

School Year 2024-2025 FSMC Fixed Price Contract Bid Process Instructions For School Sponsors

These are the instructions for a Food Service Management Company (FSMC) **Fixed Price** contract. Although similar, these are not the same instructions as for a FSMC Cost Reimbursable contract or a Vended School Meals Company contract.

Applicable Federal Regulations and Guidance

First, it should be noted that federal regulations, specifically those found in 7 CFR 210 for the National School Lunch Program (NSLP) in Sections 210.14, 210.16, 210.19, 210.21, and the procurement standards under 2 CFR Part 200, govern this entire procurement process.

School sponsors should be aware of these regulations, including 2 CFR 200.318(c) (1 & 2) regarding conflicts of interest in relation to participants in the procurement process. The sponsor must immediately notify the Michigan Department of Education (MDE) if such a conflict of interest is present with any member involved with the procurement of this contract. Bidders are prohibited from assisting the sponsor in developing the bid specifications for this Request for Proposal (RFP).

Food Service Contracts Information

To obtain copies of the current school year contract prototypes or renewal documents, email MDE-FSMC-Vended@michigan.gov.

Link to website: [MDE, Food and Nutrition Programs, Food Service Contracts](#)

For further reference, refer to the [Updated Guidance: Contracting with Food Service Management | Food and Nutrition Service \(usda.gov\)](#) posted on the Food Service Contracts website.

Contract Administration and Monitoring

The sponsor's responsibilities do not end when the contract is signed. Monitoring the contract is essential to ensure the service procured is the service received, and to ensure compliance with Federal law. Diligence in monitoring the contract helps demonstrate program integrity, fiscal responsibility, and is key in protecting the sponsor's interests.

1. **Know the contract.** Read and understand what is included in the contract.
2. **Monitor the service.** Designate and train staff to:
 - Check that meals served match the menus, are reimbursable, and meet food quality standards.
 - Check invoices to ensure they match the sponsor's records, charges are correct, and the sponsor receives the full value of the United States Department of Agriculture (USDA) Food credits.
 - Document instances where standards are not met.

3. **Practice excellent communication with the FSMC.**

- Regularly and clearly communicate with the FSMC about service or operational changes.
- Develop a system to communicate and resolve complaints.
- When applicable, question discrepancies and enforce the contract.

4. **Pay invoices on time.** Unless there is a documented, legitimate reason as accounted for in the contract terms, the sponsor has an obligation and is required to pay the FSMC for services rendered on time.

The sponsor and the FSMC owe it to one another to communicate about service regularly and clearly. Both parties should notify each other of service issues, work on resolutions, and discuss what is working well and what is not.

Some instances where payment may not be required may include, but are not limited to, the following examples: 1) documented meals that do not meet meal patterns or the sponsor's required specifications as outlined in the contract, 2) meals that are spoiled or are unwholesome, or 3) meals that are not provided in accordance with contract terms.

Timely payment to the FSMC for reimbursable meals and compliant service is critical to the success of the program just as much as it is to the FSMC's successful operation. Consistent failure to pay the FSMC on time may negatively impact its ability to provide successful service to the sponsor or even elsewhere.

Contract administration is a key component to program success and ensures an effective contract!

Contract Duration

All contracts run from July 1st of the current year to June 30th of the following year. The contract must be properly procured, approved by MDE, and fully executed by **July 1** for it to be considered valid for the coming school year. The resulting contract is for one year with the option of four one-year term renewals. It is recommended that sponsors begin the procurement or renewal process several months in advance of July 1.

Overview of RFP Review and Approval Process

If it is determined that a fixed price FSMC contract is the appropriate choice for the sponsor's food service, the sponsor's designated representative may complete the following documents and submit to MDE for review and approval. The sponsor may not advertise or distribute the bid packet without MDE's prior review and written approval of the bid documents.

There are four documents and several attachments that make up the initial packet to MDE:

1. Legal Notice (in Word format)
2. Letter to FSMCs (in Word format)
3. Request for Proposal (RFP) (in Word format)
4. Information Section (in Excel format)

5. Applicable policies, menus, and year-end PAL report (in PDF format)

These must be completed with the sponsor's information and submitted to MDE-FSMC-Vended@michigan.gov. The letter, legal notice, and RFP must be submitted in Word format, and the Information Section must be in Excel format. Supporting attachments such as policies and menus should be submitted in PDF format. Include multiple menus in one PDF file versus separate attachments.

