

FOOD SERVICE MANAGEMENT COMPANY

FACT SHEET I

CONTRACTING FOR SCHOOL FOOD SERVICE

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

- List of food service management companies (FSMCs) currently providing service to Local Education Agencies (LEAs) in your geographical area.

Access the NJDOA website www.nj.gov/agriculture/applic/forms/#6 for the following:

- Current NJ Directory of Registered Food Service Management Companies (Form #221)
- Response and Projected Operating Statement (Form #23) - mandatory for use in Request for Proposals (RFP)
- Sample Proposal Comparison Sheet (Form #24)
- Local Education Agency/Food Service Management Company 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. LEAs are to use their own procurement procedures under applicable State and local laws, provided they conform to the standards set forth in USDA regulations at Title 7 CFR Section 3016.36. Those standards include (but are not limited to) the following:

- Maintain a written code of conduct applicable to LEA 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 LEA

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 possessing the ability to perform successfully under the terms and conditions of the proposed procurement.
- 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 LEA's procurement procedures and FSMC contract will be monitored by the NJDOA 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

LEAs 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. In its Local Finance Notice 2010-3 dated January 15, 2010, DLGS stated that school districts that use the bidding or competitive contracting procedures of Public School Contracts Law would be in compliance with federal procurement standards.

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.

LEAs should consult their local counsel to ensure compliance with all applicable 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 LEA 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 Fact Sheet II – Form #356.). The LEA 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 LEA 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 LEA in conducting a 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" (April 2009) includes discussions of procurement methods, specifications, advertising and evaluation, among other things. The guidelines are available at www.fns.usda.gov/cnd/guidance/FSMCguidance-sfa.pdf.
- The Office of the State Comptroller's report entitled "Best Practices for Awarding Service Contracts" (March 4, 2010) provides detailed guidance to LEAs on the use of RFPs under the competitive contracting provisions of Public School Contracts Law. Access at www.nj.gov/comptroller/news/docs/service_contracts_report.pdf.
- 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
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- RFPs should be issued and proposals received while school is in session. Refer to Steps and Resources for Privatization of School Food Services (Form #36).
- 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 LEA(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 LEAs 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 LEA must evaluate proposals using the weighted evaluation criteria described in the RFP. Complete the Sample Proposal Comparison Sheet (Form #24) -- this allows the LEA 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 LEA in the RFP are "overly responsive" and the LEA cannot consider the unsolicited items or services in its evaluation of the proposal.

VI. Submit FSMC Contract to State Agency for Annual Approval

The State Agency is required to review each LEA/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 LEA. **Any proposed revisions to the approved prototype FSMC contract must be sent to the State Agency by the LEA, along with the LEA & 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 LEA 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 LEA may begin receiving federal and state reimbursement.

LEAs 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 LEA/FSMC Base Year Contract Checklist (Form #15).