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**FOOD SERVICE CONTRACTS
ADMINISTRATIVE POLICY NO. 1
SCHOOL YEAR (SY) 2015-2016**

SUBJECT: Guidance on Food Service Contract Procurement Procedures for United States Department of Agriculture (USDA) Child Nutrition Programs

DATE: November 23, 2015

The purpose of this memorandum is to provide USDA Child Nutrition Program participants that will not self-operate its food service operation or will not produce its own meals, information on procuring a food service contract funded by a nonprofit food service account. This memo will detail:

- types of food service contracts
- the small purchase threshold
- competitive procurement methods
- competitive procurement exceptions and clarifications
- additional instructions

TYPES OF FOOD SERVICE CONTRACTS

FOOD SERVICE MANAGEMENT COMPANY CONTRACTS

A *Food Service Management Company (FSMC)* contract is a service contract where a company (commercial enterprise or nonprofit organization) provides at least a food service manager to oversee some aspect of the district or organization's food service operation. Meals are generally prepared and produced onsite at district facilities.

If a school district participates in multiple Child Nutrition Programs in a contract year, the district is eligible to procure a year-round food service contract instead of conducting separate procurements.

FSMC contracts can either be *Cost Reimbursable* or *Fixed Price* in terms of the fee structure and charges.

Cost Reimbursable: A type of food service management company contract that provides for the payment of allowable costs incurred by the Contractor while performing the contract. Contractors are reimbursed at the value of the allowed expenses plus may also be paid a fixed management and administrative fee to the Contractor to perform these services.

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Fixed Price: A type of food service management company contract that provides a fixed price per meal agreed upon at the inception of the contract, without any upward or downward adjustment during the duration of the contract. This type of contract may allow Contractors to adjust the fixed price per meal according to the Consumer Price Index as identified in the original solicitation.

VENDED MEAL COMPANY CONTRACTS

A *Vended School Meal Company (VSMC)* contract is a service contract where a company (commercial enterprise, nonprofit organization, or public entity) prepares, cooks, and packages unitized or bulk-form meals, with or without milk, off-site at their own facilities and delivers them ready-to-eat or heat to the site or location requested by the participating institution.

If a school district participates in multiple Child Nutrition Programs in a contract year, the district is eligible to procure a year-round vended meal contract instead of conducting separate procurements.

Year-round vended meal contracts are also available for non-school participants who participate in the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP). The institution would not be required to complete separate procurements.

Vended meal company contracts are *Fixed Price* contracts that charge a fixed price per meal agreed upon at the inception of the contract.

SMALL PURCHASE THRESHOLD

All participants, school and non-school institutions, in the Child Nutrition programs are required to complete the formal procurement method (defined later in this guidance) for obtaining a food service contract that in aggregate (i.e. total paid to the Contractor for the one year term of the contract) meets or is greater than the small purchase threshold of \$150,000.

However, a school's board of education or a sponsoring organization's board of directors can set small purchase thresholds lower than \$150,000 for services related to the food service program. Participants must use a lower, more restrictive threshold if their respective organizational thresholds are set at a lower amount as indicated in the institutions' adopted policies. All participants in the Child Nutrition Programs must have policies in place regarding procurement, and all transactions must be conducted as outlined in these policies.

All participants in the Child Nutrition programs are allowed to complete the informal procurement method (defined later in this guidance) for obtaining a food service contract that in aggregate (i.e. total paid to the Contractor for the year) is less than the small purchase threshold of \$150,000.

When determining how the small purchase threshold applies, it is not permissible for the institution to split the contract into smaller units or subgroups for the purpose of avoiding the formal procurement process.

COMPETITIVE PROCUREMENT METHODS

All School and Non-school Institutions in the Federal Child Nutrition Programs must have policies in place regarding procurement, and all transactions must be conducted as outlined in the policies.

