FORMAL SOLICITATION PROCESS TO CONTRACT WITH FOOD SERVICE MANAGEMENT AND CONSULTING COMPANIES FOR THE FOOD AND NUTRITION PROGRAM(S)

Responsible: Purchasing Department

PURPOSE

This Administrative Procedure shall provide guidance for Washoe County School District's (District) Purchasing Department when processing competitive and noncompetitive solicitations specific to services to be provided by food service management and consulting companies as required per the Code of Federal Regulation (CFR).

PROCEDURE

1. General Information. The CFR is the codification of the general and permanent rules published in the *Federal Register* by the Executive departments and agencies of the federal government.

    a. Procurement standards for food and nutrition management and consulting services are outlined in the CFR under 7 CFR 210.21, 2 CFR 200.318-326, CFR 200.400 (series), and in contract provisions in Appendix II to 2 CFR Part 200.

    b. Child Nutrition Program regulations applicable to School Food Authorities (SFAs) with any Food Service Management Company (FSMC) contracts are found in 7 CFR 210.16 identifies current policy guidance related to procurement and FSMCs Appendix A of 2 CFR Part 200. Appendix B identifies required contract provisions.

2. The Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) administers the nutrition assistance program of the USDA.

    a. USDA Food Programs support domestic nutrition programs and American agricultural producers through purchases of domestic agricultural products for use in schools and other institutions. USDA-Foods are foods purchased by the USDA.

3. The FNS of Nevada Department of Agriculture (NDA) operates under the directives, guidance, and authority of the USDA for food and service nutrition related services, as applicable to local governments' public agencies, referred to as non-federal entities.

    a. The District is a local government, public agency that provides food and nutrition services for its students.

b. Per 7 CFR 210.19(e), the NDA, as a state agency, may impose additional requirements that meet or exceed required USDA standards, if those requirements are not inconsistent with the USDA standards.

   i. In addition to these requirements, the District is also required to follow all district administrative policies and regulations, including, but not limited to procurement processes, as they relate to the District's food and nutrition program (Program).

   ii. When any additional requirements are not federal regulations, the most restrictive regulations, whether by the NDA, Nevada Revised Statute (NRS) 332, or the District apply.

4. The District's Roles, Responsibilities and Legal Obligations for Food and Nutrition Services. The District, identified as School Food Authority (SFA), is responsible for the administration of one or more schools and therefore, has legal authority to operate the National School Lunch Program or School Breakfast Program as approved by USDA's FNS to operate these programs.

   a. As an SFA, the District is responsible for operating school nutrition programs in schools within its jurisdiction. These programs include the:

      i. National School Lunch Program (NSLP);

      ii. School Breakfast Program (SBP);

      iii. Special Milk Program for Children (SMP);

      iv. Afterschool Snack Program (ASSP);

      v. Fresh Fruit and Vegetable Program (FFVP);

      vi. Food Distribution Program (FDP);

      vii. Seamless Summer Option (SSO);

      viii. Summer Food Service Program (SFSP); and

      ix. Child and Adult Care Food Program (CACFP).

5. To assist in carrying out this responsibility, the District may contract with a FSMC, as an outsourcing option, to manage the food service operation in part, or in all, of these programs and in one, or more, of its schools.

   a. The scope of the management must be clearly specified in the solicitation for an FSMC and in the contract awarded to the successful FSMC.

However, it is the ultimate responsibility of the SFA to monitor the terms of the contract.

b. The District must comply with existing federal, state, and local procurement requirements when obtaining the services of an FSMC.

c. The District may contact the NDA for guidance before entering any procurement process for FSMC services. The NDA may also be willing to review any other food and nutrition services solicitations and/or resulting contracts (e.g., Request for Bid (RFB)).

