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FOOD SERVICE

ADMINISTRATIVE POLICY NO. #5 SCHOOL YEAR 2013-2014

SUBJECT: Guidance on Material Changes and Review Requirements for Food Service Management and Vended Meal Contracts

DATE: September 11, 2013 **Replaces Previous Version of Administrative Policy No. 7 School Year 2012-2013**

The Michigan Department of Education (MDE) recommends that the School Food Authorities (SFAs) review the following regulations concerning the procurement of all goods and services with nonprofit school food service account funds, including food service contracts:

7 CFR, Subchapter A, Part 210 – National School Lunch Program
Specifically:

Part 210.14 – Resource Management
Part 210.16 – Food Service Management Companies
Part 210.19 – Additional Responsibilities
Part 210.21 – Procurement

7 CFR Parts 3016 and 3019 applicable to Procurement

Under 7 CFR 210.21(c)(1), MDE has the authority to impose pre-issuance review requirements on a School Food Authority's procurement. The Michigan Department of Education is mandated to annually review each contract, including all supporting documentation, between an SFA and their Food Service Management Company or vendor to ensure regulatory compliance [7 CFR 210.19(a)(6)].

Furthermore, 7 CFR 210.21(c)(2) requires the SFA to obtain MDE's prior written approval for any change made to prototype solicitation or contract documents before issuing the revised solicitation documents or executing the revised contract. Any change to the services outlined within the original Request for Proposal (RFP) or Request for Quotation (RFQ) and subsequent contract after it was initially approved by MDE, must be submitted to MDE for review and approval prior to execution.

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Although not a comprehensive list, examples of situations that must be directed to MDE for review and approval prior to execution of the change to the original approved contract are:

- Two SFAs have the same food service management company (or vendor) and are asked to share their food service directors to reduce costs or advanced payments, but neither school bid this arrangement in their original procurement.
- Changes to any price, fee, or payment the vendor or management company charges for any meal or service under the contract.
- The SFA originally bid their vended meal contract under the Full Serve option, but now wants to switch to the Offer vs. Serve option.
- The SFA originally bid their vended meal contract under bulk form meals, but now wants to switch to unitized form.
- The SFA wishes to add another meal type under the National School Lunch Program or in another Child Nutrition Program, such as the Child and Adult Care Food Program or Summer Food Service Program, to their contract, but the original procurement did not include either program.
- The SFA becomes eligible to participate in the Community Eligibility Option (CEO) and wishes to add snack as a meal, but did not include snack in the original procurement.

The above examples are types of changes to services or costs of a contract that would require discussion with MDE about material change and possible rebid. School Boards, Vended Meal Companies, and Food Service Management Companies do not have regulatory authority to execute such changes to an existing contract without first obtaining prior written approval from MDE. Therefore, SFAs are directed to notify MDE directly of any proposed changes or situations that may affect or differ from their original food service contract procurements.

Upon notification of such changes, MDE will discuss with the SFA all details of the proposed change or amendment to the original contract. Because each district's solicitation documents and contract terms are unique, MDE and SFAs must review the existing contracts to make a determination as to whether a material change has occurred. The following questions should be asked to help determine if the change constitutes a material change to the contract:

1. Would an increase or decrease in cost of the contract have caused bidders to bid differently if the prospective change had existed at the time of bidding?

2. Would the prospective change materially affect the scope of services, types of food products, volume of food products, etc., in both the solicitation document and resulting contract? For example, this might include switching from full serve to offer vs. serve.

There is **not** a dollar threshold that must be used when determining whether a change to an existing contract is material. While the cost of a proposed amendment is a factor that should be used in determining whether a proposed change is material, there is no minimum threshold. The key factor is whether other bidders knowing of the change would have bid differently. Therefore, discussion and review with MDE is required in order to determine whether a material change exists.

Contracts between SFAs and Food Service Management Companies or Vended Meal Companies must be no longer than one year in duration with four optional annual renewals. Every SFA should be annually reviewing its contract with no expectation by either party to renew the contract. In addition to new contracts, MDE is required to annually review each contract renewal. As noted above, MDE and the SFA must review the current contract and determine if any prospective changes would result in a material change. If the parties determine that prospective change would be material, the SFA must either:

1. Conduct a separate procurement to obtain the desired deliverable that created the material change; or
2. Conduct a new procurement and ensure that the new solicitation associated with the rebid contains the appropriate specifications and provision.

If the SFA enters into a contract improperly where solicitation and contract deficiencies are identified, the SFA cannot fund the contract costs, including any ongoing and maintenance costs, from the nonprofit food service account [7 CFR 210.21(c)(3)]. This result can impose a substantial financial burden on the SFA.

Questions regarding this policy memo for **Food Service Management Company contracts** may be directed to Katherine Fuller, School District Consultant, at fullerk@michigan.gov or 517-373-4017.

Questions regarding this policy memo for **Vended School Meal Company contracts** may be directed to Tom Freeland, Department Manager, at freelandt@michigan.gov or 517-241-3537.