Submit the bid packet to MDE for review at least **three weeks in advance** of the anticipated document release date. This will allow sufficient time for review and revisions prior to approval. Failure to do so may result in a delayed approval and, therefore, MDE will not be able to guarantee the timeline.

Designated Representative and Selection Committee

All substantive pre-bid contact or communications between any potential bidder and the sponsor must be through the sponsor's designated representative. Any substantive pre-bid contact or communication with any sponsor personnel, administration, vendors, contractors, or board members other than the designated representative will automatically disqualify them as a bidder.

Prior to releasing the bid documents, identify the bid evaluation committee members who will attend the pre-bid meeting, bidder presentations, and evaluate the non-price portion of the bid. The committee members should participate in the entire evaluation process. The bid evaluation committee should not include individuals who have a personal financial interest in the bid award, or who have any other legal or financial conflict of interest, real or apparent.

Unallowable Provisions and Overly Responsive Items

The bid proposals must not include unallowable cost items such as scholarships, incentives, gifts, travel packages, football signs, vacations, kitchen equipment, special events, or other overly responsive items. These types of items are outside the scope of the solicitation and create a conflict of interest. They must **not** be included in the evaluation and scoring to determine contract award as they may disqualify and render the FSMC's entire response ineligible for contract award.

Bid Protest Procedures/Policy

Per Federal procurement procedures, the sponsor alone is responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of its procurement. Issues may include, but are not limited to, source evaluation, disputes, protests, and claims.

Bid protests will go directly to the sponsor for resolution. Therefore, it is best practice for the sponsor to have a policy or procedure in place to handle and resolve disputes relating to its procurements.

Document Approval

The sponsor **must** have written approval from MDE before releasing any bid document or packet. This includes the legal notice and letter announcing the bid to the FSMCs.

Pre-Bid Meeting

Sponsors are required to schedule a mandatory pre-bid meeting and a tour of facilities. The following must occur at the pre-bid meeting: 1) have a sign-in sheet, 2) provide time during the meeting for questions and answers, 3) conduct a tour of several buildings that are representative of the sponsor's current food service program, and 4) identify the sponsor's designated representative for any future contact.

Give bidders at least **three weeks** to submit proposals after the completion of the pre-bid meeting and/or release date.

Legal Notice

After MDE's written approval of the legal notice, it must be published in a widely read newspaper seven to ten days in advance of the bid release to notify interested parties of the bid for a food service management contract.

Letter to FSMCs

After MDE's written approval of the letter to FSMCs, it should be sent to **at least all** companies on MDE's courtesy list of companies. It is recommended that the sponsor send a group email, with the notification letter attached, to the entire group of FSMC contacts from the courtesy list. Sponsors are encouraged to include other entities as well.

When sending the group email, be sure to include all email addresses in the "to" line of the email and "cc" your contract analyst on the email. Do not blind copy the recipients.

If the company's email address is no longer valid or does not go through, be sure to contact the company for a valid email and document such attempt.

Request for Proposal (RFP) Document

The RFP prototype document contains sections in bold and/or highlighted in yellow that must be filled out by the sponsor. Any additions or changes to the prototype made by the sponsor must be in **bold, red font**, so that upon review, MDE can easily identify the change.

Procurement Agent Duties for Point of Service, Inventory or Financial Management

USDA provides guidance on this topic in relation to FSMCs. Unless the sponsor structures the RFP to include the services of the FSMC and a Point of Service (POS) system together, it would be unallowable for the FSMC to bring in a POS system post award.

In situations where the sponsor wishes to have the FSMC manage its food service **and** act as its procurement agent for acquiring an automated accountability system (point of service, inventory, financial management, etc.), it must be included in this RFP. The sponsor must indicate the scope of the procurement duties the FSMC must fulfill and the responsibilities as the procurement agent. The sponsor must cite a description of the procedures the FSMC must follow to procure the system and indicate that the FSMC must follow the same procedures as its procurement agent.

If the sponsor includes language in the RFP to have the FSMC act as its procurement agent for a technology system (or any major, non-expendable item), when the FSMC administers any aspect of the procurement process for a POS system, the FSMC itself, its subsidiary companies, or any company that has a business/corporate interest or relationship with the FSMC may *not* submit a bid or offer in response to the solicitation for a technology system. If they do, the bid would not be considered “responsive” as it would constitute a conflict of interest according to federal procurement regulations.

