

AMENDMENT TO FIXED PRICE FOOD SERVICE MANAGEMENT COMPANY CONTRACT FOR USDA FRESH FRUIT AND VEGETABLE PROGRAM (FFVP)

This "Amendment" is between School Food Authority (SFA) Messmer Catholic Schools and Food Service Management Company (FSMC) _____ for the purposes of adding the SFA's participation in the Fresh Fruit and Vegetable Program (FFVP) to the FSMC contract.

The parties now desire to amend the FSMC contract dated July 1, 2023 (FSMC effective date). In consideration of the promises contained therein, the parties hereto agree to amend FSMC contract as follows:

All terms and conditions contained in the FSMC contract shall remain unchanged and in full force and effect, including the option to renew this Amendment along with the FSMC contract.

The cost to the SFA for the FFVP for the school year shall be a fixed annual FFVP administrative fee of: \$_____ plus the costs of produce and associated items as described in the section C: "Allowable Costs, Cost Thresholds, and Reporting", subsection 1: "Produce" and subsection 2: "Costs incurred" of this Amendment.

Invoices will be paid based on terms and conditions described in the FSMC contract.

Program Description: The FFVP provides children with a variety of fresh fruits and vegetables. The FFVP is supported primarily by grants from the USDA which the SFA apply for each school year. The level of funding is dependent upon the SFA's enrollment and the availability of funding by the USDA.

A complete description of the FFVP and recorded instructional webinars are on the Wisconsin Department of Public Instruction's FFVP website at the following link: <http://dpi.wi.gov/school-nutrition/ffvp>. Parties to this Amendment must operate the FFVP in compliance with applicable rules and regulations.

Purpose: The purpose of the FFVP is to expand and increase the variety and amount of fruits and vegetables children experience and consume. Combined with nutrition education and a reinforcement of healthful eating habits, the program emphasizes the long-term goals of positively influencing children's life-long eating habits and combating childhood obesity.

FFVP Eligibility: Public and non-profit private elementary schools claiming 50 percent or greater free and/or reduced price meals are eligible for this program. Schools with higher percentage of students certified for free and reduced price meals will be given priority over schools with lower percentages of free and/or reduced price meals.

Fresh Fruit and Vegetable Program Compliance

The SFA and the FSMC must ensure compliance with all applicable FFVP rules and regulations, guidelines, memorandums, including but not limited to, the following:

A. Spending Plan (Allocation A and B Budgets): The SFA must submit spending plans for each allocation received by the SFA for each site participating in the FFVP to the Wisconsin Department of Instruction, School Nutrition Team (DPI - SNT) by the dates indicated in the DPI-SNT memo sent to participating schools in the FFVP. The FSMC must submit spending plans to the SFA that allows the SFA enough time to submit spending plans to DPI-SNT by each of the deadlines. The spending plans must detail how allocated funds will be spent throughout the program year and identify all produce costs, operating costs, and administrative costs.

B. Geographic Preference: When purchasing produce, consideration may be made to procure locally grown produce for the FFVP. Local is defined as produce items grown in Wisconsin. This geographic preference

shall not limit competition to only Wisconsin. However, local procurement strategies and preferences (when allowable) shall be used whenever possible.

C. Allowable Costs, Cost Thresholds, and Reporting:

The allowable costs: The following are allowable costs. The FSMC must submit to the SFA a monthly invoice for the actual allowable costs associated with operating the FFVP and reported in the following manner:

1) Produce:

Cost Thresholds: At least eighty percent (80%) of the costs invoiced to the SFA must be used to purchase produce. Costs invoiced must meet this minimum threshold.

Reporting: FSMC will need to provide detailed statement of the following costs:

- Produce costs
- Non-produce food costs (example: low fat or fat free dips)

2) Costs Incurred:

Cost Thresholds: Up to twenty percent (20%) of the costs invoiced may be used for other costs incurred. Costs invoiced exceeding this threshold are unallowable and will be the responsibility of the FSMC and not the SFA.

Reporting: FSMC will need to provide detailed statement of the following costs:

- Direct labor costs in preparing and serving produce
- Small supply costs, such as napkins, plates, utensils, peelers, knives, cutting boards, etc.
- Small equipment costs (< \$250), such as carts, shelving, etc.

3) Administrative Costs:

Cost Thresholds: Of the "Costs Incurred", not more than ten percent (10%) of those funds invoiced may be used for administrative costs. Costs invoiced exceeding this threshold are unallowable and will be the responsibility of the FSMC and not the SFA.

Reporting: FSMC will need to provide detailed statement of the following costs:

- Administrative costs, such as indirect labor spent on purchasing produce, planning, and claim reconciliation
- Large equipment costs (\geq \$250), such as refrigerators, coolers, etc. Prior approval by DPI-SNT is required

Additional guidance and requirements for the FFVP can be found in attachment A: "USDA Memo RE: Fresh Fruit and Vegetable Program Fees in FSMC Contracts."

D. Submission of Claims: In order for the SFA to receive reimbursement, all costs must be actual costs and supported by adequate documentation. This documentation must be submitted with the invoice. An invoice submitted to the SFA without adequate documentation will be returned to the FSMC. The FSMC will need to provide missing documentation before invoice will be paid by the SFA. SFA has a limited amount of time to submit claims to DPI-SNT for reimbursement; SFA must submit claims online to DPI-SNT for payment within sixty (60) days after the end of the claiming period.

