MICHIGAN Department of Education

Office of School Support Services
P.O. Box 30008
Lansing, Michigan 48909

Web: http://www.mde.state.mi.us

Thomas D. Watkins, Jr.
Superintendent
of Public Instruction

State Board of Education

Kathleen N. Straus
President

Sharon L. Gire
Vice President

Michael David Warren, Jr.
Secretary

Eileen Lappin Weiser
Treasurer

Marianne Yared McGuire
NASBE Delegate

John C. Austin
Herbert S. Moyer
Sharon A. Wise

John Engler, Governor
Ex Officio

FOOD SERVICE

ADMINISTRATIVE POLICY #8
SCHOOL YEAR 2001-2002

SUBJECT: Group Buying Services Follow-up

DATE: May 23, 2002

Administrative Policy #7, related to Group Buying Services, generated many questions. As a result, we compiled the questions and forwarded them to the United States Department of Agriculture for their response. A copy of their response is attached. We have also received additional correspondence from USDA concerning the extension of the implementation date of Administrative Policy #7. The USDA has extended the implementation date from July 1, 2002 to October 1, 2002. This date supercedes the response to question number 1 in the attached letter and in Administrative Policy #7.

There are several conditions that must be met by School Food Authorities *during the extension period.*

- Schools may not enter into any new agreements that are not competitively procured.
- Any current non-competitive agreements may not be extended beyond September 30, 2002.
- Current agreements which include a cost plus percentage of cost pricing structure must be amended by deleting the cost plus percentage pricing structure.

The following are applicable at all times.

- New contracts may not contain cost plus percentage of cost pricing structure.
- All districts wishing to use the services of a non-profit or profit making purchasing agent, must bid such service in an open and competitive manner.

Please be advised that the State will be involved in greater over site of procurement related issues because of these USDA directives.

Please direct any questions related to this policy to Cheryl Schubel, School Meals Consultant, at 517.241.2597.

attachments (2)

USDA

United States
Department of
Agriculture

Food and
Nutrition
Service

Midwest Region

77 W. Jackson Blvd.
20th Floor
Chicago, IL
60604-3591

CC: Sue/Peg/Bach/Ch
Laurie
OFFICE OF SCHOOL
SUPPORT SVCS
APR 15 2002
OFFICE OF DIRECTOR

MW S&CNP: SA 14-3

APR 05 2002

Ms. Susan Perkowski-Anderson, Director
Office of School Support Services
Michigan Department of Education
P.O. Box 30008
Lansing, MI 48909

Dear Ms. Perkowski-Anderson:

This letter responds to the procurement questions in your letter dated March 22, 2002. Each question below is restated as in your letter, and in the same order, with the answer appearing immediately below each question.

1. Question: Clarify the corrective action implementation date of FY 02 School and Community Nutrition Programs Policy Memorandum #02-02. Does this mean that procedures need to be in place or that any purchases made July 1, 2002 or later, must be in compliance?

   Answer: All School Food Authorities (SFAs) and school cooperatives must implement corrective action with respect to any cost plus percentage contracts by July 1, 2002. Any purchases made from the nonprofit food service account on or after July 1, 2002, by SFAs or school cooperatives must be in compliance with the prohibition against cost plus percentage contracts.

2. Question: School food authorities will be placing orders for deliveries July 1, 2002 and after. How does the July 1, 2002 implementation date referenced above impact these deliveries?

   Answer: Prior to July 1, 2002, SFAs can place orders under currently existing contracts for delivery after July 1, 2002, if done as part of their regular contracting procedures. On or after July 1, 2002, SFAs cannot place orders under cost plus percentage contracts, if these orders/deliveries will be paid for from the nonprofit food service account.

3. Question: May school food authorities issue a joint RFP or bid to meet USDA procurement requirements?

   May a legally recognized cooperative (with an inter-local agreement, formed under Michigan Compiled Laws) issue a RFP or bid to meet USDA procurement requirements? Can other districts, who are not part of the cooperative, be added on? If yes, what procedures must be followed to add partner/members to the cooperative?

USDA IS AN EQUAL OPPORTUNITY PROVIDER AND EMPLOYER

Answer: Yes, SFAs may issue a joint Request for Proposal (RFP) or Invitation for Bid (IFB). Such purchasing arrangements may actually increase the purchasing power of SFAs, and result in cost savings and improved quality, which helps advance the goal of improving the nutrition of children. As with any other procurement, a joint purchasing effort by SFAs must be permissible under applicable State and local procurement requirements, and the procurement must meet the requirements of 7 CFR 3016 or 7 CFR 3019, as applicable.