Institutions may use their own procedures for procurement to the extent that procurements comply with applicable State or local laws; the standards set forth in 2

CFR 200, the program regulations for the specific Child Nutrition Program, as well as those established by the Michigan Department of Education to help prevent abuse, fraud, and waste.

PRE-REVIEW REQUIREMENT

The pre-review requirement of the formal procurement process is already established in program regulation. However, per the authority set forth under Federal Program Regulations, MDE elected to establish a pre-review requirement of all bid documents for the formal and the informal procurement processes to obtain a food service contract.

[7 CFR 210.21(c)(1); 7 CFR 226.21; Summer 2015 SFSP Admin. Handbook]

Pre-review assists participants in ensuring compliance with program requirements, regulation, and guidance. It also helps institutions develop strong bid specifications to include the type of meals and service they expect (i.e. types of meals, food quality, etc.) that will later aid in the administration of the contract once in place.

FORMAL PROCUREMENT

Formal Procurement procedures are used to obtain a food service management company or vended school meal company contract when the value of the contract meets or exceeds the small purchase threshold of \$150,000 (or lower if the organization is required to use a lower threshold). Schools and non-school institutions must use a competitive process by issuing an Invitation for Bid (IFB) or a Request for Proposal (RFP) for any procurement over the small purchase threshold. Both must be formally advertised and contain reasonable bid specifications.

Invitation for Bid (IFB): Also called a sealed bid, an IFB is a formal competitive procurement procedure used to publicly solicit bids for securing food, services, and/or supplies that cost more than the small purchase threshold. A firm fixed price contract is awarded to the responsible bidder whose bid conforms to all of the material terms and conditions of the Invitation for Bid and is the lowest in price. The IFB format is usually used by non-school organizations that are seeking vended meals for SFSP or CACFP.

Request for Proposal (RFP): Also called a competitive proposal, an RFP is a procedure conducted where more than one source submits an offer for securing food, services, and/or supplies, that costs more than the small purchase threshold, and where either a fixed price or cost reimbursable contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. Price and non-price criteria may be used to determine award with price assigned with at least 51% weight. The RFP is usually used by School Food Authorities that are seeking a food service management company or a vended school meal contract for the National School Lunch Program (NSLP).

INFORMAL PROUREMENT

Informal Procurement procedures are used when the aggregate total of the food service contract will be less than the small purchase threshold of \$150,000. The school and non-school institution must contact at least three known suppliers of the vended meal service and obtain competitive price quotations. Bid quotes obtained by telephone should be followed up with a written document or communication from the vendor confirming items and prices discussed. Bid quotes should be obtained in writing.

Generally with the informal procurement process, the responsive and responsible bidder with the lowest total price should be selected. If the lowest price of the responsive and responsible bidder is not selected, the organization must submit justification to the State Agency for prior approval.

School and non-school institutions should take care to draft thorough bid specifications and ensure bidders are aware of all requirements and services that would address responsiveness and responsibility. All information and prices discussed must be documented in the program's procurement files including the informal procurement log.

For NSLP participants, due to the nature and scope of service, MDE provides SFAs with a prototype Request for Quotation (RFQ) document to be used in the informal process of obtaining bid quotes for a vended meal contract.

For SFSP and CACFP participants, the sponsoring organization may use whatever contract it normally uses for this type of service, but must indicate bidders are required to adhere to the program requirements and regulations of the SFSP or CACFP program.

COMPETITIVE PROCUREMENT EXCEPTIONS AND CLARIFICATIONS

MICRO-PURCHASE THRESHOLD

Unless the aggregate total of the institution's food service contract is less than the micro-purchase threshold of \$3,000, a competitive procurement is required to obtain a food service contract. Competitive procurements are required to obtain a food service contract in the Child Nutrition Programs. Competitive procurement can refer to either the formal method or informal method.

