




State of New Jersey

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DIVISION OF FOOD AND NUTRITION
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TO: School Business Administrators, Charter School Leads,
Non-Public School Administrators, Food Service Directors

FROM: Rose Tricario, Director
Division of Food & Nutrition 

DATE: July 5, 2018

SUBJECT: Clarification about School Food Authority (SFA) Monitoring Responsibilities
when Contracting with a Food Service Management Company (FSMC)

It has been brought to the State Agency's attention that SFAs are unclear about their monitoring responsibilities when contracting with a FSMC. One of the general procurement standards in the federal regulations 2 CFR 200.318(b) addresses School Food Authorities (SFAs) responsibility to maintain oversight of contracts to ensure contractors perform in accordance with the terms, conditions, and specifications of their contracts and purchase orders. To ensure that the FSMC performs the contracted service in accordance with the contracts, the SFA must monitor the operation of the FSMC. USDA Guidance Manual entitled "FSMC Guidance for SFAs" (May 2016) contains a sample SFA-FSMC Monitoring form that the State Agency has adopted as Form 330 to facilitate SFAs compliance with this federal requirement. SFAs must ensure that they regularly monitor FSMCs procurements to ensure they are adequately addressing the federal compliance requirements referenced in this memo. This documentation must be maintained on file for review during a Procurement Review.

In addition to the general SFA/FSMC monitoring responsibilities referenced above, SFAs **utilizing cost-reimbursable contracts with FSMC are required to monitor their FSMC 's compliance with Federal procurement standards when the FSMC has been designated as the SFAs procurement agent in the contract.** The FSMC would be required to conduct the procurement of goods on behalf of the school district in accordance with the Federal procurement regulations. The SFA's solicitation and resulting contract should have specified the scope of services the FSMC would provide as a procurement agent and required the FSMC to conduct the procurement of goods and services on behalf of the SFA in accordance with the Federal regulations. The SFA must also ensure the value of discounts, rebates, and credits received by the FSMC are reported and credited to the SFA nonprofit food service account.

References to the FSMCs requirement to comply with the Federal procurement requirements are located in the State Agency Cost-Reimbursable Contract Form # 17 CR document Sections: E: Food Service Operation, M: Rebates. Discounts and Credits and M: Procurement.

If the contract is a **fixed price type**, the FSMC **does not** have to use the Federal procurement procedures for food and supply purchases that apply to SFAs. That is because price competition has already taken place when the SFA selected the FSMC. The FSMC is, however, still obligated to adhere to certain program regulations regarding purchases, namely, “Buy American” for food items.

In summary, ALL SFAs must maintain general oversight of their contractors to ensure contractors perform in accordance with the terms, conditions, and specifications of their contracts and purchase orders. SFAs utilizing a cost-reimbursable contract have additional monitoring responsibilities to ensure their FSMC conducts the procurement of goods and services on behalf of the SFA in accordance with the federal, State and Local regulations.

General procurement questions should be directed to Emma Davis-Kovacs at (609) 984-1438 or emma.davis-kovacs@ag.nj.gov

Questions specific to the FSMC contracts should be directed to Nani Lepicard at (609) 984-0698 or nani.lepicard@ag.nj.gov