



COLORADO
Department of Education

Contract Renewal with Food Service Management Companies (FSMC)

CDE Office of School Nutrition

April 13, 2016

Learning Objectives

Attendees will understand:

- Length of FSMC contracts in Colorado
- Information required at renewal
- Contract changes requiring re-bid not renewal
- What's new with federal and state regulations
- Required documents to submit



Length of FSMC Contracts

- The USDA doesnot allow FSMC contracts of more than one year duration with up to 4 renewals
- Term of contract is from July 1 of school year to following June 30
- FSMC contracts may be renewed 4 additional years



Decision to Renew

- SFAs and FSMCs make a decision annually to renew
- Contract renewal basis, including fee increase provisions, must follow the original contract
- Not renewing? Contact CDE now to issue new RFP or to change to self-operation



Decision to Renew

SFAs:

- Take time to review original contract terms
- Are all original contract agreements being met?
- Look at the projected budget for next year when deciding about renewal

5



Renew or Re-bid?

- *Non-material* changes can be renewed
- Alterations/amendments/addendums cannot result in material changes to the contract
- *Material* changes must result in new procurement process



Material Change or Not?

- Material Change: Would responders have bid differently if proposed change had existed at time of the bidding?
- 2 CFR 200.324: CDE must review if "a proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold. (\$150,000)



Material Changes = Re-bid

Examples of material change

- Adding/Removing significant new programs or sites
- Combining with or leaving another district
- Changing from 5 day to 4 day
- Budget impact
- Possible material changes:
 - Starting Community Eligibility Provision
 - Required to start Colorado Breakfast after the Bell Program Nutrition Program (SFA ≥ 1000 ; 70% F/RP)



Non-material = renewal likely

- Per meal fee increases are based on index within original contract
- Minimal enrollment/site changes



SFA Submission of January and End of Year FSMC Invoices to CDE

Enforcement of Contractual Terms and Regulatory Requirements in SFA and FSMC Contracts

- June 26, 2013: Anthony Dyl, CO Sr. Assistant Attorney General, responds to April 13, 2013 USDA Under-Secretary Kevin Concannon letter sent to all state attorney generals, plus a Memorandum sent to all state CNP directors.
- Mr. Dyl worked with CDE OSN to review and revise policies and procedures to ensure proper enforcement, oversight and monitoring of contractual terms in SFA and FSMC contracts.
- Result: CDE OSN will review 2 sets of invoices annually

10



CDE OSN FSMC Oversight Commitment

- CDE OSN annually monitors contracts through renewal process to ensure that FSMC's attest to their agreement to comply with the requirements.
- Forecasted budget included in annual renewal with a line item for rebate credit in Cost Reimbursable contracts.
- Findings can lead to a criminal investigation by the CO Attorney General's Office

11



Regulatory Updates

- *Procurement Review*: USDA's plan is to complete a procurement review with the Administrative review every 3 years. Contract management
- *Professional Standards Rules* went into effect July 1, 2015. FSMC and SFA responsible for ensuring that all food service staff and management meet the minimum standards for education and annual training.
<http://www.cde.state.co.us/nutrition/trainingprofessionalsstandards>

12



Regulatory Updates

- **Currently: Two types of FSMC contracts allowed**
 - Fixed price contracts that provide for fixed fees.
 - Cost-reimbursable contracts that provide for management fees established on a per meal basis.
- **Proposed: Eliminate cost-reimbursable contracts**
 - To ensure that discounts, rebates, and credits were returned to the nonprofit school food service account, and ensure no prohibited expenses were paid using Program fund
- **Legislation has been proposed to only allow fixed fee contracts for FSMCS in child nutrition programs and not permit cost reimbursable contracts.** This has not been finalized or implemented at this time

13



New 3 yr. Administrative Review Cycle

- **Menu/meal pattern**
 - Meal patterns in much better shape first two years. In the new cycle, and inadequate components require fiscal action
 - Professional standards are part of the administrative review now. Be sure it is clear who is tracking all employee training hours and areas to meet requirements and that the food service directors with new contracts in SY15-16 meet education requirements

14



Required Renewal Documents

- SFA submission of prior school year January invoices to CDE
- Completed checklist of FSMC allowable charges and required credits
- Current FSMC contract renewal check list
- School district contacts for current year
- **End of school year (June) invoice with YTD totals by category for prior school year will be required to be submitted to CDE OSN by August 1 each year.**



Required Renewal Documents

- Projected food service budget: based on Fixed Fee or Cost Reimbursable contracts
- SFA Non-delegable Responsibilities
- Anti-collusion Affidavit
- Suspension And Debarment Certification
- Certification Regarding Lobbying
- Any additional addendums and terms next year

16



Specific Fee increases allowed

Follow original approved contract:

- The General, Administrative Expense & Management Fees may be increased annually
- Yearly % Change in Consumer Price Index (CPI) by the U.S. Dept of Labor, Bureau of Labor Statistics, Food Eaten Away from Home, US City Average, not seasonally adjusted, January to January
- This is the maximum fee increase allowed as agreed upon between FSMC and SFA



Specific Fee increases allowed(cont)

Such increases effective

- On a prospective basis on anniversary date of this Contract
- *Allowed only if approved in advance by SFA*
- CPI Fee increases for upcoming renewal year must be submitted annually to SFA
- No other fee increases allowed



Non-Delegable Duties

- Non-delegable duties are those which the SFA maintains responsibility.
- These are duties that the SFA cannot assign to the FSMC
- The checklist is SFA acknowledgement of all SFA responsibilities for the non-profit school food service fund.



School District Contacts

- Helps to get the message to the right person the first time!
- Complete all contact sections please!
- Be sure to notify CDE if contact changes are made during the year as well as change the contacts in the claim system.



Required Renewal Documents

- Completed documents due at CDE OSN by due date
- Electronic format is preferred (scanned and emailed). Send separate email to ensure that packet was received through CDE's 10 mb limit emails
- All documents available at:
<http://www.cde.state.co.us/nutrition/nutrifsmc>
- Please contact CDE OSN at 303-866-6661 or NutritionProcurement@cde.state.co.us with questions!


