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Food Service Management Companies

Food Service Management Companies

School districts considering contracting for foodservice management with a private sector management company are advised that there are specific federal and state regulations delineating procurement and contract requirements and responsibilities. Districts considering this choice must contact the state office for information prior to initiating the procurement process and before posting a public notice for bids or proposals.

Procedures for Competitive Bidding/Competitive Proposal for a Food Service Management Company (FSMC)

The procedures listed below must be followed.

1. Notify the state office of the intent of the school district to contract with a FSMC. Information will be provided to the district about competitive procurement of foodservice and the proper procedures to follow in accordance with federal and state requirements.
2. School districts must use the TDA-approved RFP when soliciting bids/proposals for a FSMC.
3. The school district should design bid specifications/proposal criteria for the RFP. The RFP is the most commonly used and appropriate method. In order to ensure objective contractor performance and eliminate unfair competitive advantage, a person that develops or drafts specifications, requirements, statements of work, requests for proposals, contract terms and conditions or other documents for use by a school district in conducting procurement under Child Nutrition Programs shall be excluded from competing for such procurements. However, prospective contractors may provide school districts with specific information related to a procurement and still compete for the procurement if the school district, and not the prospective contractor, develops or drafts the specifications, requirements, statements of work, and/or requests for proposals used to conduct the procurement.
4. The school district must mail the proposal criteria to the state office for approval prior to the initial advertisement to seek proposals for foodservice at least two weeks prior to the first advertisement date. All proposal criteria must be submitted to the state office before March 1 for approval for contracts procured for the following school year. On approval, the state office will send the district a copy of the Vendor's List of approved FSMCs in Texas.

5. The school district advertises for proposals for foodservice management for the upcoming year with options for four consecutive one-year renewals. The term of any contract for foodservice must coincide with the school calendar year. The Request for Proposal must be distributed to all vendors on the TDA Vendor's List. Public advertisement must also occur in two locations, a public newspaper for two consecutive weeks and on the Texas Building and Procurement Commission — Electronic State Business Daily Web site at <http://esbd.cpa.state.tx.us> for four consecutive weeks.
6. If more than one FSMC responds to the public advertisement with intentions of submitting a proposal, the school district must conduct a Prebid Conference for all interested bidders to attend at least two weeks after the date of the last public advertisement. All respondents to the public advertisement must be invited to the Prebid Conference. Any questions asked by prospective bidders at the Prebid Conference that would cause change to the RFP must be responded to, in writing, by the school district, with copies provided to all attending bidders. If any questions asked by vendors result in any change to the RFP, then a new copy must be provided to the state office for approval. If only one FSMC responds to the public advertisement with intentions of submitting a proposal, then the school district may then conduct a walk-through of the facility instead of a Prebid Conference.
7. Proposals should be submitted no earlier than two weeks after the Prebid Conference or walk-through. The due date for proposals must be stated in the RFP.
8. RFB proposals must be ranked in accordance with the Weighted Criteria Evaluation Worksheet, which must be a part of the RFP approved by TDA. The school district may enter into competitive negotiations with the highest ranked proposer/vendor. TDA recommends that the attorney for the school district take an active role in negotiations and contract review with the FSMC before the school district signs any contractual document.
9. The school district must furnish the state office with the following documents for approval of the contract prior to May 31.
 - a. A completed TDA checklist.
 - b. A copy of the foodservice management contract accompanied by the completed USDA Contract Checklist.
 - c. Copy of a List of Campuses Served under the contract.
 - d. Copy of the projected foodservice budget for the upcoming school year.
 - e. Signed copies of the Anticollusion Affidavit, Lobbying Certification and the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.
 - f. To accommodate the number of requests and proposals that need to be evaluated, school districts should consider submitting the necessary documentation several weeks in advance of the May 31 submission deadline. The school district will be notified by the state office of the approval of the contract or the need for an amendment.
10. Contract approval by the state office must occur before the start of the school year for con-

tracts to be executed for the upcoming school year. Reimbursement cannot be paid for meals served under a FSMC contract that has not been approved by the state office.

Procedures for Renewal of FSMC Contract for an Optional One-Year Term

1. The school district will be provided with any changes in regulatory requirements in the contracting process by the state office.
2. The school district and the FSMC negotiate renewal of the contract, the proposed budget and any amendments to the contract. The term of any contract renewal must coincide with the upcoming school calendar year. Fee increases to the school district must be in accordance with the district policy stated in the RFP and contract. Fee increases linked to the Consumer Price Index (CPI) must be stated in the RFP and contract, and accompanied by a written recalculation or methodology from the old fee to the new fee. This documentation of fee increases must be provided to the state office as part of the contract renewal packet.
3. The school district must furnish the state office with the following documents for approval of the contract renewal prior to the May 31 deadline:
 - a. A letter stating the intent of the school district to renew the contract with the FSMC for the upcoming school year.
 - b. A copy of any amendments, subcontracts, letter agreements or any other relevant documentation pertaining to the contract which have not previously been furnished to this office;
 - c. A copy of the previous year-end foodservice budget.
 - d. A copy of the upcoming year projected budget.
 - e. An amended List of Campuses Served, if the district has added/deleted campuses to/from the contract.
 - f. Methodologies for all allocated changes that document the change as an actual cost to the FSMC.
 - g. To accommodate the number of renewals and contracts that need to be evaluated, school districts must submit the necessary documentation before May 31 of each year. The FSMC renewal packet must be approved by the state office before the start of the school year of each year. Reimbursement cannot be paid for meals served under a FSMC contract that has not been approved by the state office.
4. The school district will be notified by the state office of the renewal approval.
5. An advisory committee of parents and students to review menus is required.

Food Service Consulting

Foodservice management would involve the day-to-day operation of the foodservice program with the contractual responsibility of daily oversight and management of the program. Consulting is specifically focused in areas, such as training or procurement, where the consultant would work with existing school district employees in those designated areas but not oversee daily operation of the program.

Caution should be exercised when multiple services are provided under a consulting agreement, as these services by a consultant could become the overall management of the foodservice operation. Time spent on-site does not determine the type of service provided. A consultant may be in the district daily for an extended period. The key criterion is whether the day-to-day operation of the foodservice program is under the management of the school district or the food service management company.

Consulting contracts of \$25,000 or more annually must be submitted to competitive procurement in accordance with state and federal regulations and related bid thresholds. Documentation of competitive procurement must be retained by the district for review by the appropriate government agencies. Options for renewal of a consulting contract are allowed. Care should be taken to ensure free and open competition is not compromised by extended renewals, therefore it is recommended that consulting contracts be submitted to competitive procurement no less frequently than a contract for foodservice management or every fifth year.

Consulting contracts must include contract provisions in accordance with dollar thresholds required federal procurement regulations. Suspension and debarment and lobbying certifications must be included if the dollar amount of the contract is \$100,000 or more. It is also recommended that a Certificate of Independent Price Determination or Anti-Collusion Affidavit be included in contracts for consultation.

For questions about consulting contracts, please contact the state office.