non-congregate meal service during the public health emergency?**

Yes. Expenses related to meal delivery and/or provision of meals in non-congregate settings are allowable costs. However, State and local agencies should note that additional reimbursement is not available for these purposes. Further, all such purchases must continue to meet the required criteria of being reasonable, allocable, and necessary (refer to 2 CFR 200.404 and 200.405). For further information, please refer to *COVID-19 Summer Food Service Program (SFSP) and Seamless Summer Option (SSO) Meal Delivery Using Existing Authority*, and SP 14-2020, CACFP 08-2020, SFSP 07-2020, *Child Nutrition Program Meal Service during Novel Coronavirus Outbreaks: Questions and Answers #3*.

**9. May funds from the nonprofit food service account be used to purchase bottled water (as an alternative to water fountains and other on-site options) for non-congregate meals served during the public health emergency?**

Yes. The purchase of potable bottled water to supplement meals served in non-congregate settings is an allowable cost. For further information, please refer to policy memorandums SP 28- 2011, *Water Availability During NSLP Meal Service*, CACFP 20-

2016 *Water Availability in the Child and Adult Care Food Program*, and SP 49-2016, CACFP 18-2016, *Resources for Making Potable Water Available in Schools and Child Care Facilities*. State and local agencies are reminded that milk is expected to be served as part of each reimbursable meal and potable water may not be provided as a substitute for milk.

**10. May local program operators pay staff salaries using funds from the non-profit foodservice account when employees are unable to work due to mandatory closures related to the current public health emergency? Is compensation in the form of hazard pay for employees who are still working also allowable?**

Yes, but only when such employee absences are covered under the local program operator's established personnel policies. FNS has determined that local program operators with such policies may continue to pay out salaries and benefits to their employees during mandatory closures due to COVID-19, which qualify as an "authorized absence from the job" for affected employees in accordance with the requirements of 2 CFR 200.431(b). These payments must be consistent with the program operator's policy of paying salaries (under unexpected or extraordinary circumstances) from all funding sources, Federal and non-Federal, and must be fully allocable. Compensation in the form of hazard pay for employees continuing to work is further considered an allowable cost, provided that such compensation is similarly permissible under the program operator's personnel policies, and the hazard pay in question is reasonable. Any of these covered personnel costs may be charged retroactively to the date upon which mandated staff absences and/or work that occurred when the hazardous conditions related to COVID-19 began.

Program operators may draft a new personnel policy if they don't have an existing one in place covering leave, salaries, and benefits during unexpected and extraordinary circumstances. Any new or updated policies must also be fully in accordance with the requirements of 2 CFR, and consistent in their payment of salaries and benefits regardless of the funding sources used/available, both federal and non-federal (as described above).

**11. May State Administrative Expense (SAE) funds be used to support activities supporting COVID-19 response?**

Yes. State Administrative Expense (SAE) funds may be used to support COVID-19 response activities, but only for allowable, State-level costs. Per 7 CFR 235.6 (a-1), costs may include salaries, employee benefits, travel expenses for administrative and supervisory personnel, support services, office equipment, staff development, monitoring, and technical assistance activities. These may take the form of state-level initiatives to promote health and safety, including technical assistance to school food authorities and to institutions on preventing or limiting the spread of COVID-19 while continuing foodservice operations during the public health emergency. Use of SAE funds for local-level expenses is prohibited.

**12. How should States, SFAs, institutions or other grantees treat non-refundable costs for events and activities that were cancelled due to COVID-19 closures and social distancing protocols?**

If a State, institution, or other child nutrition program grantee had expended funds for an approved and otherwise allowable program cost (e.g., travel, meeting registration, supplies) for an event or activity that was cancelled due to COVID-19 closures, and those costs were not refunded by the vendor, the grantee may charge those costs to their program. Grantees should keep records of the original expense, and their attempt to obtain refunds. Grantees should also ensure that any materials of value, such as travel vouchers, supplies, materials, etc., that can be repurposed or used at a later date, are used for the operation of the child nutrition program or a related activity. This flexibility applies only to costs incurred prior to the expiration of OMB Memo, M-20-17, “Administrative Relief for Recipients and Applicants of Federal Assistance Directly Impacted by the Novel Coronavirus, Due to the Loss of Operations.”