

INSTRUCTIONS FOR:
FOOD SERVICE MANAGEMENT COMPANY (FSMC) CONTRACTS

The Child and Adult Care Food Program (CACFP) defines a FSMC as "an organization other than a public or private nonprofit school, with which an institution may contract for preparing and, unless otherwise provided for, delivering meals, with or without milk for use in the Program." These instructions address procurement related to FSMC contracts and are provided to help avoid unwanted difficulties and to ensure **maximum open and free competition**. Accordance with these guidelines will allow an institution to protect their interests, and possibly, protect them from legal action.

Institutions that contract for meals from school food authorities (SFA) participating in the National School Lunch Program or the School Breakfast Program are exempt from these procedures to the extent that agreements with SFA's may be procured noncompetitively.

Public agencies, including military, city and county governments, are not obligated to use these procurement procedures. Public agencies may use their own contract and are exempt from the CPI guidelines outlined in these instructions.

REVIEW OF PROCUREMENT PROCEDURES FOR MEAL SERVICE

Formal Advertising:

For all contracts in excess of \$150,000, the invitation for bid (IFB), or competitive sealed bids (formal advertising), is the procurement method to be used. If you are utilizing this procedure, you must:

- **Solicit** sealed bids from an adequate number of known suppliers.
- Submit a **paid public advertisement** of the IFB to a local newspaper. Do not just submit it with a request that it be printed as a public service.
- Allow **at least 14 days** from the date of the public notice to the due date for the bids and a few days from the due date of the bids to the date of the bid opening to allow for mail.
- **Publicly open** the bid at the date, time and location as stated in the IFB.
- Award a firm-fixed-price contract to the most responsible FSMC whose bid, conforming to all the requirements of the IFB, is the most **responsive and lowest in price**. If the lowest bid will not be taken, prior approval must be received from this office. Consideration shall be given to contractor integrity, compliance with public policy and documented record of past performance.

- Submit the contract, a copy of the IFB, copies of all bids, and a copy of the chosen FSMC's current health permit to this office. If the contract is for more than \$50,000, submit contract to this office **before signing**.

Small Purchase Procedures:

For contracts costing in the aggregate less than \$150,000, small purchase procedures may be used. If you are utilizing this procedure, you must:

- Obtain an **adequate number** (commonly three but may be less if not available) of written or oral price quotations from qualified sources via telephone or mail;
- Maintain a **written record** of all contacts, including name, person spoken to, requirements requested and quotations obtained.
- Award the contract to the most responsible FSMC whose bid, conforming with all the requirements set forth, is the most **responsive and lowest in price**. If the lowest bid will not be taken, prior approval must be received from this office. Consideration shall be given to contractor integrity, compliance with public policy and documented record of past performance.
- Submit the contract, copies of all bids, and a copy of the chosen FSMC's current health permit to this office. If the contract is for more than \$50,000, submit the contract to this office **before signing**.

Setting Forth Requirements:

All procurement transactions, regardless of price, must be conducted in a manner that does not restrict or eliminate competition. All meal requirements and other factors to be used in evaluating bids must be clearly expressed as to ensure consistency of offers. If using formal advertising, these requirements and factors, including necessary information regarding the public opening of the bid, are to be incorporated into the IFB. (See the enclosed sample IFB for some common requirements.)

Other factors might include requests to obtain references, a list of contracts the FSMC has had for the past two years, or a provision for renewals (see section on Contract Duration/Renewals for more information regarding renewals).

The requirement for meal records must also be explained. This is to be done through the use of delivery tickets, prepared by the FSMC, that are itemized to show the number of meals of each type delivered to each center. The tickets are to be signed by a

designee of the institution after checking for adequacy of the meals. The tickets are to be kept for future reference.

CONTRACT DURATION / RENEWALS

The duration of all FSMC contracts for meal service must be limited to **one year**, with the effective beginning and ending dates stated in the contract. Note, the beginning date of the contracted service should not be prior to the date the contract is signed.

