

OHIO AUDITOR OF STATE KEITH FABER



From: Auditor of State's Center for Audit Excellence

To: All IPA Firms

Subject: Food Service Management Company Update

Date: March 1, 2024

AOS received legal opinions from a few food service management companies (FSMC) articulating that federal procurement requirements do not apply to food sourced by the FSMC under federal law, programmatic requirements, or contractual requirements (using the standard RFP provided by DEW). Our legal division has reviewed the legal opinions and concurs with the position of the FSMCs. As such, unless you encounter a contract that clearly indicates that the FSMC must follow federal procurement requirements, FSMC compliance with such requirements is not required to be tested from a single audit perspective.

The attached FSMC procedures, which you may consider when auditing a school that uses an FSMC, have been updated for this change.

Questions can be directed to the Center for Audit Excellence at AOSFederal@ohioauditor.gov.

Food Service Management Company (FSMC) Procedures¹

1. Determine via inquiry, review of planning procedures (including minutes), and scan of the Entity's expenditure ledgers whether the Entity utilizes a food service management company (FSMC).
2. If the Entity utilizes a FSMC, determine whether the FSMC is a service organization or a vendor.

If the Entity contracts with another organization to administer the Nutrition Cluster Federal program (in part or in whole) on its behalf, the other organization is a service organization if:

- The organization is responsible for activities subject to compliance requirements (paying invoices, submitting reports, etc.) and
- The organization is *not* the auditee's subrecipient.

AOS auditors should refer to AOSAM 30500, Appendix A for more information about service organization relationship determinations.

If the FSMC is a vendor, it will be subject to the same testing as other vendors paid using Federal funds. The FSMC would not need to be tested as a separate population if it is a vendor, it can be included with other non-payroll expenditures in the population subject to testing. For single audit purposes, if the Entity is billed on a price-per-meal basis under a vendor relationship, auditors should verify that the contract between the FSMC and the Entity includes only allowable activities/costs within the calculation of the price per meal. Auditors then test invoices from the FSMC to verify they are billed in accordance with the FSMC contract.

Regardless of if the FSMC is a vendor or service organization, procurement of the FSMC should be tested in section I of the FACCR.

3. Determine if the FSMC is a material service organization.
 - a. Auditors must consider materiality in relation to the financial statements and the Nutrition Cluster (if it is a major program) when determining whether the FSMC is a **material** service organization. The FSMC could be material to either the financial statements or Nutrition Cluster, material to both, or immaterial to both.
 - i. For financial statement purposes, auditors should evaluate both revenue (charges for services and intergovernmental revenue) and expenditures when determining materiality (contingent upon actual services provided by the FSMC).
4. If the FSMC is a **material** service organization:
 - a. Ensure the financial and / or single audit planning contains appropriate documentation of the FSMC as a service organization.
 - b. Determine if the FSMC has a SSAE 16 (SOC 1) report available. If so, ensure the report has been obtained and AOS auditors must evaluate the report using the SOC form. If a report is not available or doesn't cover 6 months of the audit period (for AOS auditors) or the entirety of material services provided by the FSMC, AOS auditors should refer to the Audit Manual 30500, Appendix A for alternative procedures.

¹ Updated February 2024 to clarify procurement requirements for food service management companies. Updates are indicated by underline and strikethrough text.

- c. Consider the impact of the use of the FSMC on financial audit and single audit testing.

For the financial audit, auditors should evaluate and test material FSMC activity (receipts and expenditures) as they would any other material accounts. This may require testing of FSMC controls as well as obtaining and testing support substantively (not just a confirmation) for amounts reported in the Entity's financial statements from the FSMC directly. As with any material line items, the availability of a SOC 1 report impacts the amount of testing required.

For single audits, in situations where the FSMC is performing significant activities subject to compliance requirements, auditors may need to test controls and compliance both at the Entity level and the FSMC level.

Auditors should be aware that FSMCs are *not* required to follow federal procurement requirements unless it is required by the contract between the Entity and the FSMC; therefore, absent a contractual requirement to follow federal procurement requirements, auditors are not required to ensure the FSMC properly procured vendors. To require the FSMC to follow federal procurement requirements, in the contract the Entity must delineate both the Entity and FSMC responsibilities and include applicable state and federal regulations that the Entity expects the FSMC to follow while performing those responsibilities (i.e., required controls of USDA Foods to purchased food; prohibiting the use of cost, plus a percentage of cost-type contracts; prohibiting real or apparent conflicts of interest including purchasing from FSMC owned, or affiliated vendors, etc.).

Auditors must test controls and compliance over the procurement of the FSMC by the Entity as well as any other procurement completed at the Entity level. If a contract appears to require the FSMC to follow federal procurement requirements, AOS auditors should submit the contract to the legal division for review.

~~For instance, if the FSMC procures food on behalf of the Entity and the Entity then pays the invoices for the food, prepares meals, and serves the meals using its own employees then the auditors would need to test procurement controls and compliance at the FSMC level. Additionally, auditors would need to test controls and compliance over the procurement of the FSMC by the Entity as well as any other procurements completed at the Entity level.~~

~~*Note: If a FSMC procures each class of items once for all Entities, auditors may be able to perform one test over FSMC procurement controls and compliance and allow other audit teams to leverage that test. AOS auditors should contact the CFAE SSAE Coordinator via Spiceworks to coordinate this process. The SSAE Coordinator will determine which audit teams throughout the state will need the testing and help the auditors determine which team will perform the testing to be leveraged by the other teams. Note that CFAE will not perform or review the work but will act in a coordinator capacity.*~~

~~*Testing documentation should be sufficiently detailed for other audit teams to accurately determine whether they can rely upon the testing or need to complete their own tests. Auditors should proceed with caution and confirm with the FSMC that the procurements indeed benefit all entities and there are no carve out transactions which may be unique to certain Entities. Auditors should also remember*~~

~~that procurement is policy-based and auditors at each individual Entity will need to verify that procurements tested conform to the Entity's procurement policy.~~

Consider also if the FSMC purchases food and provides that food to the Entity to prepare and serve. Entities billed on a reimbursement basis should receive underlying support for the amount billed which the Entity utilizes to verify the purchase is an allowable activity and allowable cost. Auditors should verify the Entity has sufficient controls in place over the purchasing process and should consider an internal control deficiency if the Entity doesn't receive detailed support from the FSMC for invoiced costs. This could also result in noncompliance and a modified opinion on the financial statements and/or single audit opinion depending on the circumstances.