NOTE: Procurement agent duties for any major, non-expendable items may be assigned to the FSMC, but it must be outlined in the RFP and include conflict of interest language.

Renegotiation of Prices (Meal and Meal Equivalent) and/or Fees (Management)

The original RFP/Fixed Price Contract must address the renegotiation of the fixed price per meal (breakfast, lunch, or supper) and per meal equivalent (a la carte), fixed management fees per meal (breakfast, lunch, or supper) and per meal equivalent (a la carte), fixed price per unit rate per reimbursable snack, and fixed per unit rate for one-half pint of milk upon renewal of the contract. Otherwise, no price/fee increases will be allowed during the life of the contract.

Sponsors should identify the method/basis for an adjustment in the fees per meal/meal equivalent and consider limiting this adjustment using the Consumer Price Index for All Urban Consumers (CPI-U): US City Average by Expenditure Category and Commodity Service Group Table 1 – Food Away from Home category *or* a flat percentage rate as determined by the sponsor (consider how much the sponsor can afford).

Cost adjustments must be supported by a review of the FSMC cost data and actions taken by the FSMC to mitigate such increases. Before any fixed rate or fee increases can be implemented as part of a contract renewal agreement, the FSMC shall document to the sponsor, through a written financial analysis, the need for such increases.

The FSMC and the sponsor may renegotiate a mutually agreeable increase/decrease each year, but the increase must not exceed the CPI for December of the current school year or the flat percentage increase as stated in the RFP.

Adjustment of fixed price per meal/meal equivalent is not automatic and must be supported by a review of the FSMC cost data and actions taken by the FSMC to mitigate such increases.

Bid Bonds

In accordance with USDA FNS policy memo SP 35-2016, bonding requirements under 2 CFR 200.325 do not apply to the procurement of FSMC services in the NSLP. **However, bonding requirements remain as outlined in 7 CFR 225.15 and SFSP13-2014 and do apply to the procurement of FSMC services in the Summer Food Service Program (SFSP). Thus, bid bonds are required for bids that include SFSP.**

While not required for NSLP, bonding requirements may still be implemented and are considered a measure of protection for the sponsor due to the scope of services provided under the contract. Bonding requirements may continue to be established to ensure the Federal interest of the program is protected and so long as it does not create a barrier to free and open competition.

Guarantees

Financial guarantees may be requested by the sponsor as a part of the RFP and subsequently proposed by bidders in their proposals. Guarantee options must be disclosed as part of the RFP process and describe in detail the forecasting of cost and settlement of losses and/or surpluses. Options could include: 1) Guaranteed Break-even/No Loss – FSMC guarantees the sponsor no loss for the operation of the food service program, and 2) Guaranteed Return – FSMC guarantees the sponsor a return of no less than a specified dollar amount for the operation of the food service program. Guarantees must not be contingent upon multi-year duration. **Note: No bidder shall propose a guaranteed return that is greater than the amount requested by the sponsor. Proposals with a guaranteed return greater than this stated amount will be rendered non-responsive and will not be considered for award.**

Sponsors must thoroughly review the proposals for any addenda to the contract. Typically, bidders that include an addendum will have sections addressing guaranteed returns.

Addenda to the Contracts

It is not unusual for FSMCs to include an addendum to the contract in a bid proposal. Addenda generally contain language to amend, remove, or further clarify terms. For example, topics such as renegotiation of fees, guaranteed returns, or insurance may be addressed. If approved by the sponsor, the addendum would become a part of the contract and override language in the original RFP/contract. Therefore, it is essential for the sponsor to fully understand the terms of an addendum prior to acceptance.

MDE is not a party to the contract but has administrative requirements to review and approve the sponsor's food service contracts, including addenda. To expedite the final review and approval process, MDE reviews all FSMC addenda templates at the beginning of the contract cycle to verify there are no conflicts with USDA guidance/program regulation. MDE does not review the addenda on the sponsor's behalf for acceptance. Thus, the sponsor should not rely on cursory reviews conducted by MDE to constitute or justify acceptance.

