

Food Service Management Company (FSMC) Procurement: Things To Think About

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EDUCATION



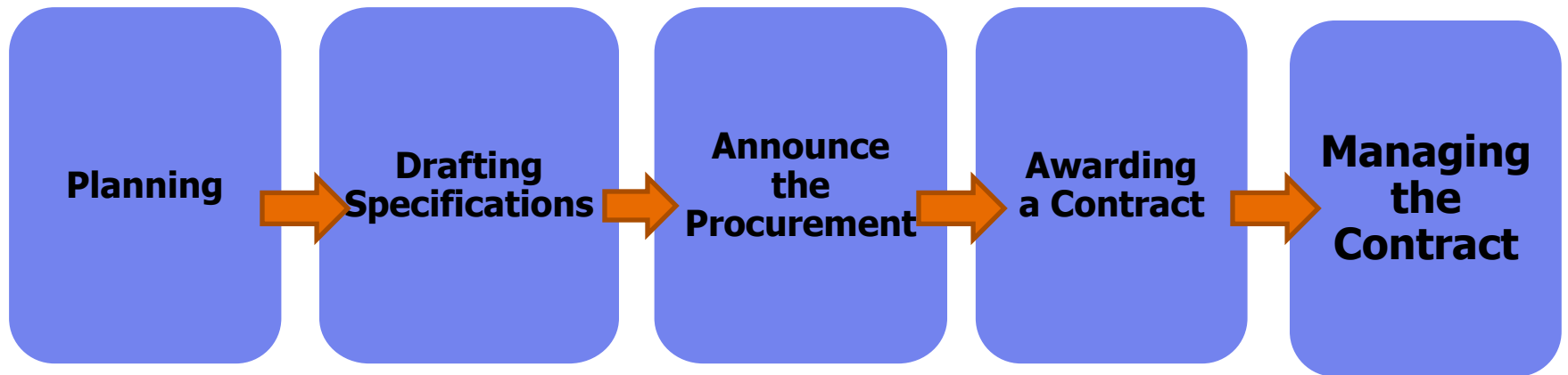
Procurement is an involved process

- ★ Federal and state procurement regulations apply
 - ★ 7CFR §210.16 *Food Service Management Companies*
 - ★ 7CFR §210.19(5) *Food Service Management Companies*
 - ★ 7CFR §210.21 *Procurement*
 - ★ 2CFR Part 200 *The Super Circular*
 - ★ M.G.L. chapter 30(b)
- ★ A Massachusetts Certified Public Procurement Official (or someone with delegated authority) must conduct the procurement
 - ★ Fixed-price contract (Invitation For Bid) or Cost-plus-a fixed-fee (Request For Proposals)
- ★ MA DESE approval process



The Procurement Process

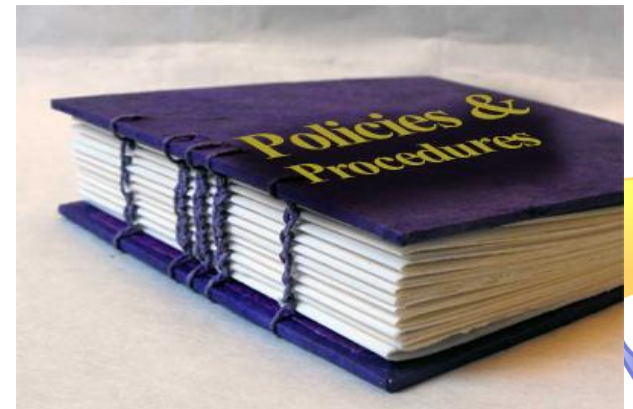
Procurement is the purchasing of goods and services. The procurement process involves:



Procurement Policy Manual

2CFR §200.319(c): The non-Federal entity must have written procedures for procurement transactions

2CFR §200.318(a): The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.



Procurement Policy Manual



2CFR §200.318(b): Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions and specifications of their contracts

The Massachusetts Office of the Inspector General requires an individual be designated as **Contract Manager** for major service contracts requiring ongoing oversight.

A Contract Manager must be designated for Food Service Management Company (FSMC) contracts.



Written Code of Conduct

2CFR §200.318(c)(1): The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts.



Massachusetts Department of Elementary & Secondary Education (MADESE)

"SFA-FSMC Mandatory Contract Language and Unallowable Contract Language" *checklist*

Contract Manager

Name & Title:

Telephone #:

e-mail address:

mailing address:

Bid Procedures:

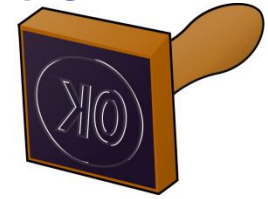
Delegated Authority to Contract Manager or other. Please indicate position if other: _____

CPO conducted procurement

Supporting Contract Documents (RFP/IFB/Other) Submitted



Contract Approval by the State



7CFR §210.16(a)(10): The SFA shall ensure that the State agency has reviewed and approved the contract terms and that the school food authority has incorporated all State agency required changes into the contract or amendment before any contract or amendment to an existing food service management company contract is executed. Any changes made by the school food authority or a food service management company to a State agency pre-approved prototype contract or State agency approved contract term must be approved in writing by the State agency before the contract is executed.