Institutions have the option of renewing contracts noncompetitively for up to four one-year periods. If you choose to exercise this option:

- The **provision** for renewals must be clearly stated in the original invitation for bid, or stated in the contract if using small purchase procedures.
- The terms and conditions for renewing the contract must be stated in the original IFB and contract.
- The criteria to be used for making changes to the per-meal cost must be clearly identified in the original IFB and contract. For purposes of the CACFP in Virginia, the **Consumer Price Index (CPI) for Food Prepared Away From Home** is the factor used. Any variation from this method resulting in an increase that exceeds the CPI% must receive prior approval from this office.
 - The current CPI percentage is provided by this office each July during the application renewal process.
 - To determine the change in cost per-meal, the current meal cost is multiplied by the CPI%. For example, a lunch price of \$2.05 is multiplied by a 4.2% CPI to give a cost increase of .0861 cents. This figure is rounded **up** (according to common rounding rules) to .09 cents, resulting in a new lunch price of \$2.14.
- Only the terms and conditions that are identified as **subject to change** in the original bid and contract can be amended in the renewal. These amendments **cannot result in substantive changes**, i.e. monetary or specification changes, to the original contract. Non-material changes are generally made when the contract is renewed. If it is determined that significant changes are necessary, the contract must be rebid.
- The renewal **cannot be automatic**. A specific renewal action must be taken each year so that each renewal results in a separate one year contract.

- The renewal action must be taken before the contract expires with the effective beginning and ending dates stated in the contract.
- The renewal process must be scheduled far enough in advance of the ending date of the contract to allow adequate time for rebidding if the renewal does not occur.
- Since the decision to renew the contract is an affirmative decision that is made by both parties, either party, for any reason, may decide not to exercise the renewal option. Renewal should be done only after careful evaluation of the FSMC's performance and a determination that the reinstatement will be beneficial to the program.
- **Only pages 1, 2, and 10 of the renewed contract need to be submitted to this office during application renewal.**
- After the contract is renewed for the fourth one-year period, it must be re-procured.

DOCUMENTATION OF PROBLEMS

If you should experience any problems with a FSMC, keeping proper documentation is imperative. This documentation must be in the form of letters to the company with specific problems and corrective action needed including precise timeframes. The results of these actions must also be documented. For instance, a letter might include a list outlining the complaints, such as food left off menu, food not served on time, rotten fruit, spoiled milk, or children's dissatisfaction with food.

Thorough and accurate documentation is essential in the instance that an institution opts to select a higher bidder because of problems with the lowest bidder.

Sample Invitation for Bid Food Services Management Contract

[Insert center name] is a not-for-profit childcare facility, located in [insert location], which is seeking a Food Services Management Company (FSMC) who will be responsible for delivering meals with the following requirements [insert center's own requirements, these are examples]:

- Fresh fruit daily
- Fresh bread baked daily
- Fresh milk daily
- Food must contain no or minimal amounts of preservatives.
- Food will contain no textured vegetable protein (TVP) or other extenders.
- Food will contain no pork or nuts.
- Hot meals and cold meals will be delivered at their required temperature degree.
- Paper products such as napkins, utensils, plates, cups, etc. will be included.
- Meals must reflect the ethnic diversity of the student population

Meal records are to be kept through the use of delivery tickets that provide the number of meals of each type delivered to the center.

The duration of this FSMC contract is for one year, **beginning on September 1, 2014 and continuing through August 31, 2015.**

The FSMC will have an **opportunity to renew** this contract for up to four one-year periods. As part of this renewal process, **the Consumer Price Index for Food Prepared Away From Home will be the factor** used to determine the amount of any meal cost increase. Renewal will be based on the FSMC's performance and the determination that the renewal is beneficial to the food program.

The FSMC contract will be based on the potential ability to perform successfully under the terms and conditions of the invitation for bid, price, contractor integrity, compliance with public policy, and documented record of past performance.

The public opening of the bid for the FSMC contract will be held at [insert location], on [insert date and time]. To submit a bid by mail, please send your bid by [insert date, must be at least 14 days from date ad is placed.] to: [insert address]. Please be sure to include the names and phone numbers of at least two **references** and a **list of contracts** your FSMC has had for the past two years.