A cooperative may issue an RFP or IFB in accordance with 7 CFR 3016 or 7 CFR 3019, as applicable. USDA supports the use of cooperatives as a means for Child Nutrition organizations to maximize their purchasing power. The cooperative acts on behalf of its member organizations, and when making purchases, must follow the same competitive procurement procedures in accordance with 7 CFR 3016 or 7 CFR 3019 that would apply to the Child Nutrition organizations which are members of the cooperative. If a cooperative has both local government entities and private non-profit organizations, then the cooperative should follow 7 CFR 3016.

No procurement rules need to be followed when adding new members to a cooperative. Since the cooperative described in this question is formed under State rules, membership would be determined by those rules.

An issue which may arise is the timing of the membership. If the new members (public or private non-profit) are added after the procurement action is taken, this may result in a substantive change. As with any substantive change, a new procurement action that accurately reflects the scope of the procurement would be needed.

4. Question: May school food authorities contract with a third party purchasing agent or buying group? Are guidelines available for this type of arrangement? May districts do this jointly? (See # 3 above).

   Answer: Yes, an SFA can contract with a purchasing agent or buying group, but must follow applicable procurement rules/regulations, and provide for full and open competition. Guidelines for SFAs contracting with purchasing agents or buying groups are found in FY 2002 School and Community Nutrition Programs Policy Memorandum #02-02, "Procurements Made Through Group Buying Services." Districts may jointly contract with a purchasing agent or buying group, but must follow applicable procurement rules/regulations, and provide for full and open competition in the contracting process.

5. Question: May a school food authority send out a RFP to consultants or purchasing services to provide administrative services for procurement management, similar to how other professional services are procured in school districts?

   Answer: Yes, an SFA may procure consultants or purchasing services to provide procurement management/administrative services. The procurement of consultants or purchasing services must be done in accordance with applicable procurement

rules/regulations and must allow for full and open competition. As an important reminder, 7 CFR 3016.60(b) and 7 CFR 3019.43 prohibit any person who develops or drafts specifications/Statements of Work, requirements, IFBs/RFPs, contract terms/conditions, or other procurement documents used by the SFA in conducting a procurement under USDA entitlement programs, from competing for contract awards resulting from that procurement.

6. **Question**: Clarify the criteria for determining whether a purchase is considered a small purchase versus one that requires a sealed bid.

School Code $17,258 Threshold

Answer: A small purchase is one using informal procurement methods for acquiring supplies, services, or other property that do not cost more than the "simplified acquisition threshold" fixed at 41 U.S.C. 403(11) currently set at $100,000. This is the small purchase threshold under Federal procurement regulations. The regulation at 7 CFR 3016.36(b) instructs a local government entity to use their own procurement procedures which reflect applicable State/local law, as long as these procedures are not inconsistent with Federal law or the procurement standards at 7 CFR 3016.36. Therefore, a local government entity/public SFA must follow the small purchase threshold set by State/local rules as long as it does not exceed the Federal small purchase threshold of $100,000. If the State/local small purchase threshold is under $100,000, then the government entity/public SFA must adhere to this lower small purchase threshold. Any procurement over the small purchase threshold must be done using sealed bidding or competitive proposals (competitive proposals are generally used when conditions are not appropriate for the use of sealed bids).

Private, non-profit entities (includes private, non-profit SFAs), can choose to follow Federal procurement requirements, or their own procurement procedures that are not inconsistent with Federal requirements. Therefore, the non-profit can follow the $100,000 small purchase threshold or their own more restrictive small purchase threshold. Any procurement which will exceed the small purchase threshold must be done using sealed bidding or competitive proposals.

7. **Question**: How may school food authorities with food service management companies insure that they are in compliance with procurement regulations when national purchasing programs are used?

Answer: Pursuant to the guidance in FY 01 School and Community Nutrition Policy Memorandum #01-05, "Food Service Management Company Procurement Responsibilities" an SFA which has a cost-based contract with an FSMC, must ensure that the FSMC follows the Federal procurement rules used by the SFA. Therefore, the FSMC cannot limit its suppliers to a certain group, as would be the case with using a national purchasing program. This would limit full and open competition.

– Cost reimb.

FSMCs which have a cost-based contract with an SFA must follow Federal procurement rules because these rules mandate full and open competition, and this serves to control the costs of goods which will be billed by the FSMC to the SFA.