- E. **Nutrition Education:** Nutrition education must be incorporated into the FFVP. Resources for this requirement can be found on DPI-SNT's Nutrition Education Resources website on the following link: <http://dpi.wi.gov/school-nutrition/ffvp/nutrition-education>.
- F. **Serving Schedule:** SFA and FSMC will work together to develop a FFVP serving schedule. Serving schedule for FFVP must start on the first full week of the school year. On scheduled days for FFVP produce must be made available to students during the school day. Produce must be provided separately from the lunch or breakfast meal services, in one or more areas of the school during the official school day. FFVP must be served at least twice per week, and the program must begin during the first full week of the school year.
- G. **Execution of Amendment:** All other terms and conditions contained in the FSMC contract shall remain unchanged and in full force and effect except for those amended by this Amendment. By signing below all parties have agreed to the changes contained in this Amendment to the FSMC contract.

SFA

Name of Authorized Representative:

Signature of Authorized Representative:

Title: _____

Date: _____

FSMC

Name of Authorized Representative:

Signature of Authorized Representative:

Title: _____

Date: _____

Note: A copy of this amendment must be provided to:

Department of Public Instruction
 School Nutrition Team
 125 S. Webster Street
 P.O. Box 7841
 Madison, WI 53707-7841

Advice of Counsel: Each party acknowledges that, in executing this amendment, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this amendment. Wisconsin Department of Public Instruction (DPI) is not a party to any contractual relationship between a SFA and a FSMC. DPI is not obligated, liable, or responsible for any action or inaction taken by a SFA or FSMC based on this prototype amendment. DPI's review of the amendment is limited to assuring compliance with federal and state procurement requirements. The DPI does not review or judge the fairness, advisability, efficiency, or fiscal implications of the amendment.



United States
Department of
Agriculture

Food and
Nutrition
Service

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DATE: May 31, 2012

MEMO CODE: SP 33-2012

SUBJECT: Fresh Fruit and Vegetable Program Fees in FSMC Contracts

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

This memo is written in response to a number of concerns brought to our attention by State agencies (SA) regarding school food authorities (SFA) in contracts with food service management companies (FSMC) that allow the FSMC to charge a fixed fee to the Fresh Fruit and Vegetable Program (FFVP).

As stated in the current FFVP Handbook, FFVP costs that may be charged to the FFVP grant are broken into two categories: administrative and operational. Operational costs are the primary costs of running the FFVP, including such costs as:

- purchase of fruits and vegetables, including the cost of pre-cut produce and delivery charges;
- non-food items or supplies that are used in serving and cleaning; and
- salaries and fringe benefits for employees engaged in preparing and distributing fresh fruits and vegetables, and in maintaining a sanitary environment.

Administrative costs, which currently cannot exceed 10% of the overall grant, are used principally to support planning and managing the program. It is important to note that most of a school's FFVP funds must be spent on purchasing fresh fruits and vegetables. This means that all non-food costs must be carefully reviewed and deemed reasonable, given the extent of program operations. Costs reported by the SFA for reimbursement from the grant must be allowable, actual costs, and fully documented. Labor costs, which must be minimal in either the "operating or administrative" category, must be reported by the SFA in a manner that clearly identifies the actual time allocated to the FFVP. Please refer to the FFVP Handbook and policy memoranda for more information on allowable costs and how to claim them.

Therefore, prior to executing a FFVP contract with a FSMC, the SFA must carefully assess all contractual provisions allowing the FSMC to charge costs other than actual costs of fresh fruits and vegetables. The purpose is to ensure adherence to the cost limitations placed on the FFVP (i.e., the requirement that administrative costs not exceed 10% of the overall grant). It is recommended that the SFA assess each bid or proposal received from FSMCs

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in order to determine the allowability of the fixed fee component charged to the FFVP (or any other fees charged to the FFVP not related to the actual cost of the fresh fruits or vegetables). This type of careful review will help ensure that the resulting contract executed by a SFA adheres to FFVP requirements. Moreover, a SFA must ensure contracts with FSMCs require the FSMC to provide full documentation of allowable costs. This documentation must clearly outline the allocation of costs charged to the FFVP (i.e., amounts charged for labor, administrative fees, and actual costs of fresh fruits and vegetables, etc.). The SFA should then use this information provided by the FSMC as a basis for its reimbursement claim under the FFVP. If the FSMC is unable or unwilling to provide this information, the SFA has two choices: it must consider either running the FFVP separately from its existing FSMC contract; or, relinquishing its grant funding. Please note that if provisions are to be added to an existing FSMC contract, the amendment must be evaluated to determine if the change is material, or not.

In addition to our concerns about the information and documentation that a SFA must obtain from the FSMC in order to claim reimbursement from the State under the FFVP, we recommend SFAs that choose to have a FSMC run any aspect of the FFVP follow the guidance below. Thus, the SFA should:

- Provide assurance that the FSMC is completely apprised of all FFVP policies and rules to guarantee the program is operated in compliance with FNS standards;
- Regularly monitor FSMC operations to ensure compliance with relevant FFVP requirements and all provisions of the contract;
- Be able to identify in the solicitation document both the SFA's and FSMC's roles and responsibilities in the FFVP service;
- Include a provision in the request for proposal that requires FSMCs to submit a FFVP cycle menu based on FNS guidance (see next bullet) which could then be used in the scoring process to compare one FSMC's fixed fee to another;
- Although serving size is not required in the FFVP, SFAs may consider including "portion sizes" by referencing the *Fruits and Vegetables Galore Guidance*, the meal pattern, or the food buying guide. Incorporating additional guidelines helps ensure the SFA is taking its required active role in operating the FFVP and helps in creating a more level playing field for potential vendors; and
- Include a provision in the solicitation that requires all FSMCs to document and track FFVP expenses separately and make this documentation easily accessible for the SFA to review.

If you have any questions regarding the contents of this memo, please contact your Regional Office.

Original Signed

Cynthia Long
Director
Child Nutrition Division