FACT SHEET

CONTRACTING FOR A FOOD SERVICE MANAGEMENT COMPANY

I. Contact the New Jersey Department of Agriculture (NJDA), Division of Food and Nutrition to obtain:

- List of food service management companies (FSMCs) currently providing service to School Food Authority (SFAs) in your geographical area.

Access the NJDA website www.nj.gov/agriculture/appli(forms/#5 for the following:

- Current “NJ Directory of Registered Food Service Management Companies” (Form 221)
- State Agency “Response and Projected Operating Statement” (Form 23) - mandatory for use in Request for Proposals (RFP)
- “FSMC Proposal Comparison Form” (Form 24)
- “SFA/FSMC Base Year Contract Checklist” (Form 15)

II. Meet Federal Procurement Standards

United States Department of Agriculture (USDA) regulations require all procurement transactions to be conducted in a manner that provides full and open competition. SFAs are to use their own procurement procedures that are consistent with applicable Federal, State and local laws, and in accordance with the standards set forth in 2 CFR 200.317 through 200.326. Those standards include (but are not limited to) the following:

- Maintain a written code of conduct applicable to SFA employees engaged in the award and administration of contracts. No employee, officer or agent may participate in the award or administration of the FSMC contract if it would involve a conflict of interest.
- Take steps to ensure that minority firms, women’s business enterprises and labor surplus area firms are used when possible.
- Use either sealed bids or competitive proposals (RFPs) as the method of procurement.

**NOTE:** Since FSMC contracts in New Jersey are structured as cost-reimbursable plus a management fee (either a flat amount or a per meal amount), RFPs rather than sealed bids are the appropriate procurement method. Accordingly, the remainder of this fact sheet will focus on the RFP procedure and will not discuss the requirements of sealed bidding.

- Perform a **price analysis** to determine the reasonableness of the proposed contract price, which includes making independent estimates before receiving proposals. When the RFP requires estimated costs to be submitted in the proposal, the SFA must also conduct a **cost analysis** to verify proposed cost data and projections, and to evaluate the specific elements of costs and profits.
Make the award only to responsible FSMC whose proposal is most advantageous to the program, with price and other factors considered.

Retain records of the procurement transaction, including rationale for the method used, the contract type, the selection or rejection of the FSMC, and the basis of the contract price.

Have protest procedures to handle and resolve disputes relating to procurements.

Conduct procurement in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of proposals.

The SFA’s procurement procedures and FSMC contract will be monitored by the NJDA Division of Food and Nutrition (the State Agency) through the annual application process, and through the annual statutory audit required by the New Jersey Department of Education.

III. Comply with State Law Requirements

SFAs contracting with FSMCs must follow New Jersey Public School Contracts Law (NJSA 18A:18A-1 et seq.) and the related rules adopted by the Director of the Division of Local Government Services (DLGS), New Jersey Department of Community Affairs, except where the federal standards described above are more restrictive. This fact sheet is intended primarily to provide information on applicable USDA procurement regulations. It does not address all specific requirements of Public School Contracts Law and related rules, which in some areas are more restrictive than the federal regulations.

SFAs should consult their local counsel to ensure compliance with all applicable Federal and State laws and rules when contracting with FSMCs.

IV. Write Comprehensive Request for Proposal

The RFP must contain a clear and accurate description of all goods and services that the SFA wants the FSMC to provide and identify all requirements that a company submitting a proposal must fulfill. In addition to stating the time and place for receiving and opening proposals, the RFP must specify all criteria that will be used to evaluate proposals and their relative importance. It must also contain all contract elements that USDA regulations require be included in solicitations (See- RFP Documentation- Form 356). The SFA should provide all essential information about its food service operation and include any foreseeable changes that may occur during the term of the contract (e.g., plans to add a school breakfast program).

The SFA must write the RFP specifications. USDA regulations state that any person, including a FSMC that develops or drafts specifications, statements of work, RFPs or other documents for use by the SFA in conducting procurement, must be excluded from competing for such procurement and is ineligible for the contract award that results from such procurement.

Resources for preparing RFPs:

- USDA’s “Contracting with Food Service Management Companies: Guidance for School Food Authorities” (May 2016) includes discussions of procurement methods, specifications, advertising and evaluation, among other things. The guidelines are
available at: https://www.fns.usda.gov/sites/default/files/cn/SP40_CACFP12_SFSP14-2016a2.pdf and SNEARS/Resources/FSMC.


- Chapter 34, Title 5 of the New Jersey Administrative Code contains the rules adopted by DLGS that implement the competitive contracting provisions of Public Schools Contract Law, and includes model evaluation criteria to be used in evaluating proposals. See NJAC 5:34-4.2.

SUGGESTED GUIDANCE FOR REQUESTS FOR PROPOSALS

- RFPs should be issued and proposals received while school is in session. Refer to Steps and Resources for Contracting with a FSMC (Form #36) for suggested timelines.

- Include as much information about the current food service operation as possible (refer to RFP Documentation- Form 356).

- Encourage an individual walk-thru by each FSMC during meal service.

- Incorporate in the RFP the “Cost Responsibility Summary” (Form 149) - it provides additional line items and details.

- Contact/visit SFA(s) currently employing the FSMC.

V. Publicize Notice of RFP, Receive and Evaluate Proposals, Award Contract

USDA procurement standards require RFPs to be publicized, and require SFAs to honor any response to the publicized RFP to the maximum extent practical.

Proposals should not be opened or reviewed before the due date established in the RFP. The SFA must evaluate proposals using the weighted evaluation criteria described in the RFP. Complete the FSMC Proposal Comparison Sheet (Form 24) - this allows the SFA to analyze and compare the proposals consistently, which is especially important if there are significant differences among the proposals received.

Proposals that offer items or services that were not requested by the SFA in the RFP are “overly responsive” and the SFA cannot consider the unsolicited items or services in its evaluation of the proposal.

Award contract to FSMC whose proposal is most advantageous to the program, with price and other factors considered.

After award of a contract, a notice shall be published in the official newspaper of the board of education summarizing the award of the contract, which shall include but not be limited to, the nature, duration, and amount of the contract, the name of the FSMC and a statement that the resolution and contract are on file and available for public inspection in the office of the secretary of the board of education.

VI. Submit FSMC Contract to State Agency for Annual Approval

The State Agency is required to review each SFA/FSMC contract annually to ensure that it complies with the standards and provisions set forth in USDA regulations before it is
executed by either party. To accomplish this, each year the State Agency reviews and approves a prototype FSMC contract that meets federal regulatory requirements and may be signed by the SFA. **Any proposed revisions to the approved prototype SFA/FSMC contract must be sent to the State Agency by the SFA, along with the SFA/FSMC Prototype Contract/Addendum Change Request (Form 47), before the contract is executed.** After the State Agency has approved the revisions, the contract may be signed. Communication between the State Agency and the SFA will continue until any and all problems with the proposed revisions are corrected.

An approved FSMC contract with original signatures must be on file with the State Agency before the SFA may begin receiving federal and state reimbursement.

SFAs are urged to mail all base year contract documents to the State Agency as soon as the contract is signed and the certified board minutes are available. Submit required documents with the SFA/FSMC Base Year Contract Checklist (Form 15).