

# Contracting with a Food Service Management Company Guidance Manual

John Huppenthal  
Superintendent of Public Instruction

Arizona Department of Education  
School Health and Nutrition Programs  
1535 West Jefferson, Bin # 7  
Phoenix, Arizona 85007



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## **Getting Started**

### **Getting Started**

Once a district or charter school decides to participate in Child Nutrition Programs (CNP), the next step is to decide which program(s) to participate in and who will prepare the meals for the students. The School Food Authority (SFA) should decide if they want to participate in the:

- National School Lunch Program (NSLP);
- School Breakfast Program (SBP);
- Special Milk Program (SMP);
- Fresh Fruits and Vegetable Program (FFVP)
- Summer Food Service Program (SFSP); and
- Any combination of these programs.

If an SFA prefers not to prepare their own meals, they have the option to hire a Food Service Management Company (FSMC) to operate all or a portion of the food service operations. The FSMC may provide services such as:

- Hiring employees;
- Ordering food and supplies;
- Making meals; and
- Other activities as deemed necessary.

### **Completing the Process**

To contract FSMC services, the SFA should or must follow the steps that are detailed in this manual. It is critical that these steps are followed, as they are requirements set forth by the federal and state procurement regulations to participate in any of the CNP. The federal and state regulations will be stated throughout this manual. Arizona Department of Education (ADE) suggests that each SFA allow adequate time to complete all steps to ensure all steps are done correctly. This also gives the SFA time to review the various aspects of their food service operations including finances, personnel and administration to determine how an FSMC may meet their particular needs. Please remember, this manual is provided as a resource tool to assist schools during the process and is not intended as an endorsement or recommendation by ADE to utilize the services of an FSMC. In addition, seeking legal counsel or advice is highly recommended when drafting a contract of any kind.

**Achieving the Desired Results**

Finally, it is important to remember that contracting with an FSMC does not allow the SFA to turn over all responsibilities required to operate the CNP. When contracting with an FSMC, the SFA will still be required to maintain and perform certain duties pertaining to the CNP operations.

## **Procedures for Contracting With a Food Service Management Company**

SFAs that are considering contracting with an FSMC must follow the procedures listed below. These procedures apply to the Request for Proposal (RFP) and renewal amendments. The requirements are not exhaustive. SFAs and FSMCs should carefully review the National School Lunch Act, and the Child Nutrition Act of 1966, as outlined in the Code of Federal Regulations (CFR). Before contracting with an FSMC, the SFA should review its current food service operation, including an overview of:

- The food service operation profit or loss over the last five years;
- All food costs, labor costs, direct costs and food service director cost(s);
- All operational considerations, such as: the facilities, equipment and food service staff; and
- Public relation factors which includes both internal and external.

If the SFA is intending to contract with an FSMC for the first time, please notify the ADE as soon as possible. ADE will provide the SFAs with information about procedures and requirements.

### **Mandatory Training**

Keep in mind, that the SFA must attend the mandatory training titled “Contracting with a Food Service Management Company” before the solicitation process can begin.

### **Solicitation Documents**

It is required that the SFA use the ADE RFP template and RFP Evaluation Rubric for the solicitation process. If the SFA wants to make any modifications, they must receive approval from ADE prior to making any modifications. The documents that must be sent to ADE to obtain approval are:

- RFP Template;
- RFP Evaluation Rubric Template; and
- Signed SFA-FSMC RFP Checklist

### **ADE Approval**

Before the solicitation process begins, the SFA must e-mail the solicitation materials outlined above to ADE to gain approval. Once the SFA has received ADE approval, the SFA may then begin the solicitation process.

### **RFP Release**

The SFA is required to send the RFP to at least five (5) different vendors. If the RFP is sent to four (4) or fewer vendors then the SFA must advertise the RFP in a local newspaper and should run the ad for at least 14 days prior to the RFP closing. The SFA is required to send the approved procurement documents to each company on ADE’s *Vendor Contact List*.

The SFA must allow a minimum of four (4) weeks for interested FSMCs to complete and submit their proposal.