SOLE SOURCE PROCUREMENT

Noncompetitive negotiation, or sole source procurement, may only occur and is limited to very specific criteria identified in program regulations where competition is determined inadequate and infeasible under informal or formal procurement methods. If an Institution believes this type of procurement is applicable to its specific needs, a discussion with MDE is required prior to initiating the procurement [2 CFR 200.320(f); 7 CFR 226.22].

SFA to SFA AGREEMENTS

When one School Food Authority plans to purchase meals from a separate SFA, the procurement responsibility differs depending on whether the SFA providing the meal is under a food service management company (FSMC) contract.

The longstanding USDA FNS policy has been that a SFA may contract with another SFA to provide meals in the Child Nutrition Programs without going out for bid, only when the provider SFA is not under a FSMC contract of its own. The SFA providing the meals must be functioning under what is commonly called "self-operating."

If a SFA wishes to purchase vended meals from a self-operated SFA, and retain its own food service operation (i.e. applies to participate, administers the program, files claims, etc.) then the two districts may use their own agreement and a competitive procurement is not required. The School Nutrition Programs Unit may require the districts submit a copy of the vending agreement in its application or during an administrative review.

SFAs must follow all applicable federal bidding and procurement requirements when meals will potentially be provided by a SFA that is already under its own

FSMC contract. If the SFA providing the meals has not yet entered into a FSMC contract and another SFA will receive meals from this SFA, the requirements for both should be written into the bid specifications at the time of bidding. The SFA should discuss this with MDE prior to entering into an agreement to verify compliance with procurement requirements.

CACFP or SFSP PURCHASING MEALS FROM LOCAL SCHOOL DISTRICT

Per USDA guidance, CACFP or SFSP Institutions that will purchase vended meals from a local school district may do so without completing a competitive procurement as long as the SFA providing the meal is self-operated for its own food service.

This competitive procurement exception does not apply when obtaining meals from another non-school CACFP or SFSP sponsor even if they are self-operated for their own meal service. This is because a non-school CACFP or SFSP sponsor providing the meal would fall into the non-school contractor category and a competitive procurement is required when obtaining meals from a non-school contractor.

When the SFA operates under a Food Service Management Company (FSMC), an Institution is not required to complete a separate competitive procurement as long as the SFA included the requirements for the CACFP or SFSP Institution in the bid specifications for the FSMC/Vended contract.

If the vending arrangement was not included in the original procurement of the SFA's FSMC contract, then one of the entities may be required to complete the proper competitive procurement to establish the relationship. Institutions may not be aware of what the SFA included in its original FSMC contract procurement documents. Thus, it is best to discuss the potential agreement with the food service contract staff of MDE to ensure the applicable process to establish the relationship is followed.

ADDITIONAL INSTRUCTIONS

FOOD SERVICE CONTRACT ADMINISTRATIVE POLICY MEMOS

All participants must review and follow School Year 2015-2016 Food Service Contract Administrative Policy #2: Guidance on Material Changes and Review Requirements for Food Service Management and Vended Meal Contracts.

All participants must review and follow School Year 2015-2016 Food Service Contract Administrative Policy Memorandum #3: Guidance on Oversight and Monitoring of Food Service Contracts.

CONTRACT DURATION

The contract duration for all food service contracts across all CNP programs is limited to the original contract year with the option of up to four one-year renewals (assuming no material changes). The contract year is established as July 1 of the current year, or upon written approval of the Michigan Department of Education, to June 30 of the following year.

LOCATION of FSMC OR VMC PROTOTYPE DOCUMENTS – FORMAL PROCESS

Instructions and prototype FSMC or VSMC contracts for the National School Lunch Program are available online at [MDE's Food Service Contract Website](http://www.michigan.gov/mde/0,4615,7-140-66254_61446-289948--,00.html)

http://www.michigan.gov/mde/0,4615,7-140-66254_61446-289948--,00.html

The vended meal contract prototypes for the Summer Food Service Program or the Child and Adult Care Food Program are only available upon request.

Questions regarding this memo may be directed to the food service contract staff at 517-373-4017.