Contract Approval by the State

7CFR §210.16(a)(10): When requested, the school food authority must submit all procurement documents, including responses submitted by potential contractors, to the State Agency, by the due date established by the State agency

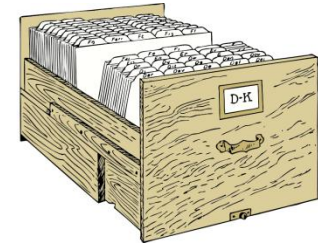


Contract Approval by the State

7CFR §210.21(c)(3): *Prohibited expenditures.* No expenditure may be made from the nonprofit school food service account for any cost resulting from a procurement failing to meet the requirements of this part



Procurement Records



2CFR §200.318(i): The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price

****Beginning SY16 – 17 all entities participating in any Child Nutrition Program (CNP) will be subject to a Procurement Review**



Contract Manager's Responsibilities

- ✓ Maintain a central contract file for all contract records;
- ✓ Coordinate communications with the contractor;
- ✓ Evaluate the qualifications of contract personnel for compliance with contract requirements;
- ✓ Communicate with the jurisdiction's auditing, finance, legal and purchasing departments;
- ✓ **Institute contract monitoring procedures that document performance, including results of inspections, progress reports, complaints, and resolution of performance problems**



Contract Manager's Responsibilities

- ✓ Determine acceptability of reports or deliverables by contractor;
- ✓ Approve or reject contractor payment requests;
- ✓ Deal with poorly performing contractors
- ✓ Ensure that contract amendments are in writing and approved by authorized individuals



Financial Oversight



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- ★ Comparing invoices to purchase order or the contract
- ★ Verifying work was completed
- ★ Ensuring that incurred charges are allowable
- ★ Ensuring that discounts or adjustments were applied correctly

For cost reimbursable contracts, the SFA will pay only allowable costs from the nonprofit food service account to the FSMC net of all discounts, rebates and other applicable credits accruing to or received by the FSMC or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA 7CFR §210.21(i)



School Food Authority (SFA)

Responsibilities under 7CFR§210.16

- ★ The SFA shall ensure that the food service operation is in conformance with the SFA's agreement under the program *7CFR §210.16(a)(2)*
- ★ The SFA shall monitor the food service operation through periodic on-site visits to ensure the food service is in conformance with program regulations *7CFR §210.16(a)(7)*
- ★ The SFA shall retain signature authority on the State agency-school food authority agreement, free and reduced price policy statement and claims *7CFR §210.16(a)(5)*



School Food Authority (SFA)

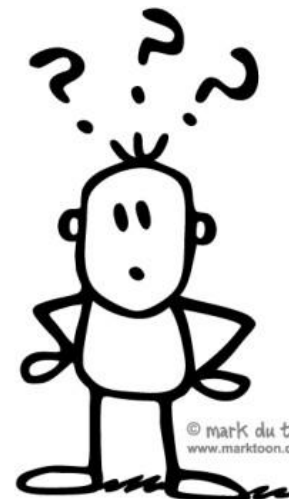
Responsibilities under 7CFR§210.16

- ★ The SFA shall ensure that all federally donated foods received by the school food authority and made available to the food service management company accrue only to the benefit of the school food authority's nonprofit school food service and are fully utilized therein. *7CFR 210.16§(a)(6)*



Questions for Consideration

- ★ What are my district's specific needs?
- ★ Will hiring a FSMC be cost effective?
- ★ Will a FSMC run program be more effective than a Self-Operated Program?
- ★ What are the advantages and disadvantages of both a FSMC run program and Self-Operated Program?



Components of a Food Service Program

- ★ Compliance with federal, state, and local laws and policies (including workplace safety and emergency preparedness)
- ★ Food Production and Operation Management
- ★ Nutrition and menu planning
- ★ Special Needs
- ★ Personnel
- ★ Storage
- ★ Serving equipment
- ★ Financial Management
- ★ Procurement & Inventory Management
- ★ Marketing & Communication



*Cost Reimbursable Contract

Typically:

Management Fee
Administrative Fee

Fixed

- Per Meal
- Per Month
- Annual

The contract should have enough detail regarding fee structure to ensure that there is no double billing, i.e., same item(s) included in the management fee and administrative fee. Additionally, the contract should specify the cost documentation requirements.

Operating Costs

Not Fixed

- food
- labor
- supplies
- other



Guaranteed Return: *Contract language indicating the FSMC guarantees to meet fiscal goals specified by the SFA*

The Guaranteed Return (GR) must:

- be clearly defined using actual numbers
- remain in the non-profit food service account
- indicate that the FSMC bears responsibility for failure to meet goals



“Prophets are up.”

Returns cannot be contingent upon multi-year contract duration



GR example

The FSMC guarantees a *return/break-even/loss* to the nonprofit school food service account at the end of the school year if certain agreed upon conditions are met. If the *return/break-even/loss* is not met at the end of the school year, the FSMC will cover the amount by reducing its management fee, up to the amount of the fee

Common GR Contingencies

- ★ Reimbursement rates and reimbursement revenue will not be less than prior School Year (SY)
- ★ Value of USDA foods will not be less than value of USDA foods in prior SY
- ★ Number of days meals are served during 2016-2017 school year will not be less than ____ days at the Middle and Elementary Schools and ____ days at the High School
- ★ The student enrollment for the 2016-2017 SY will be not less than 5,000 students



Summary

- ★ SFA's Responsibilities

 - ★ Procurement Process

 - ★ Develop Contract & Submit to DESE for Approval

 - ★ Contract Management

 - ★ NSLP regulations that can not delegated to a FSMC

- ★ FSMC good fit (Needs Assessment)

- ★ Cost Reimbursable Contract

- ★ Guaranteed Return