### **Pre-Offer Conference**

It is highly recommended that the SFA conduct a Pre-Offer Conference two (2) weeks before, but no less than seven (7) days, prior to the RFP closing date. Invite all Offerors to the Pre-Offer Conference. If additional information is requested at the Pre-Offer Conference or if the RFP is amended by questions or requests from this meeting, then more time should be provided to allow vendors time to develop a “Responsive” proposal. Consideration should be given to procurement time allocations so that the SFA has enough time:

- To make an adequate decision; and
- The executed contract deadlines for the upcoming year are met.

### **Evaluation Committee**

The SFA must establish a committee to evaluate the RFP. The committee may be comprised of principals, teachers, parents, administrators, school board members or other individuals who may have involvement with the Child Nutrition Program/food service operation. Due to the complexity of the process, students should not serve as committee members.

### **ADE Approval of Selected Proposal**

The selected proposal, with all supporting documents included, must be sent to ADE for final review and approval prior to obtaining signatures. Then, ADE will notify the SFA, in writing, when all documents have been approved for signatures. Keep in mind, failure to obtain ADE approval, before obtaining signatures from either party, will result in the withholding of federal funds until such time as the required documents are approved by ADE and new signatures are obtained. Before notifying the selected FSMC, the SFA must send ADE the following:

- Selected FSMC proposal;
- All evaluation team members scores and comments for each proposal scored;
- SFA Selected FSMC Proposal Checklist; and
- Copy of the Vendor list that the RFP was sent to.

When ADE has ensured that the procurement meets all the CFRs, ADE will notify the SFA in writing. Then, the SFA may notify the FSMC of Award. Afterward, the SFA must send ADE a copy of the Offer of Acceptance and Contract Award form.

Each SFA approved RFP, with all attached appendices, attachments, exhibits and amendments, becomes the final contract between the SFA and FSMC when the Acceptance of Offer and Contract Award is signed.

## Questions to Ask?

When comparing school-operated programs to FSMC-operated programs, decision-makers must be sure they are comparing “apples to apples” and consider all costs. School board members, administrators and business officials need to be aware that federal and state requirements regulate the process of contracting with an FSMC. These comprehensive and detailed requirements should be reviewed thoroughly by any SFA considering contracting with an FSMC. The steps listed below are suggestions for deciding if your district or charter school should use an FSMC.

### Analyze Food Service Operation

Conduct a needs analysis of the current food service operation to determine what method of providing food service best meets the SFAs goals and objectives. The Auditor General requires the analysis if an SFA chooses to outsource for the first time or is currently operating with a vendor. Also, determine the current cost of operating the food service. In addition, analyze all other aspects of the current food service operation that do not financially impact your food service department to determine the impact of utilizing an FSMC (e.g., nutrition goals and nutrition education activities). Be sure to identify the functions that might be contracted and the benefits and costs of such contracts.

### S.W.O.T.

SWOT Analysis is a strategic planning method used to evaluate a business venture. It involves specifying the objective of the business venture and identifying the internal and external factors that may affect the outcomes. S.W.O.T. means:

- Strengths are attributes of the organization which are helpful to achieving the objective.
- Weaknesses are attributes of the organization which are harmful to achieving the objective.
- Opportunities are external conditions which are helpful to achieving the objective.
- Threats are external conditions which could do damage to the business's performance.

### Additional Information

To gain additional information about contracting with an FSMC you can contact ADE Health and Nutrition Office. ADE can provide:

- Information on the FSMCs operating in the state;
- The SFAs names who are currently operating with FSMCs; and
- Additional technical assistance.

For more information, contact Ellen Pimental, Health and Nutrition Office at (602) 542-6208 or [Ellen.pimental@azed.gov](mailto:Ellen.pimental@azed.gov).