If the contract between the SFA and the FSMC is not cost-based, but instead uses a flat-fee or per-meal rate, then all of the charges by the FSMC to the SFA have been properly procured. The flat-fee or per-meal rate itself serves to limit the amount billed by the FSMC to the SFA.

8. **Question**: The use of a purchasing group, such as HPS, has not been addressed with school food authorities administering the Summer Food Service Program. Why?

   Answer: The guidance in FY 02 School and Community Nutrition Programs Policy Memorandum #02-02, "Procurements Made Through Group Buying Services" also applies to Child Nutrition Program participants in the Summer Food Service Program. This is because FY 02 School and Community Nutrition Programs Policy Memorandum #02-02, is also FY 2002 Summer Food Service Program Policy Memorandum #02-3.

9. **Question**: What is the appropriate procedure to protest or resolve problems related to procurement procedures stated in 7 CFR 3016.36?

   Answer: The answer is found at 7 CFR 210.21(b), which states that the State agency or SFA is the responsible authority, without recourse to FNS, regarding the settlement of all contractual and administrative issues arising out of procurements entered into in connection with the Program. Contractual/administrative issues would include, but not be limited to: source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the Federal, State, or local authority that has proper jurisdiction.

10. **Question**: Would USDA staff be willing to meet with representatives from the Michigan School Business Officials to discuss procurement issues?

    Answer: Yes.

We hope that the above responses are helpful. Please contact Sandra Lehner at (312) 353-6697, if you have any questions.

Sincerely,

THERESA E. BOWMAN
Regional Director
Special Nutrition Programs

USDA

United States Department of Agriculture

Food and Nutrition Service

Midwest Region

77 W. Jackson Blvd.
20th Floor
Chicago, IL
60604-3591

MW S&CNP: SNP 14-3

Ms. Susan Perkowski-Anderson, Director
Office of School Support Services
Michigan Department of Education
P. O. Box 30008
Lansing, MI 48909

OFFICE OF SCHOOL SUPPORT SERVICES
MAY 0 1 2002
MAY 0 7 2002
OFFICE OF DIRECTOR

Dear Ms. Anderson

This is in response to your letter of April 8, 2002 requesting an extension for implementing policy memorandum # 02-02. Specifically this issue relates to the competitive procurement requirements that schools and other child nutrition program operators must comply with when expending federal funds received through the operation of the Child Nutrition Programs.

We have discussed and corresponded on this issue numerous times attempting to provide schools in Michigan with clear directives regarding procurement procedures that are in compliance with 7 CFR Parts 3016 and 3019. Our correspondence of August 3, 2001 and Policy Memorandum #02-02 best details our policy. In that correspondence we advised that all schools in Michigan expending federal funds must comply with competitive procurement beginning School Year 2002 – 2003. Your letter of April 8, 2002 seeks an additional extension of 6 to 12 months.

On April 18, 2002 and on April 29, 2002 we discussed the request. During both discussions I concurred with a 3 month extension that would end on September 30, 2002. This extension would provide schools with the necessary time to institute competitive procurement. During this extension, schools cannot enter into any new agreements that are not competitively procured. Nor can any non-competitive agreements be extended beyond September 30, 2002. Further, during this extension period, current agreements which include a cost plus percentage of cost pricing structure must be amended by deleting the cost plus percentage pricing structure. New contracts must not contain this pricing method. To resolve this issue, we need the following:

1. Your assurance that cost plus percentage of cost pricing structure will no longer be used.
2. A date when the new policy will be implemented.
3. Copies of materials that are given to schools on this issue
4. A copy of the revised proto-type agreement being offered to schools by HPS.
5. A description of the process that will be used to ensure that beginning October 1, 2002 schools will be executing competitive bid contracts.

In addition, we understand that the general areas of your CRE review form may be revised to include questions that will ensure schools are in compliance with the necessary procurement

USDA IS AN EQUAL OPPORTUNITY PROVIDER AND EMPLOYER

requirements. We also understand that the Michigan State Auditing Guide may be revised to include procurement guidance questions that auditors can use when conducting school audits. We concur with these changes. Therefore, please provide the following:

6. Your assurance that the CRE monitoring forms will be revised and the timeline for those changes.
7. Your assurance that changes will be made to the State forms for conducting school audits. A timeline for those changes should also be included.
8. A copy of the revised monitoring forms and audit materials when they become available.

If you have any questions, please contact me.

Sincerely,

THERESA E. BOWMAN
Regional Director
Special Nutrition Programs