Contracting with Food Service Management Companies

What the Law Requires
7CFR 210.16

Food service management companies

a) Any school food authority may contract with a food service management company to manage its food service operation in one or more of its schools.
(2) Ensure that the food service operation is in conformance with the school food authority’s agreement under the Program;

(4) Retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals;

(5) Retain signature authority on the State agency-school food authority agreement, free and reduced price policy statement and claims;

(6) Ensure that all federally donated foods received by the school food authority and made available to the food service management company accrue only to the benefit of the school food authority’s nonprofit school food service and are fully utilized therein;

(9) Obtain written approval of invitations for bids and requests for proposals before their issuance when required by the State agency. The school food authority must incorporate all State agency required changes to its solicitation documents before issuing those documents;
c) Contracts that permit all income and expenses to accrue to the food service management company and “‘cost-plus-a-percentage-of-cost’” and “‘cost-plus-a-percentage-of-income’” contracts are prohibited. Contracts that provide for fixed fees such as those that provide for management fees established on a per meal basis are allowed.
7CFR 210.21 Procurement

a) General. State agencies and school food authorities shall comply with the requirements of this part and 7 CFR part 3016 or 7 CFR part 3019, as applicable, which implement the applicable Office of Management and Budget Circulars, concerning the procurement of all goods and services with nonprofit school food service account funds.

b) Contractual responsibilities. The standards contained in this part and 7CFR part 3015, 7 CFR part 3016 and 7CFR part 3019, as applicable, do not relieve the State agency or school food authority of any contractual responsibilities under its contracts.
(f) Cost reimbursable contracts—(1) Required provisions. The school food authority must include the following provisions in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts:
i. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;

ii. The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;
v. The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and

vi. The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.
§ 250.50 Contract requirements and procurement.

a) Contract requirements. Prior to donated foods being made available to a food service management company, the recipient agency must enter into a contract with the food service management company. The contract must ensure that all donated foods received for use by the recipient agency for a period specified as either the school year or fiscal year are used in the recipient agency's food service.

b) Types of contracts. Recipient agencies may enter into a fixed-price or a cost-reimbursable contract with a food service management company, except that recipient agencies in CACFP are prohibited from entering into cost-reimbursable contracts, in accordance with 7 CFR part 226. Under a fixed-price contract, the recipient agency pays a fixed cost per meal provided or a fixed cost for a certain time period. Under a cost-reimbursable contract, the food service management company charges the recipient agency for food service operating costs, and also charges fixed fees for management or services.
c) *Procurement requirements.* The recipient agency must meet Departmental procurement requirements in 7 CFR parts 3016 or 3019, as applicable, in obtaining the services of a food service management company, as well as applicable requirements in 7 CFR parts 210, 220, 225, or 226. The recipient agency must ensure that procurement documents, as well as contract provisions, include any donated food activities that a food service management company is to perform, such as those activities listed in paragraph (d) of this section. The procurement and contract must also specify the method used to determine the donated food values to be used in crediting, or the actual values assigned, in accordance with §250.51. The method used to determine the donated food values may not be established through a post-award negotiation, or by any other method that may directly or indirectly alter the terms and conditions of the procurement or contract.
Activities relating to donated foods. A food service management company may perform specific activities relating to donated foods, such as those listed in this paragraph (d), in accordance with procurement documents and its contract with the recipient agency. Such activities may also include the procurement of processed end products on behalf of the recipient agency. Such procurement must ensure compliance with the requirements in subpart C of this part and with the provisions of the distributing or recipient agency's processing agreements, and must ensure crediting of the recipient agency for the value of donated foods contained in such end products at the processing agreement value. Although the food service management company may procure processed end products on behalf of the recipient agency, it may not itself enter into the processing agreement with the processor required in subpart C of this part. Other donated food activities that the food service management company may perform include:

1) Preparing and serving meals;
2) Ordering or selection of donated foods, in coordination with the recipient agency, and in accordance with §250.58(a);
3) Storage and inventory management of donated foods, in accordance with §250.52; and
4) Payment of processing fees or submittal of refund requests to a processor on behalf of the recipient agency, or remittance of refunds for the value of donated foods in processed end products to the recipient agency, in accordance with the requirements in subpart C of this part.
250.51 Crediting for, and use of, donated foods.