## **SFA Responsibilities**

Decision-makers must remember that the SFA remains responsible for all aspects of the food service program. They need to assure that the program is being operated in the best interests of the SFA and the students. Compliance with federal and state regulations will still remain with the SFA. If your SFA decides to use an FSMC, the SFA remains responsible for the overall operation of the CNP. This responsibility requires that the SFA retain and maintain direct involvement in the operation of the food service program. Section 210.16(c) states "Contractual agreements with food service management companies shall include provisions which ensure that the requirements of this section are met." These provisions are expanded upon below to incorporate program policies, pertinent regulatory requirements, and guidance. Some of the required provisions are based upon the dollar threshold of the contract. In such cases, the total dollar value of the contract must be considered, e.g., in the case of a cost-reimbursable contract, the total value of the contract must reflect the management fee as well as the direct costs incurred by the FSMC which are billed to the SFA, such as food and labor.

Below are the responsibilities that the SFA must retain when contracting with an FSMC.

### **Development of Contract Documents**

The SFA must prepare all contract documents issued prior to the award of the SFA-FSMC contract. These documents include, but are not limited to:

- Bid specifications;
- Invitation for bid (IFB); and
- Request for proposal (RFP).

Section 7 CFR 210.16(c)(3) specifically addresses the SFA's development of specifications for each food component or menu item and requires these specifications to be included in the IFBs or RFPs. Specifications must cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, a person that develops or drafts:

- Specifications;
- Requirements;
- Statements of work;
- Invitations for bids;
- Requests for proposals;

- Contract terms and conditions; and
- Other documents.

Shall be excluded from competing for such procurements that can be used by a SFA in conducting a procurement under the USDA entitlement programs specified in 7 CFR Part 3016.4(b).

### **Contract Review**

The SFA ensures that ADE annually reviews each contract (including all supporting documentation) between SFA and FSMC prior to execution of the contract to ensure compliance with all the provisions and standards set forth in Part 210 and Part 250, Subpart D.

An important change made by the procurement regulation is that all contracts must contain a provision clearly requiring that all costs to the program be net of applicable discounts, rebates, and applicable credits. SFAs should include the following provisions in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts: Only allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority [210.21(f)(1)(i)].

### **Program Oversight**

The SFA makes certain that the food service operation is in compliance with the SFAs agreement with ADE. The SFA is ultimately responsible to ensure the Food Program Permanent Service Agreement is followed and maintained during the entire contract term with ADE. The SFA is held responsible to resolve program reviews and audit findings.

### **Monitoring**

The SFA monitors the food service operation through periodic on-site visits to ensure that the food service is in conformance with program regulations and program review and audit findings are resolved. The SFA must have procedures in place to monitor the FSMC's compliance with the contract and the SFA maintains documentation.

### **Control the Quality, Extent and Nature of Food Service**

The SFA must retain control of the quality, extent, and general nature of the food service and the prices to be charged to the children for meals. Such control must include:

- Retaining control of the nonprofit school food service account and overall financial responsibility for the school nutrition programs;
- Establishing all prices for all meals served under the nonprofit school food service account (e.g., pricing for reimbursable meals, a-la-carte food services and adult meals, as applicable);
- Developing the 21-day cycle menu in accordance with the meal pattern requirements specified in 7 CFR Part 210;

- Conveying menu adjustment requirements to the FSMC and monitoring implementation of those adjustments; and
- Any refunds received from processors must be paid to the SFA.

### **Signature Authority**

The SFA retains signature authority on the agreement to participate in the NSLP, the SBP and the SMP, including the SFA's free and reduced-price policy statement and the monthly Claim for Reimbursement.

### **Free and Reduced-Price Meal Process**

The SFA maintains responsibility for the implementation of free and reduced price policy in accordance with 7 CFR Part 245. Such responsibilities include the conduct of any hearings related to such determinations and verification of applications for free and reduced price meals.

### **USDA Donated Foods**

The SFA retains title to USDA donated foods and ensures that all donated foods received by the SFA are made available to the FSMC. This includes processed donated foods accrue which must only to the benefit of the SFA's non-profit school food service and are fully utilized therein. Specifically, the SFA should:

- Evaluate the utilization of the donated food by the FSMC. Under cost-reimbursable contracts, this may include a review of production records and food cost documentation.
- Ensure the FSMC credits the SFA for the value of all donated foods received for use in the SFA's meal service in the school year or fiscal year. All forms of crediting must include clear documentation of the value received from the donated foods.
- Ensure the FSMC uses all donated ground beef, donated ground pork and all processed end products, in the SFA's food service.
- Ensure that when the contract terminates and is not extended or renewed, the FSMC returns all unused donated ground beef, donated ground pork and processed end products.
- Ensure the FSMC meets the CFR general requirements for the storage and inventory management of donated foods.
- Ensure the FSMC has a system of inventory management which does not result in the SFA being charged for donated foods under cost-reimbursable contracts.

