



State of New Jersey


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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: October 31, 2017

SUBJECT: Monitoring Compliance with Federal Procurement Requirements when Contracting with a Food Service Management Company (FSMCs)

When operating in a School Food Authority (SFA), FSMCs are required to follow the procurement requirements that apply to the SFA (e.g. 2 CFR Part 200.317-326).

In particular, SFAs **utilizing cost-reimbursable type contracts with FSMC require 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 Federal regulations. The SFA's solicitation and resulting contract must specify the scope of services the FSMC provides as a procurement agent and requires the FSMC to conduct the procurement of goods and services on behalf of the SFA in accordance with the Federal regulations.

SFAs with cost-reimbursable contracts must ensure that they regularly monitor procurements undergone by the FSMC to ensure they are adequately addressing the federal compliance requirements referenced in this memo.

References to the requirement for FSMCs compliance with the Federal procurement regulations are located in Article I: Federal and State Required Contract Language – State Agency Form # 17, Sections (C) Food Service Operation, and (L) Procurement.

FSMCs must adhere to Federal procurement rules in cost-reimbursable contracts with SFAs since Program costs must be controlled. Although, the SFA has hired the for-profit FSMC, in procuring goods for the SFA the FSMC is conducting a type of transaction that is actually the responsibility of the SFA. The SFA is, therefore, responsible for monitoring the procurement practices of the FSMC to ensure compliance with Federal Regulations.

If the SFA enters into a **fixed price contract for food and supply purchases with the FSMC, price competition has already taken place through the RFP process and the FSMC does not have to use the Federal procurement procedures.** The FSMC is, however, obligated to adhere to certain program regulations regarding purchases, namely, "Buy American" for food items.

A brief webinar entitled "What is a Fixed Price Contract?" will be offered on November 29th, 2017 at 10 AM. To register, click on the following link: <https://attendee.gotowebinar.com/register/1220893699420158722>.

General procurement questions should be directed to Emma Davis-Kovacs at (609) 984-1438 or Emma.Davis-Kovacs@ag.state.nj.us . Questions specific to the fixed price contract should be directed to Marya Hewins at (609) 292-2166 or Marya.Hewins@ag.state.nj.us .