As a matter of local control, the responsibility for review and acceptance of the proposed changes in the addendum falls to the sponsor. It is highly recommended that the sponsor has its respective legal counsel review the addendum to ensure clarity on any proposed change and to ensure the sponsor's interests are protected. As part of this review, the sponsor has the right to reject, accept, or request revision of the addendum.

If the sponsor works with the FSMC to make changes to an addendum, make sure the original proposed addendum, and the revised final version is submitted to MDE for review. **In addition, MDE requires that the sponsor submit a separate, written confirmation statement that the sponsor has reviewed, fully understands, and approves/accepts the final addendum.** The sponsor must wait to sign the addendum until after the sponsor receives approval from MDE to proceed with executing and awarding the contract.

Information Section (Excel document)

It is required that sponsors use the prototype Information Section document provided as there are pre-filled formulas in the relevant boxes on certain tabs.

Tab 1: Information Section Cover Sheet

This tab should be read but left alone as no entry is needed here.

Tab 2: Required Attachments

1. Sponsor must attach its procurement policy to include a written code of conduct, small purchase threshold, and bid protest procedures. Sponsor must also attach its meal charge policy, which may address humanitarian/alternate meals, as well as its bad debt policy.
2. Sponsor must attach a sample 21-day cycle menu for each meal type served (breakfast, lunch, snack, supper), including specific milk choices (at least two). **Remove all food service logos and names of staff/directors.**
3. Sponsor must attach the a la carte menu and pricing sheet for each site where a la carte is available.
4. In its bid proposal, the FSMC must attach a cycle menu for the Fresh Fruit and Vegetable Program if applicable.

Tab 3: Food Specifications and Meal Patterns

Enter specific requirements regarding meals, food items, times, etc.

Tab 4: Sample Non-Price Criteria

This is a list of sample non-price criteria that the sponsor may use on its own Bid Point Calculator.

Tab 5: Sample Bid Point Calculator

This tab shows how the Bid Point Calculator should look upon completion. The sponsor does not need to use the criteria set forth on this sample, but can, if it fully encompasses everything for which each bidders' proposal will be rated.

Tab 6: Bid Point Calculator and Evaluation Criteria Matrix

The Bid Point Calculator will be utilized by the selection committee to evaluate the price and non-price portion of each bidder's proposal. Once completed, this form should clearly identify each responsive bidder by price and non-price criteria and will demonstrate which bidder is being selected.

The Bid Point Calculator is divided into two sections. The top section evaluates pricing only and in this prototype is worth a maximum of 51 points. **The sponsor may weight price differently than 51 points so long as price is still the primary factor.** No entry is needed on the top portion of the form until after the bid due date.

The bottom section is where the sponsor will insert its non-price criteria. Tab 4 has a list of possible evaluation criteria and sub-criteria. A numerical value must be assigned to each sub-criteria item and these values must equal the overall numerical value assigned to each criteria item that will be used to evaluate the non-price portion of the bid response.

Note: If the sponsor intends to use taste tests or menu sampling as a part of its decision, it must be included as part of the criteria on the Bid Point Calculator and assigned a numerical value accordingly. No factors other than what is listed here can be the determining factor for the decision to award the contract.

If the sponsor plans to allow responsive bidders to give an oral presentation to accompany a written proposal, that invitation must be extended to ALL responsive bidders. All elements of said presentations should be kept equal, including the same committee members present, length of time, and questions to the extent possible.

Tab 7: Equipment Inventory List

List all food service equipment at each site, mark whether items are expendable or non-expendable, and whether they are owned/provided by the sponsor or the FSMC.

Tab 8: Contracts/Vended Agreements

List contracted meals sold to other sites or schools (such as head start, daycare, juvenile detention center, or other school via a sponsor-to-sponsor agreement or vended meal contract).

Tab 9: Building Demographics

List all sites that serve meals, including those sites receiving contracted meals from the sponsor.

Tab 10: Services by Location

List all sites that serve meals, including those sites receiving contracted meals from the sponsor. Do not mark both the "Full Serve" column and the "Offer vs. Serve" column; one or the other must be chosen. If the site contains some grades that will do regular full serve and some grades that will do offer vs. serve, list those grades separately and label accordingly. Lunch must be offer vs. serve for grades 9-12.

Tab 11: Current Labor

By site, list current staffing, hourly rate, hours worked, etc. Include staffing for ALL child nutrition programs (CACFP, SFSP, and NSLP). Indicate if each position is either a sponsor employee or FSMC employee.