### **Health Certification**

The SFA maintains applicable health certifications and assures that all State and local regulations are being met by a FSMC preparing or serving meals at a SFA facility.

### **Establishment of an Advisory Board**

The SFA must establish and maintain an advisory board composed of parents, teachers and students to give suggestions and help with menu planning.

**Development of a 21- Day Cycle Menu**

The SFA must develop a 21-day cycle menu in accordance with the meal pattern requirements specified in the CFRs for the FSMC proposal. The SFA must approve any changes to the cycle menu after the first 21 days of meal service.

**Internal Controls**

The SFA applies the internal control procedures required by CFRs to the preparation of the monthly Claim for Reimbursement. The signature authority representative from the SFA will be the only individual with the rights and ability to submit monthly claims on the ADE CNP Internet Website. This duty shall not be delegated to the FSMC to complete.

**Reports**

The SFA completes all reports as required by ADE.

## **Beginning the Process**

Before beginning the process to contract out the food service operations to an FSMC, the SFA must attend the mandatory training “Contracting with a Food Service Management Company”. This training will provide the SFA information on how to maneuver through the procurement process. The training will focus on:

- How to evaluate the current food service operation;
- What steps an SFA must take during the solicitation process;
- How to develop an effective RFP;
- What CFR provisions must be followed;
- What responsibilities the SFA can delegate to the FSMC; and
- What responsibilities the SFA cannot delegate to the FSMC when operating a CNP.

This class is mandatory for self-operation SFAs who are planning to outsource their food service operations in the future program year. It is also mandatory for SFAs who are required by ADE to re-solicit.

## FSMC RFP Schedule of Events for the Upcoming Year

Due Date	Activity
January 1	Prepare the Arizona Department of Education Request for Proposal (RFP) template according to requirements as indicated in the CNP Regulations 7 CFR 210,210.16,3016,3017 and 3018. For more information go to: <a href="http://www.ade.az.gov/health-safety/cnp/nsfp/Operating/ContractingforMealService.asp">http://www.ade.az.gov/health-safety/cnp/nsfp/Operating/ContractingforMealService.asp</a>
February 1	Submit the proposed RFP, Evaluation Rubric and SFA-FSMC Request for Proposal Checklist to ADE Health and Nutrition Office for review and approval. ADE will review all the documents to determine if they meet the CFRs. Then ADE will notify the SFA, in writing, when all documents are approved for solicitation.
February 15	Send the RFP to at least five (5) vendors. ADE has a current list of FSMCs. The SFA shall send the approved RFP to each company on ADE's Vendor List before advertising of the RFP begins. If the SFA only sends the RFP to four (4) or fewer vendors, then the SFA must advertise for proposals. The SFA may choose to conduct a Pre-Offer Conference. For best results, it is suggested that the SFA allow at least 4 to 6 weeks for proposals to be developed by vendors.
March 15	The SFA reviews bids/proposals received: <ul style="list-style-type: none"> <li>• IFB; evaluate bids to determine the lowest "Responsible" and "Responsive" bidder; or</li> <li>• RFP; evaluate proposals according to established criteria.</li> </ul>
	Send ADE Health and Nutrition Office the following items for review: <ul style="list-style-type: none"> <li>• The SFA selected FSMC proposal;</li> <li>• All the committee members evaluations; and</li> <li>• Checklist for the RFP proposal</li> </ul>
	ADE will review all the documents to determine if they meet the CFR. Then ADE will notify the SFA, in writing, when all documents are approved to receive signatures.
April 1	The School Board Awards the bid/proposals for Food Service <b>ONLY</b> after receipt of ADE Health and Nutrition Office's approval: <ul style="list-style-type: none"> <li>• For IFBs, the SFA must Award the contract to the lowest "Responsible" and "Responsive bidder" whose bid conforms in all material respects to the requirements; or</li> <li>• For RFPs the SFA must Award the contract to the most advantageous to the SFA Award based <u>only</u> on factors set forth in the RFP.</li> </ul>
	Notify the FSMC of the Award and the SFA signs the Offer of Acceptance and Contract Award form.
June 1	Send a copy of the final, <b>SIGNED</b> Acceptance of Offer form to ADE Health and Nutrition Office within ten (10) days of execution.