6. Noncompetitive Proposals and Sole Source Procurement. Procurement for an FSMC by noncompetitive proposals is through a request of a proposal from only one (1) source and may be used only when one or more of the following circumstances apply:

   a. The item is available only from a single source.

   b. The public's necessity or emergency for the services that would be delayed due to the competitive solicitation process and resulting contract to provide services.

   c. The awarding agency authorizes noncompetitive proposals.

   d. After solicitation of several sources, competition is determined inadequate.

7. The requested noncompetitive proposal must include both price and terms using the same procedures that would be followed for competitive Request for Proposals (RFP) solicitations.

8. Sole Source procurement refers to one type of noncompetitive proposal found in 2 CFR 200.320(f); in Child Nutrition Programs this occurs only when the goods or services are available from only one (1) manufacturer through only one (1) distributor or supplier.

   a. When faced with an actual sole source situation, the District must first obtain NDA's approval, and then go directly to the one (1) source of supply to negotiate terms, conditions, and prices.

9. Purpose of a Request for Proposal Solicitation or Use of a Request for Bid. The District must identify which procurement method meets its needs most effectively. The two most frequently used methods for soliciting bids/proposals from an FSMC are by issuing an RFB or an RFP. Both processes, for the District, are governed under NRS 332.

a. The District has chosen to use the RFP process as the preferred method of solicitation for an FSMC. Refer to Solicitation Development (Section E) below for processing an RFP solicitation.

10. The intent of issuing an RFB is for the District to solicit for specific services and/or products from an entity where a contract is then awarded to the lowest responsive (one which conforms to all the material terms and conditions of the solicitation) and responsible (an entity capable of performing successfully under the terms and conditions of the solicitation and/or to be awarded contract) bidder.

    a. Requirements of the RFB process, include, but are not limited to sealed bid submissions on a specific date, at a specific time, and at a specific location; scope of service/work and/or bid specifications must be clear, accurate and complete that describe the District's requirements; pricing must be included in the sealed bid submission; a complete tabulation of all bid submissions is produced after the bid opens; and is awarded accordingly.

11. The intent of issuing an RFP is to allow the District to find the best solution for its needs where the final award determination is not primarily based on the lowest cost of the solution. The RFP process also helps increase transparency in the District, as a local government.

    a. The issuance of an RFP is not intended to be used by the District to limit competition, discourage competitive bidding or to engage in or allow bid-shopping.

    b. Issuing an RFP allows the District to compare various products, services, and vendors so the assigned evaluators can do a side-by-side comparison of factors that include, but are not limited to, each proposer's qualifications, experience, conformance to specifications, financial stability, and associated prices/cost/fees.

    c. Rather than just seeing one solution, RFPs show many ways of approaching a problem. This can highlight solutions that are more comprehensive and sustainable.

    d. Going through the RFP process may help the District identify new products it may not be aware of.

    e. By encouraging open competition, RFPs can help the Purchasing Department find the best, most cost-effective solution for the District.

12. Once the required procurement method is identified, the District must solicit for bids or proposals to ensure it receives the best possible product/service and at the lowest possible price for RFBs, and highest scoring proposer for RFPs.

13. Solicitation Development. The RFP is to provide background information on the services of an FSMC. It establishes the scope of the service/work, specifying what the District needs and how the submitted proposals will be evaluated and scored.

14. Per 7 CFR 210.16(a)(9) and as required by the NDA, the District must obtain written approval from the NDA's School Nutrition Supervisor (e.g., a signed letter) of the solicitation before its issuance

    a. The District must incorporate all of NDA's required changes to its solicitation before issuing those documents.

15. When ready to develop the solicitation documents, the assigned Buyer from the District's Purchasing Department, who will be facilitating the solicitation (RFP Facilitator), is required to contact NDA's Food and Nutrition Service Department to request a current RFP template (prototype document) to be issued publicly as the official solicitation.

