
Changes to School Food Service Contracts

By Jeremy S. Motz / Jan 15, 2013

During 2012, the United States Department of Agriculture (the "USDA") made the first major changes in school meals in 15 years by modifying the nutritional standards applicable to school meals. These changes affect various nutrition programs the USDA administers, and in which schools participate, including the National School Lunch Program, the School Breakfast Program, the Special Milk Program and the Summer Food Service Program. These changes consist of new meal requirements and are intended to raise standards and improve the health and nutrition of the children who participate in the school meal programs, and are a key component of the federal Healthy, Hunger-Free Kids Act. The USDA has provided time for schools to implement key changes, which are largely phased in over a three-year period, beginning in 2012-13.

If your school contracts with a third-party Food Service Management Company ("FSMC") or vendor to provide food service or vended meals, it is prudent that you review your FSMC or Vended Meals contract to determine if the changes will result in a change to terms and conditions of your FSMC or vended meals contract, such as the price, fee or payment the FSMC or vendor charges for any meal or service under the contract. As you are aware, the USDA and Michigan Department of Education ("MDE") regulations provide that any change to the original MDE-approved FSMC or vended meals contract must be approved by the MDE prior to implementation. If your FSMC or vendor will require an increase in costs or fees in order to provide food service or vended meals in accordance with the new regulations, such change may require MDE approval and/or a re-bid of your FSMC or vended meals contract, even if your contract still has extensions available.

Based upon our review of these changes to the regulations and discussions with the MDE, we understand that these changes will mostly affect "Fixed Price" FSMC contracts and vended meals contracts, as the implementation of these contracts may require an increase to the prior-approved fixed prices. Although we believe "Cost Reimbursable" FSMC contracts will most likely not be affected, if your FSMC or vendor proposes any change to its pricing, fees or payments, regardless of the type of contract you have, you should notify the MDE to discuss the details of any such change, and whether modifications are permitted, or if a re-bid of your contract is required.

You should review these contracts now, as any required re-bid of your contract will take time and your school will need to complete the process so the new contract is in place prior to the traditional FSMC or vended meal contract start-date of July 1. For more information, you may review the MDE's guidance on this issue by [clicking here](#).

If you have further questions regarding this issue, you may contact Jeremy S. Motz at 248-988-5895 or jmotz@clarkhill.com.