## Procurement Options and Procedures

Before an SFA can create and sign a contract with any FSMC, the SFA needs to decide on how they will obtain the service. This process of deciding what type of procurement method to use is an important step, so it should be carefully considered and planned. For more information please refer to the Arizona School District Procurement Code. The two most frequently used methods of procurement with costs above the competitive sealed bid (\$50,000) threshold for an FSMC are:

1. Competitive Negotiation also known as Request for Proposal (RFP)
2. Competitive Sealed Bids also known as Invitation for Bid (IFB)

**Competitive Negotiation:** Also known as Request for Proposal (RFP), is a method of procurement whereby a technical proposal is solicited that explains how the prospective contractor will meet the objectives of the solicitation and a cost element that identifies the costs to accomplish the technical proposal. While price alone is not the sole basis for award, price remains the primary consideration when awarding a contract under the competitive proposal method. Contact ADE for assistance and more detailed information about allowable large purchase procurement procedures.

Factors to consider when using competitive negotiation (RFP) are:

1. **Technical Skills Needed:** The SFA must possess the technical skills necessary to evaluate the proposals and negotiate with the offerors. These skills usually include knowledge of procurement and contracting, school food service, and financial management.
2. **Legal Advice Needed:** The SFA's legal authority must be available to assure that the proposed contractual language reflects the agreement reached between the successful offeror and the SFA.
3. **Monitoring Costs Required:** Under a cost-reimbursable contract, the SFA must independently monitor the costs incurred under for compliance with 7 CFR Part 3015, Subpart T.
4. **Careful Preparation of Evaluation Criteria:** The criteria that will be used to evaluate the proposals, must be carefully prepared and included in the RFP. These criteria must be followed in evaluating the proposals. Negotiations will then be conducted with those offerors who exceed a pre-determined "cut-off" score.
5. **Requires Inclusion of All Pertinent Information:** The due date for proposal submission must be included in the request as well as any information concerning pre-proposal meetings and the need for board approval of the selected offeror.

Advantages of using competitive negotiation (RFP) are:

1. **Flexibility in Assigning Responsibilities:** Based upon the responses received from the offerors, the SFA decides which functions will be performed by the FSMC.

2. **SFAs Benefit During Periods of Falling Prices:** RFPs that result in cost-reimbursable contracts allow the SFA to take advantage of price declines during periods of falling prices.
3. **Greater Flexibility in Selecting FSMC:** The SFA has somewhat more flexibility in selecting a FSMC because the SFA is not limited to selecting the offeror that submits the lowest price bid.

Disadvantages of using competitive negotiation (RFP) are:

