



Questions and Answers

Arkansas Department of Education, Division of Elementary and Secondary Education, Child Nutrition Unit

Here are questions and answers from the training sessions for School Food Authorities (SFAs) and Food Service Management Companies (FSMCs) provided October 17th and 18th 2022.

1. Question: When using reimbursement rates, do the rates come from the previous year or the current year?

Answer: The rates are for the current year.

2. Question: Can the Price/Cost section under criteria be defined or reworded?

Answer: Price/Cost is defined as the total cost of proposal submitted in the USDA guidance. This criterion will continue to be named Price/Cost.

3. Question: How do you deal with meal equivalency for non-student meals?

Answer: Meal equivalency does not apply to non-student meals. New contracts that began in the 2020-2021, school year changed as far as applying meal equivalents to non-student meals. From that point forward, all meals served are assigned a per meal rate.

In a fixed rate contract, the FSMC will propose a fixed rate per student snack, breakfast, and lunch. In a cost reimbursable contract, the FSMC will propose an administrative fee and a management fee per student snack, breakfast, and lunch.

Non-student meals, a.k.a. non-reimbursable meals, which includes adult meals, teacher meals, and second trays for students are charged at the per meal rates proposed in the fixed or cost reimbursable contract. Meal equivalency does not apply to non-student meals and money collected from

the sale of these meals must not be used to calculate meal equivalency. Meal equivalency applies to total cash sales from a la carte, catering, banquets, etc.

The State Agency does not set the meal equivalency rate. The State Agency informs the SFAs and FSMCs of the rate each year based on total federal reimbursement and the per meal value of USDA donated foods.

The value of in-kind meals allowed for Child Nutrition staff are not charged back to the SFA in the meal equivalency calculation.

4. Question: How do professional standards apply to the Food Service Management Companies?

Answer: Professional standards apply to SFAs and FSMCs in much the same way. The most current memo from USDA is linked [HERE](#). This memo has a Q and A attached and provides information for training topics (some of which are required each year), the number of required training hours per year based on the types of positions held in the SFA, and the number of hours worked per week. Hiring standards are also addressed based on district enrollment. Questions 53-55 specifically address FSMCs and when the hiring standards or professional standards would need to be the same as the school district.

5. Question: Are magazine binders/booklets allowed to be sent along with the RFP, if they are kept separate?

Answer: FSMCs should not insert the RFP into their own document. SFA are to use the State Agency prototype RFP that has been reviewed by USDA. The RFP is intended to become the signed legal contract between the LEA/SFA and the FSMC. If the FSMC wants to develop a separate document to market or advertise their program or products, that is their choice. However, that document cannot become their proposal or the contract. It is important for the language in the RFP to describe a precise indication of need. If the RFP does not clearly project the scope and identify the products and services **requested** by the SFA, the proposal may not meet the needs of the SFA. It is important to note that if an FSMC has any part in the development of the RFP, they would be excluded from submitting a proposal. This further reiterates that the binders and notebooks should not be part of the RFP since language in those binders could alter the prototype document.

6. Should Buy American justification forms be checked to verify the price of the non-domestic product?

Answer: Yes, and the SFA should be checking the prices on the invoices against the price on the Buy American Justification Form. A main part of the

justification is that the non-domestic product is substantially cheaper. SFA must have proof of that. Justification is not automatic.

7. Question: Related to Arkansas Act 575, does USDA's determination on the surcharge payment of an embedded employee being an unallowable expense from the non-profit food service account still stand?

Answer: Act 575 is an Arkansas law established for the purpose of protecting the Arkansas Teacher Retirement System by establishing a surcharge to be paid by the SFA if they are in a contract with an FSMC and if they have outsourced the employees to the FSMC. When the law was enacted, CNU was advised by the USDA regional office that the surcharge would not be an allowable expense from the non-profit food service account and could not be charged back to the food service. Therefore, this payment would need to come from district funds. After our meeting on 10/17/2022, CNU posed the question to the regional office to determine if the ruling was still in effect. USDA advised that the ruling from 2018 would stand and the surcharge is not considered an allowable cost from the non-profit food service account. Click [HERE](#) for Commissioner's Memo CNU-18-032.

8. Question: What is considered overly responsive in the RFP? How are overly responsive submissions handled by the SFA?

Answer: Overly responsive elements of an FSMC's response are considered unallowable and must not be considered in the award. An overly responsive response is anything offered in the RFP that was not originally solicited in the RFP. A contract award must be made by evaluating responses against the evaluation and scoring criteria stated in the solicitation with price as the primary consideration and other factors considered. Overly responsive elements must not be included in the evaluation criteria. Doing so can render the entire FSMC response ineligible for the contract award. Examples of overly responsive elements include but are not limited to gifts, trips, hotel stays, dinners, equipment, scoreboards, grills, loans, etc.

9. Question: Can the FSMC require employees to sign a non-compete agreement or insert a non-compete clause into the contract with the SFA?

Answer: Child Nutrition workers who are employed by the SFA and, upon outsourcing, become employees of the FSMC cannot be required by the FSMC to sign a non-compete agreement after the contract between the LEA/SFA and the FSMC has been signed. This is addressed in the prototype RFP that is compiled by the state agency and reviewed by USDA.

10. Question: Can FSMC Child Nutrition directors and managers be required to become certified through the State Agency Directors and Managers Training courses?

Answer: Districts with self-operated programs are required to enroll their managers and directors in the Culinary Directions training offered by the State Agency if those managers and directors are paid with Child Nutrition funds. The training is extensive covering the major performance standards (those that can carry fiscal corrective action) monitored in the administrative review process as well as other regulatory program requirements. Those who complete the training successfully become Certified Child Nutrition Directors and Managers in the state of Arkansas. At this time, the State Agency does not require FSMC employees to attend the training or become certified. However, SFA/LEA could require that the FSMC employees become certified in the state of Arkansas.

11. Question: In past RFPs, a year-to-date report was pulled from the Child Nutrition claim system. This report showed the total number of meals served by category (students, adults, a la carte, catering, contract meals) and the financial status of the program. With changes to the claim system, this year-to-date report is no longer available. CNU made the decision to require districts to include the October claim for the current year with the RFP along with a report from the district's point of sale report for the entire previous year. The month of October was chosen since it is typically a long month and eligibility is established. The comment was made that the month might be skewed due to districts that offer a fall break.

Answer: Most districts do not offer a fall break during October. However, for those that do, there is information available on the claim and in the RFP (average daily members, average daily participation, total number of serving days in the school year, and total number of serving days in the month) that would allow the FSMC to adjust. Also, providing the total meals from the point of sale will show the number of meals served in the previous year.

12. Question: The number of meals served in the 2021-2022 school year will be inflated since everyone ate at the free rate. Can districts also include data from the 2019-2020 school year.

Answer: Yes, you can.

13. Question: What is the time requirement for receiving or correcting invoices?

Answer: FSMCs are to provide the SFA with an itemized invoice for payment by the 10th day of the month for the previous month's billing. If the SFA finds

the invoice contains errors or needs clarifications, the SFA must request a corrected invoice and the FSMC must provide a corrected invoice within 14 days of the request. If additional corrections are needed, a final, corrected, itemized invoice must be received by the SFA no later than 45 days after the end of the month in question. If the FSMC fails to provide an itemized, corrected invoice within 45 days, the SFA will withhold payment for non-compliance. SFAs will pay invoices in the order of calendar months. Payments will not be made out of monthly sequence.

11/7/2022