    NDA's Food and Nutrition Service Department's Staff Directory is available at:

    http://agri.nv.gov/Resources/Staff_Listings/Food___Nutrition_Staff_Listing/

    a. The USDA permits States to require the use of their solicitation template(s) if such templates have been developed. The NDA has developed such templates and it is a requirement of NDA to use their template for an RFP to hire a FSMC. the District is not permitted to use their RFP template.

    b. The solicitation document and the resulting contract must provide information about the District's food service operations and all required products and service the District is seeking to procure.

16. The RFP Facilitator is to follow the Purchasing Department's procedure for processing RFPs and then additionally follow Section 3 below.

17. The RFP solicitation document must include a clear description of the scope of service/work, all technical requirements, all specifications for products and services required, terms and conditions, contract provisions, award procedures and any pertinent attachments, and evaluation and scoring criteria.

a. The evaluation and scoring criteria are factors other than price alone to be considered; however, **price/cost/fee must be the primary consideration and most heavily weighted criteria per 2 CFR 200.320.**

    i. The price/cost/fee submitted with RFP proposals may be described in different ways, such as *service fee*, *management fee*, *administrative fee*, or a combination of any of these.

    ii. All fees must be expressed as a dollar value unit per meal or may include details of the total annual cost of administrative or management services included in these fees.

    iii. All prices/cost/fees must be included in the overall price submitted by the interested proposer during the evaluation and scoring phase for contract award.

    iv. The annual cost may be prorated for monthly payment based on the total annual value. Fees are to be fixed for the entire contract duration and for renewals unless a provision allowing for periodic cost adjustment is otherwise stated in the original solicitation.

18. The District shall NOT use information prepared by FSMCs in the any competitive solicitation document as doing so prohibits the FSMC that prepared that information from the RFP submission and contract award.

    a. Full and open competition cannot be compromised by allowing potential contractors to provide product and/or service specifications, technical requirements, minimum liability insurance requirements for vendors, or "brand name" products that only one FSMC or its distributor can supply as doing so potentially restricts competition.

19. The District's procurement procedures must not restrict or eliminate competition. Examples of such restrictions include, but are not limited to:

    a. Unreasonable requirements;

    b. Noncompetitive pricing practices;

    c. Organizational conflicts of interest;

    d. Inappropriate practices;

    e. Insufficient time of solicitation submissions by interested vendors/firms;

    f. Overly responsive; and

g. Value-Added responses.

20. The solicitation must include the time and place for opening proposals, as well as any information concerning pre-proposal meetings and level of authority and process required to officially award a contract, such as the need for approval from the District's Board of Trustees (Board).

21. Should the District operate a Summer Food Service Program, a bid bond and performance bond are required as per in 7 CFR 225.15(m) (5-7).

    a. Requirements concerning the bonding requirement, bonding firm, and when the bond(s) must be provided to the District and must be included in the solicitation.

22. The RFP Facilitator will develop critical deadline dates and a list of individuals who will serve on the Evaluation Committee.

    a. The Evaluation Committee shall consist of at least three (3) members and shall have at a minimum, one (1) external (non-District employee) member with experience and/or interest related to the product(s)/service(s) being solicited.

    b. If a supervisor, manager, director, or chief is on an evaluation committee, the majority of the committee may NOT be part of that person's reporting structure.

23. Once the RFP solicitation document and any related exhibits are prepared, a timeline for the solicitation process is prepared by the RFP Facilitator that will align with the needs of the solicitation's completion and the requesting department's needs.

24. Following the internal-department review of the RFP solicitation document and having obtained approval from the NDA's School Nutrition Supervisor of the final RFP solicitation (as stated in Section E(2) above), the RFP Facilitator completes various tasks as outlined in the Purchasing Department's procedure for RFPs in order to finalize the solicitation for publishing and distribution including obtaining electronic copies of any related exhibits; preparing the legal ad notification; and preparing calendar e-invites with dates and times for required meetings and project milestones (e.g., question and answer period; addendum posting; RFP submission date; proposal review meeting; formal interviews and presentations; contract negotiation period; obtaining approval from NDA prior to contract execution (refer to Section H(6) below) release of Recommendation of Award; Board Approval; release of Notice of Award, and continued contract management of the RFP.

