STATE OF CONNECTICUT

DEPARTMENT OF EDUCATION

TO: Sponsors of the National School Lunch and Breakfast Programs

FROM: Cheryl Resha, Education Manager
Bureau of Health/Nutrition, Family Services and Adult Education

DATE: August 13, 2009

SUBJECT: Operational Memorandum #17-09
Food Service Management Company Information and Procurement Guide

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I. Unallowable SFA-FSMC Contract Document Provisions

Sponsors that contract with a food management company must ensure that the SFA contract with the FSMC does not contain any unallowable contract document provisions. The following is the list of unallowable contract provisions:

1. **Cost Plus a Percentage of Cost/Income –** no matter how it is represented, cost plus a percentage of cost/income to the FSMC is not allowed.

2. **Duplicate Fees –** fee structures that permit a FSMC to bill management fees and charge the same costs as cost-reimbursable expenses.

3. **Purchasing –** if the SFA does the purchasing, clauses that limit the selection of vendors to only FSMC-approved vendors.

4. **Acceleration Clause –** provision (multi-year) that require full payment (e.g., program equipment purchases) if contract is not renegotiated.

5. **Interest Payments –** interest payments to the contractor, however represented, including interest payments for equipment purchases.

6. **Guaranteed Return –** "guaranteed return" provisions unless the "return" remains in the nonprofit food service account. "Returns" cannot be contingent upon multi-year contract duration.

7. **Delegation of SFA Responsibilities –** FSMC responsibility for any of the functions that must be retained by the SFA include:

    1. Free and reduced price meal process.
    2. Signatory authority on all required documents, including the reimbursement claims.
    3. Conducting annual on-site monitoring procedures.
    4. Retaining title to all United States Department of Agriculture (USDA) commodity foods.
    5. Establishment and maintenance of advisory board of parents/teachers/students to assist in menu planning.
    6. Ensuring the non-profit status of the food service account.
    7. Ensuring compliance with both federal and state competitive food laws.

8. **Automatic Renewal –** provisions that automatically renew the contract.

9. **Processing Contracts –** contract document language that permits the FSMC to subcontract USDA donated foods for further processing.

II. Contracting with a Food Management Company

Sponsors who plan to operate a food service program with a food management company for the first time, or those with contracts that have expired with the close of the past school year, must conduct a formal bid process to determine what services will be provided for meals this fall.

In accordance with 7 CFR 210.16(d), the following requirements must be met:

1. Contract duration is limited to one year, with the effective beginning and ending dates specified in the contract.
2. Options for yearly renewals of a contract are allowed, but may not exceed four additional one-year extensions.

For new contracts, the following materials must be submitted before your program can be approved for reimbursements:

1. Copy of your Request For Proposal (RFP);
2. List of vendors requesting and receiving your RFP;
3. Copy of your newspaper ad;
4. Specifications for your RFP;
5. Copies of all bids received;
6. New contract for 2009-10 school year (The contract may not be signed until approval is given to the sponsor by Robert Zwack to sign the contract);
7. 21-day menu (all grade levels, and breakfast and lunch);
8. Management fee;
9. Debarment certification;
10. Certification Regarding Lobbying (for Contracts exceeding $100,000);
11. Disclosure of Lobbying Activities (for Contracts exceeding $100,000);
12. Energy conservation compliance statement; and
13. Completed *Prototype SFA-FSMC Contract Document Checklist Sections A – J*. (Available at: **http://www.sde.ct.gov/sde/lib/sde/word_docs/DEPS/Nutrition/DocsChecklist.doc**)

III. Renewal of an Existing Contract with a Food Management Company

Program sponsors who operate with a food management contract may renew that contract for four additional one-year extensions beyond the initial grant year. The process for renewing a contract must occur on or prior to the expiration date of the current contract. Any provisions that represent changes from the original contract must be stated in the amendment. Substantive changes would require a sponsor to rebid the contract.

If an addendum is being submitted for an existing contract, the following items must be included:

1. An addendum for the 2009-10 school year (The addendum may not be signed until approval is given to the sponsor by Robert Zwack to sign the addendum);
2. Management fee;
3. Menus for September 2009;
4. List of advisory board members and minutes of meetings from 2008-09;
5. Annual debarment statement;
6. Certification Regarding Lobbying (for Contracts exceeding $100,000);
7. Disclosure of Lobbying Activities (for Contracts exceeding $100,000); and
8. Energy conservation compliance statement.

IV. Responsibilities of School Districts

School food authorities that contract out their food service management are still solely responsible for the following activities:

1. Public notification of programs;
2. Distribution of parent letters and applications;
3. Review and determination of eligibility for free and reduced benefits;
4. Notification of eligible participants;
5. Verification procedures, including notification of ineligible participants;
6. On-site school reviews that must occur annually before February 1 of each school year; and
7. Oversight of compliance with competitive foods regulations.

V. Additional SFA-FSMC Contract Requirements

A. Meal Equivalency Rate – The Meal Equivalency Rate must be set no lower than the sum of the current free lunch reimbursement rate plus the per meal commodity foods reimbursement rate. If the management fee and the administrative fee, if the contract includes an administrative fee, are flat per month or per year fees, the Meal Equivalency Rate is not applicable to the contract.

B. Recovery of Prior Year Costs – Per USDA Northeast Regional Office (NERO) guidance, clauses that allow the recovery of prior and current year FSMC reimbursed amounts from current Food Service Program Surpluses are not allowed. “The FSMC’s recovery cannot be allowed as a nonprofit food service cost. This charge is in violation of OMB Circular A-122, “Cost Principles for Non-Profit Organizations”, (Attachment A, Basic Considerations) because (1) the FSMC lost its management fee for nonperformance the prior year and (2) prior year costs cannot be recovered in a future period.”

The actual language of the clause in a SFA/FSMC contract that NERO deemed to be **unallowable** is as follows (note: the name of the FSMC has been deleted):

> *Current and prior years (FSMC name) reimbursed amounts may be recovered by (FSMC name) from current Food Service Program Surplus.*

VI. Informal Procurement Guidance

Program sponsors that use the informal procurement process to obtain the services of a FSMC must maintain documentation that a minimum of two organizations were contacted regarding the potential procurement, three organizations should be contacted if at all possible.

Please submit items 1 - 6 requested in **Section II** or **item 1 requested in Section III** above, as appropriate, to Robert Zwack as soon as possible, but no later than **October 1, 2009**. The other items listed in section II or section III above should be submitted as soon as possible, but should not delay the submission of items 1 – 6 of section II or item 1 of section III.

The submission of unsigned proposed contracts and contract addenda for approval to the State agency is a new requirement of the USDA's final rule on procurement (Operational Memorandum 12-08). In order to expedite the review and approval process Robert Zwack will e-mail approval of contracts and contract addenda or required changes to the contract or contract amendments to sponsors. Please provide the e-mail of the person to whom you want the approval or required change(s) information to be sent.

Questions regarding food management company contracts may be directed to Robert Zwack at 860-807-2081 or **robert.zwack@ct.gov**.

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