



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

GRETCHEN WHITMER
GOVERNOR

MICHAEL F. RICE, Ph.D.
STATE SUPERINTENDENT

**CHILD NUTRITION PROGRAMS
ADMINISTRATIVE MEMO NO. 3
SCHOOL YEAR 2022-2023**

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

DATE: April 1, 2023

The Michigan Department of Education (MDE) recommends that school and non-school participants of the Child Nutrition Programs review the following regulations applicable to procurement and the use of federal program funds (nonprofit food service account funds) for the procurement of all goods and services, including food service contracts:

- 2 CFR Part 200 applicable to Procurement
- 7 CFR 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 Part 215 – Special Milk Program
- 7 CFR Part 220 – School Breakfast Program
- 7 CFR Part 225 – Summer Food Service Program
- 7 CFR Part 226 – Child and Adult Care Food Program

Under 7 CFR 210.21(c)(1), MDE has the authority to impose pre-issuance review requirements on a school/non-school participant's procurement. MDE is mandated to annually review each contract, including all supporting documentation, between a school/non-school participant and its food service management company or vended meal company to ensure regulatory compliance [7 CFR 210.19(a)(6)].

Furthermore, 7CFR210.21(c)(2) requires the school/non-school participant 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

STATE BOARD OF EDUCATION

PAMELA PUGH – PRESIDENT • ELLEN COGEN LIPTON / TIFFANY D. TILLEY – CO-VICE PRESIDENTS
JUDITH PRITCHETT – SECRETARY • MARSHALL BULLOCK II – TREASURER
MITCHELL ROBINSON – NASBE DELEGATE • TOM MCMILLIN • NIKKI SNYDER

Quotation (RFQ), and subsequent contract after it was initially approved by MDE, must be submitted to MDE for review and approval prior to execution.

School boards, non-school participants' board of directors, vended meal companies, and food service management companies do not have regulatory authority to execute changes to an existing contract without first obtaining prior written approval from MDE. Therefore, school and non-school participants are directed to notify MDE of any proposed changes or situations that may affect or differ from an original food service contract procurement.

Upon notification of such changes, MDE will discuss with the school/non-school participant all details of the proposed change or amendment to the original contract. Because solicitation documents and contract terms are unique, the following questions should be asked to help determine if the proposed 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 (i.e., switching from full serve to offer versus serve)?

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:

- Changes to any price, fee, or payment the food service management company or vendor charges for any meal or service under the contract.
- Changes in meal form (such as switching from bulk form meals to unitized form).
- Changes in meal type served (such as adding snack) and/or participation in a child nutrition program (such as adding CACFP) not previously included in the original procurement.

There is not a dollar threshold that is used to determine 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 to determine whether a material change exists.

Contracts between school/non-school participants and food service management companies or vendors must be no longer than one year in duration with a maximum of four optional annual renewals. Every school/non-school participant must annually review 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 school/non-school participant must review the current contract and determine if any prospective changes would result in a material change.

If the school/non-school participant enters into a contract improperly where solicitation and contract deficiencies are identified, the school/non-school participant cannot fund the contract costs, including any ongoing and maintenance costs, using federal program funds (nonprofit food service account) [7 CFR 210.21(c)(3)]. This result can impose a substantial financial burden on the school or non-school participant.

Questions regarding this policy memo may be directed to the MDE Food Distribution/Contracts Unit staff at MDE-FSMC-Vended@michigan.gov.