25. Required Inclusions, Approvals of Contracts/Amendment(s) with Awarded FSMC, and Notice of Award. In accordance with 7 CFR 250.53, as applicable, all contracts must include the provision relating to the use and crediting of USDA Foods to the nonprofit food service account.

26. The District's contract with the FSMC recommended for award must be developed based on the original solicitation, and if applicable, within the negotiations phase, to prevent compromising full and open competition.

    a. FSMC developed contracts or amendments are never allowed.

27. Appendix II to Part 200 of Title 2, section B, requires that all contracts more than $10,000 (Ten Thousand Dollars) must address termination for cause and convenience, including how it will be affected and the basis for settlement.

    a. In addition to the provision of termination for cause, the District may also include a termination for convenience provision that provides adequate advance notice that would permit the District sufficient time to arrange alternate food service if the FSMC exercises the clause.

28. Any resulting contract must contain a provision that clearly outlines how all costs will be reported and that all costs will be net of applicable discounts, rebates, and credits.

    a. Contracts with the FSMC must include the basis for payments and management of the business relationship.

    b. *Cost-reimbursable* contracts for the FSMC to competitively procure food, supplies, equipment, and services must contain language about payment of vendor bills and accounts, if applicable.

    c. In both *fixed-price* and *cost-reimbursable* contracts, the provision should outline how the value of USDA Foods will be credited to the nonprofit food service account.

    d. A *cost-plus-fixed-fee* contract may also have multiple fees provided these are specified and defined.

    e. A *cost-plus percentage of cost* or a *cost plus a percentage of income* contracts are prohibited.

29. Contract language should also confirm the District's responsibility to implement internal controls as required under 7 CFR 210.8(a) and to ensure resolution of Program review and any audit findings.

30. Per 7 CFR 210.16(a)(10), the District must obtain from the NDA, an approval notice (i.e., signed letter) of the contract, including all supporting documentation, between the District and the FSMC prior to the contract's execution.

31. After the approval letter from the NDA is received, the Purchasing Department's standard practice is to request the awarded proposer to sign the related contract first followed by the countersignature of the District's authorized representative with signature authority, following formal approval and award by the Board.

    a. Once the final contract has been fully approved as required and signed by both the District and the FSMC, the Notice of Award is processed, posted, and distributes accordingly.

32. Per 7 CFR 210.19(a)(6) the NDA is required to annually review each contract renewal and/or amendment (including all supporting documentation) between the District and the FSMC prior to execution (signatures) of the renewal/amendment to ensure compliance with all the provisions and standards set forth in program regulations as well as the regulations in Part 250, Subpart D governing USDA Foods.

33. The District's monitoring of the FSMC should include determining whether the food service operation is in conformance with the contract to operate Program in accordance with all program regulations.

34. Fully executed contracts only need to be provided to the District and to the FSMC. Both may retain all necessary documents related to the entire RFP process in their original form or may scan documents for electronic storage. Contracts should stipulate that records are:

    a. Maintained in such a way that they are easily accessible when requested;

    b. Available upon demand; and

    c. Available through the District location (e.g., the Purchasing Department or Office of General Counsel) rather than at an FSMC location.

LEGAL REQUIREMENTS AND ASSOCIATED DOCUMENTS

1. This Administrative Procedure reflects the goals of the District's Strategic Plan and aligns and complies with the governing documents of the District, to include:

    a. Board Policy 3321, Contract Review and Approval;

    b. Administrative Regulation 3322, Bids/Quotations and Contracts; and

    c. Administrative Regulation 3329, Procurement Protocols – Federal Funds.

2. This Administrative Procedure aligns with Nevada Revised Statutes (NRS), to include:

    a. Chapter 332, Purchasing Local Governments.

REVISION HISTORY

Date	Revision	Modification
01/01/2022	1.0	Adopted