



State of New Jersey


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To: School Business Administrators
Charter School Leads
Non-Public School Administrators

From: Rose Tricario, Director
Division of Food and Nutrition 

Date: January 15, 2014

Subject: Procurement of Food Service Management Company Services

Local Education Agencies (LEA) must comply with both federal and state procurement regulations when procuring the services of a Food Service Management Company (FSMC). Procedures related to FSMC contracting have been thoroughly reviewed by this office. As a result, the following clarifications should be noted and followed by the LEA when procuring the services of a FSMC:

1. Food Service Equipment, Point of Sale (POS) systems, and other major purchases:

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

OR

- 2) 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.
- o 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.
- o 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.

NOTE: If equipment purchases are included in a contract, the LEA must submit the following to this office for approval PRIOR TO EXECUTING THE CONTRACT:

➤ 30 days must be allowed for the state agency review process.

- Completed "LEA and FSMC Prototype Contract/Addendum Change Request Form" (Form 47)
 - Unsigned contract
 - Copy of the RFP that includes equipment specifications
2. **To ensure open and fair competition the RFP must not be overly restrictive, and the FSMC cannot be overly responsive in its proposal.**
- Example of overly restrictive: LEA requiring FSMC to be located in NJ or to have previous experience in NJ schools
 - 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, etc.*
3. **The LEA must evaluate all proposals using the criteria stated in the RFP**
4. **The FSMC must include the completed "Response and Projected Operating Statement" (Form 23) with its proposal**
- The first page of Form 23, must be provided to this office with the contract for approval
5. **All Requests for Proposals (RFP) must be PUBLICIZED. Proof of publication must be provided to this office.**
- In addition to the required public advertisement LEAs can solicit proposals from registered FSMC by sending letters or emails.
6. **Termination language must be inserted into Section O of the executed FSMC contract.** The LEA must determine the number of days for notice of termination, AND must include payment terms for making settlement of amounts due. *Note: Contracts left blank in this section can NOT be approved by this office.*
7. **Prevent delays in having the annual agreement packet approved and reimbursement being placed on hold by ensuring all documents are provided to this office for approval.** Follow instructions and mail all documents listed on "LEA/FSMC Base Year Contract Checklist" (Form 15).
8. **Refer to FSMC Fact Sheets (Forms 355 and 356) and, "Steps and Resources for Contracting with a FSMC" (Form 36) for more detailed information on contracting with a FSMC.**

Note: Forms can be found at <http://www.nj.gov/agriculture/applic/forms/#5>

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