Tab 12: Current Fringe

By site, list current staffing and fringe benefits. Include staffing for ALL child nutrition programs (CACFP, SFSP, and NSLP). Indicate if each position is either a sponsor employee or FSMC employee.

Tab 13: USDA Foods

Attach the 2023 year-end PAL report. The PAL report can be accessed from the sponsor’s consortia’s website:

- GLC: www.hpsusdafoods.org
- SPARC: www.michigansparc.com
- MOR: <http://veorders.vaneerden.com/>

Identify the school year (SY) 2024-2025 consortia election made on the SY 2023-2024 Child Nutrition Programs coordinated application.

Enter the SY 2022-2023 annual delivery fee amount. The sponsor’s consortia can confirm this amount.

Describe any major changes that took place between SY 2022-2023 and SY 2023-2024 that might impact USDA Food Entitlement Usage. For example, did the sponsor’s special dietary needs change or did the enrollment decrease/increase significantly?

Tab 14: Cost Responsibility Details

Indicate the areas of responsibility for both the sponsor and FSMC. Note that it is possible for both the sponsor and FSMC to be responsible for some items. Items marked as the responsibility of the FSMC must match bid items listed on the Projected Costs tab.

Tab 15: Projected Costs

All costs associated with the food service program should be reflected here. Enter the number of days these costs are based on. Describe expenses included for Contracted Services, Utilities, Indirect Costs, and any amount noted on the “Other” line. For any cost paid directly by the sponsor, include it on this page and note that it is not a bid item.

Tab 16: Projected Revenue

Sponsor will complete ONLY the yellow highlighted sections. MDE will complete all other areas using claim reporting data for October 2023 for NSLP and Child and Adult Care Food Program (CACFP) and June/July/August 2023 for SFSP.

Tab 17: FSMC Proposed Labor

The bidder will complete this tab.

Tab 18: FSMC Proposed Fringe

The bidder will complete this tab.

Tab 19: Bid Sheet

The cells for meals/units will auto-fill; do not enter numbers. The bidder will complete all other applicable cells.

If additional plans are requested, include additional bid sheets, and note the plan name at the top (such as Plan A, Plan B., etc.).

After the Bid Due Date

After the bid due date, the bid evaluation committee will evaluate the price and non-price portions of all submitted proposals using the Bid Point Calculator. This form must be used as the primary means to evaluate each bid proposal and oral presentation (if applicable) to determine the successful bidder. **Note:** The bidder with the highest number of points will ordinarily be awarded the contract, not necessarily the bidder with the lowest bid price per meal/meal equivalent.

When evaluating the costs associated with each requested service on the bid sheet, if applicable, the selection committee must make sure that the FFVP flat rate, when added to the sponsor's own administrative costs for the program, does not exceed 10% of the overall grant for administration.

Before awarding the contract to the successful bidder, the sponsor must complete and submit all items noted on the "Checklist Letter to MDE" for final review. Items must be emailed to the contract analyst as indicated on the Checklist Letter.

Important Final Reminders

1. The RFP/Fixed Price Contract and attachments that are part of the pre-bid packet and RFP proposal submitted by the successful bidder will become the final contract when approved by MDE, awarded to the FSMC, and fully executed. Any amendments, modifications, and/or addenda must be approved by MDE prior to the award and execution. The FSMC may propose but is not allowed to unilaterally impose contractual terms and conditions.
2. All contracts and contract renewals must be reviewed and approved by MDE before being taken to the sponsor's Board of Education for approval. The sponsor will be issued a written letter of approval from MDE after contracts and/or renewals are approved.
3. After the original contract is approved, if there are any changes to the prices, fees, services, or terms, the sponsor MUST notify and receive approval from MDE prior to execution of said change.
4. The original contract is for one year with the option of four one-year term renewals. Contracts and contract renewals must be approved by MDE before being signed by the sponsor. Contracts and renewals must be in place prior to each July 1st to be in effect by the start of the new school year. According to the Final Procurement Rule effective November 30, 2007, the failure of the sponsor to meet this deadline will result in regulatory non-compliance with established procurement standards and could result in the withholding of reimbursement pursuant to current regulations 7 CFR 210.19 (2), 210.21, 215.14a, 220.16.
5. After the execution of the final contract, the sponsor is responsible for the administration of the contract.