



State of New Jersey

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To: School Business Administrators
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Non-Public School Administrators

From: Arleen Ramos-Szatmary, Coordinator
School Nutrition Programs

Date: February 9, 2015

Subject: Equipment Purchases/Procurement of Food Service Management Company (FSMC)
Services

Local Education Agencies (LEA) must comply with both federal and state procurement regulations when purchasing equipment or procuring the services of a FSMC. As a result, the following clarifications should be noted and followed by the LEA when procuring the services of a FSMC:

Equipment

1. Equipment Purchases Financed by a FSMC:

- The FSMC can ONLY offer these items to the LEA **if** it is SPECIFIED in the Request for Proposal (RFP).
- The LEA should determine its needs and the scope of the services/goods desired, and specify those in the RFP. This assures proposals can be fairly evaluated.
- **Any items/services offered by the FSMC that are not requested in the RFP must be considered overly responsive and cannot be considered in the evaluation/scoring.**
- If the LEA wants the FSMC to finance and provide equipment, the RFP has to do one of two things:
 - Describe in detail, with specifications or technical requirements, the equipment item(s) that the LEA desires.

OR

- Specifically state that the FSMC will be responsible for acting as the LEA's purchasing or buying agent for the purchase, and list the major cost categories and types of equipment that the LEA wants the FSMC to buy.
- The RFP must also state that the FSMC must follow the same procedures when purchasing equipment that the LEA would be required to use if it made the purchases itself (i.e., free and open competition), and that the FSMC cannot buy from a company in which it has an interest.

- LEA re-payment procedures must be described in the proposal and included in the contract. Any equipment provisions must be considered within the constraints of a one year contract – there can be no “tie-in” or assumption that the contract will be renewed. Acceleration clauses are NOT allowed per federal regulations.
- An amortization schedule is highly recommended.

2. Food Service Equipment and Point of Sale (POS) systems purchases of \$5000.00 or more:

- Equipment is defined by an article of nonexpendable, tangible, personal property with a useful life a year or longer and an acquisition cost which equals or exceeds the Federal per-unit capitalization threshold of \$5000.00.
- The state agency has compiled a list of equipment pre-approved by USDA.
- If an LEA wishes to purchase an item not listed on the NJDA Child Nutrition Programs Pre-Approved Equipment List, it must first complete and submit the “School Food Service Program Large Equipment Request” (Form 106) to the NJ Division of Food and Nutrition for pre-approval before issuing an RFP.
- The pre-approved list and the equipment request form can be found in SNEARS/Resources/Equipment Request and Waivers.

3. Contract Equipment Language

If equipment is being purchased by the FSMC at the LEA’s request, the section of the contract in Article 2 regarding repayment must be completed with input from the LEA.

- The contract section for equipment should provide that the LEA has the option to keep the equipment and continue to make payments to the FSMC in accordance with the established amortization schedule **or** that the LEA will return the equipment to the FSMC in full release of any unpaid balance.
- It is the LEA’s sole decision which of these options it will choose to place in the contract.
- Should an LEA choose to return the equipment, it should also obtain from the FSMC a written release that the return of the equipment releases the LEA from any further payment obligation under the contract.

4. If equipment purchases are included in a contract, the LEA must submit the following for approval *prior to executing the contract*:

- Completed “LEA and FSMC Prototype Contract/Addendum Change Request Form” (Form 47).
- Unsigned contract
- Copy of the RFP that includes equipment specifications
- **NOTE:** If the LEA *does not* want the FSMC to remove equipment if the contract is not renewed, the option does not have to be included. However the LEA must include a letter with the change request indicating it was the LEA’s decision to exclude the option of the removal of equipment financed by the FSMC.

Procurement Reminders

- 1) For more detailed information on contracting with a FSMC refer to:
 - “Contracting for a FSMC” (Form 355);
 - “Request for Proposal Documentation” (Form 356) and,
 - “Steps and Resources for Contracting with a FSMC” (Form 36)

- 2) To ensure open and fair competition the RFP must not be overly restrictive, and the FSMC cannot be overly responsive in its proposal.
 - o Example of overly restrictive: LEA requiring FSMC to be located in NJ or to have previous experience in NJ schools
 - o Example of overly responsive: FSMC offering incentives such as scholarships or “free” equipment to entice a LEA to select its proposal. *Note:* LEAs cannot request scholarships/grants, nor can a FSMC offer or give scholarships etc.
- 3) All Requests for Proposals (RFP) must be publicized.
 - o An affidavit of publication or a copy of the actual published advertisement from the newspaper must be submitted to this office.
 - o In addition to the required public advertisement, LEAs can solicit proposals from registered FSMC by sending letters or emails.
- 4) The FSMC must include the completed “Response and Projected Operating Statement” (Form 23) with its proposal
 - o The first page of Form 23 must be submitted to this office with the contract.
- 5) The LEA must evaluate/score all proposals using the criteria stated in the RFP.
 - o The “FSMC RFP Scoring Tool” (Form 263) *and* “FSMC Proposal Comparison Form” (Form 24) can be used.
- 6) Termination language must be inserted into Article 1 Section O of the executed FSMC contract.
 - o The LEA must determine the number of days for notice of termination, AND must include payment terms for making settlement of amounts due.
 - o Contracts left blank in this section cannot be approved by this office.
- 7) Prevent delays in having the annual agreement packet approved and reimbursement being placed on hold by submitting all required documents to this office for approval.
 - o Mail all completed documents listed on “LEA/FSMC Base Year Contract Checklist” (Form 15).

Note: All forms referenced can be found in SNEARS/Resources or at: <http://www.nj.gov/agriculture/applic/forms/#5>

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