USDA
United States Department of Agriculture

Food and Nutrition Service

Park Office Center

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Alexandria
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DATE: November 13, 2015

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SUBJECT: Guidance on Competitive Procurement Standards for Program Operators

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Recent communications between the Food and Nutrition Service (FNS) and State agency program staff during procurement trainings and management evaluations conducted in fiscal year (FY) 2014-2015 indicated a need for guidance on competitive procurement standards. These standards are located at: National School Lunch Program (NSLP) 7 CFR Part 210.21; Special Milk Program (SMP) 7 CFR Part 215.14a; School Breakfast Program (SBP) 7 CFR Part 220.16; Summer Food Service Program (SFSP) 7 CFR Part 225.17; Child and Adult Food Program (CACFP) 7 CFR Part 226.22 and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200.317-326 (formerly in 7 CFR Parts 3016.36 and 3019.40-48).

These standards ensure that program operators conduct procurement transactions in accordance with governing regulations and in a manner that facilitates full and open competition. Full and open competition is achieved when potential bidders/offerors receive all information necessary to respond properly to a solicitation; and responses are accurately evaluated for contract award. Contracts must be awarded to the responsive and responsible bidder/offeror whose bid/proposal is lowest or most advantageous to the program with price and other factors considered of which cost/price must be primary. (See *Procurement Questions* dated July 14, 2005. http://www.fns.usda.gov/sites/default/files/2005-07-14.pdf)

Management evaluations conducted in fiscal year 2015 revealed a number of issues, primarily that State agencies have been approving contracts for awards that contained unallowable cost provisions (i.e., incentives, investments, and value-added or overly responsive bids/offers) and/or failed to consider cost as the primary evaluation factor. In these instances, FNS required State agencies to review all existing contracts to determine whether or not the contracts were in compliance with applicable requirements. Contracts found to be noncompliant with unallowable cost provisions were required to be amended. Contracts that failed to include cost as the primary factor were required to be rebid.

State agencies have been trained in procurement regulations and are preparing to begin conducting reviews of procurement activities by Program operators. In order to prepare for procurement reviews and to ensure compliance with all Federal procurement standards, Program operators are strongly encouraged to review the documentation of their procurement solicitations, responses, and evaluation procedures used to award contracts. This includes ensuring all existing contracts were evaluated and awarded without unallowable cost provisions and that cost was the primary evaluation factor among factors considered. If issues with unallowable cost provisions are identified in contracts, these contracts must be amended immediately to remove these provisions. For contracts awarded without cost as the primary factor, State agencies should ensure that the affected school food authority begin the rebidding process to allow for a new, compliant contract to be awarded by the beginning of the next school year.

Moving forward, all new solicitations must include provisions for evaluation and scoring factors with cost as the primary factor. Solicitations must include language on prohibited expenditures found in program regulations, as well as, required contract provisions in Program and Uniform Administrative regulations in 2 CFR Part 200, if adopted, and in Appendix II of 2 CFR Part 200, as applicable. If 2 CFR Part 200 is not adopted due to the grace period allowed, regulations at 7 CFR Parts 3016 and 3019, as applicable, remain in effect. As a reminder, all food service management company contracts must be reviewed by the State agency prior to execution.

Additionally, responses to solicitations must be evaluated without consideration of any included unallowable cost provisions and must be awarded using the published evaluation and scoring factors, with cost as the primary factor. Contracts must be awarded to the lowest responsive and responsible bidder, or to the responsible firm whose proposal is most advantageous to the program with price as the primary factor. Cost does not have to be weighted at 51% or more among factors; however, cost must be primary.

State agencies must distribute this memorandum to Program operators. Program operators with questions should contact their State agency. State agencies with questions may contact the appropriate FNS Regional Office.

Sincerely,

Sarah Smith-Holmes
Division Director
Program Monitoring and Operational Support