a) Crediting for donated foods. In both fixed-price and cost-reimbursable contracts, the food service management company must credit the recipient agency for the value of all donated foods received for use in the recipient agency's meal service in a school year or fiscal year (including both entitlement and bonus foods). Such requirement includes crediting for the value of donated foods contained in processed end products if the food service management company's contract requires it to:

1) Procure processed end products on behalf of the recipient agency; or

2) Act as an intermediary in passing the donated food value in processed end products on to the recipient agency.
b) **Method and frequency of crediting.** The recipient agency may permit crediting for the value of donated foods through invoice reductions, refunds, discounts, or other means. However, all forms of crediting must provide clear documentation of the value received from the donated foods ...

c) **Donated food values required in crediting.** The recipient agency must ensure that, in crediting it for the value of donated foods, the food service management company uses the donated food values determined by the distributing agency, in accordance with §250.58(e), or, if approved by the distributing agency, donated food values determined by an alternate means of the recipient agency's choosing.
Use of donated foods. The food service management company must use all donated ground beef, donated ground pork, and all processed end products, in the recipient agency's food service, and must use all other donated foods, or commercially purchased foods of the same generic identity, of U.S. origin.
250.52 Storage and inventory management of donated foods

a) General requirements. The food service management company must meet the general requirements in §250.14(b) for the storage and inventory management of donated foods.

b) Storage and inventory with commercially purchased foods. The food service management company may store and inventory donated foods together with foods it has purchased commercially for the school food authority's use (unless specifically prohibited in the contract). It may store and inventory such foods together with other commercially purchased foods only to the extent that such a system ensures compliance with the requirements for the use of donated foods in §250.51(d)
c) Disposition of donated foods and credit reconciliation upon termination of the contract. When a contract terminates, and is not extended or renewed, the food service management company must return all unused donated ground beef, donated ground pork, and processed end products, and must, at the recipient agency's discretion, return other unused donated foods. The recipient agency must ensure that the food service management company has credited it for the value of all donated foods received for use in the recipient agency's meal service in a school year or fiscal year, as applicable.
250.53 Contract provisions

a) Required contract provisions in fixed-price contracts. The following provisions relating to the use of donated foods must be included, as applicable, in a recipient agency's fixed-price contract with a food service management company. Such provisions must also be included in procurement documents. The required provisions are:

Twelve specific requirements
b) **Required contract provisions in cost-reimbursable contracts.** A cost-reimbursable contract must include the same provisions as those required for a fixed-price contract in paragraph (a) of this section. Such provisions must also be included in procurement documents. However, a cost-reimbursable contract must also contain a statement that the food service management company will ensure that its system of inventory management will not result in the recipient agency being charged for donated foods.
250.54  Recordkeeping and reviews

a) Recordkeeping requirements for the recipient agency. The recipient agency must maintain the following records relating to the use of donated foods in its contract with the food service management company:

1) The donated foods and processed end products received and provided to the food service management company for use in the recipient agency's food service;

2) Documentation that the food service management company has credited it for the value of all donated foods received for use in the recipient agency's food service in the school or fiscal year, including, in accordance with the requirements in §250.51(a), the value of donated foods contained in processed end products; and

3) The actual donated food values used in crediting.
b) **Recordkeeping requirements for the food service management company.** The food service management company must maintain the following records relating to the use of donated foods in its contract with the recipient agency:

1. The donated foods and processed end products received from, or on behalf of, the recipient agency, for use in the recipient agency’s food service;

2. Documentation that it has credited the recipient agency for the value of all donated foods received for use in the recipient agency’s food service in the school or fiscal year, including, in accordance with the requirements in §250.51(a), the value of donated foods contained in processed end products; and

3. Documentation of its procurement of processed end products on behalf of the recipient agency, as applicable.
c) **Review requirements for the recipient agency.** The recipient agency must ensure that the food service management company is in compliance with the requirements of this part through its monitoring of the food service operation, as required in 7 CFR parts 210, 225, or 226, as applicable. The recipient agency must also conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the food service management company has credited it for the value of all donated foods received for use in the recipient agency's food service in the school or fiscal year, including, in accordance with the requirements in §250.51(a), the value of donated foods contained in processed end products.
d) *Departmental reviews of food service management companies.* The Department may conduct reviews of food service management company operations, as necessary, to ensure compliance with the requirements of this part with respect to the use and management of donated foods.