1. **Complex Monitoring**—The monitoring of revenue and expenses under the contract will be more complex because the Federal cost principles referenced in 7 CFR Part 3016.22(b) apply to cost-type contracts. In addition, 7 CFR Section 210.21(f) highlights requirements for contractors billing SFAs under cost-reimbursable contracts. The SFA must review specific items of cost the FSMC charges to the food service account for conformity to these cost principles.
  - a) The timing of expenses will affect the status of the food service account. If the FSMC records expenses on the cash basis of accounting and bills the SFA accordingly, it will bill for goods and services at the time they are purchased. Under the accrual basis of accounting, the FSMC would record expenses and bill the SFA when the goods are actually used in the food service operation.
  - b) The accrual basis of accounting is the preferred method because it measures the benefits received from the FSMC's purchases. Cash basis billing can distort this measurement. It can generate overstated expenses and an understated account balance at the time of purchase, and the reverse situation at other times. The SFA can correct such distortions only by making adjustment entries. If the FSMC does not use the purchased goods at the same rate from month to month, the SFA must recalculate the adjustment entry each month.
2. **Unbudgeted Costs During Periods of Rising Prices:** RFPs that result in cost-reimbursable contracts may result in additional costs to the SFA during periods of rising prices.
3. **Potential Reopening of Negotiations:** Under a RFP, the contract is prepared based upon the negotiations. The contract should not be finalized until the SA reviews the document. If deficiencies are noted, it may be necessary for the SFA to reopen negotiations.
4. **Essential Skill and Experience:** The negotiation process requires that the SFA possess significant skill and experience in negotiating, contracting and financial management. It may be necessary for the SFA to hire individuals to provide the needed expertise, which can be cost prohibitive. Attempting to negotiate without the needed expertise can result in the SFA entering into a contract that meets regulatory requirements and is fully enforceable, but is detrimental to the SFA.
5. **Unexpected Responsibilities:** To the extent that the SFA has not identified whether it or the FSMC will perform certain functions, the SFA may incur duties and related costs not planned or budgeted.

**Competitive Sealed Bids:** Also known as Invitation for Bid (IFB), is a method of procurement in which sealed bids are publicly solicited, i.e., through an invitation for bid, resulting in the award of a firm fixed-price contract to the responsible bidder whose bid is responsive to the IFB, conforms with all the material terms and conditions of the invitation for bids, and is lowest in price. In this case, the IFB must be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them with sufficient time to respond prior to the date set for opening the bids.

Factors to consider for using competitive sealed bids (IFB) are:

1. **Fixed Scope of Services:** The SFA has identified exactly which services and costs it wishes to contract out to the FSMC.
2. **Legal Advice Needed:** The SFA should obtain legal advice in the development of a contract for inclusion in the IFB.
3. **No Negotiation Involved:** The SFA either does not wish to, or lacks the needed experience to, negotiate price and contractual responsibilities with the FSMC.
4. **Competition Available:** More than one FSMC is willing and able to compete effectively for the contract.
5. **Responsible/Responsive Bidder:** The bid will be awarded to the responsive/responsible bidder that submits the lowest responsive bid. The SFA must include sufficient information in the IFB to allow bidders to properly respond to the IFB, thus enabling the SFA to determine responsiveness.
6. **Needed Information**—the place and time the bids will be opened and the award made must be included in the invitation as well as any information concerning pre-bid meetings and the need for board approval of the selected bidder. If bid and/or performance bonds will be required, the amount, any requirements concerning the bonding firm, and when the bond(s) must be provided to the SFA must be included in the invitation

Advantages of using competitive sealed bids (IFB) include:

1. **Advance Preparation:** The contract is prepared prior to soliciting bids. This generally allows the SFA to more accurately estimate costs and assign staff resources well in advance of the effective date of the contract. The pre-bid preparation of the contract also permits the SFA to arrange for its legal authorities to review the contract provisions for legal sufficiency without the pressures of negotiation.
2. **Easier Identification of Revenues and Expenses:** Fixed-price contracts more easily permit the SFA to identify anticipated revenues and expenses, as well as the total anticipated cost of the contract.
3. **No Negotiation Responsibilities:** The SFA is relieved from negotiating both the cost and responsibilities with bidders.

4. **Simplified Monitoring:** The monitoring of the status of the nonprofit food service account is not difficult. Transactions are restricted to processing billings from and payments to the FSMC; the FSMC does not pass costs on to the SFAs.

Disadvantages of using competitive sealed bids(IFB) are:

1. **Demands Precise Identification of Needs:** If the bid document does not clearly identify the services requested, the bid prices and the services provided by the FSMC may not be reasonable or responsive to the SFA's needs.
2. **May Limit Competition:** During periods of rapidly rising prices, prospective bidders may decline to bid on a fixed-price basis or bid overly high. In situations where prices are declining, fixed-price contracts do not allow the SFA to benefit from the decline.

An RFP is what the SFAs use primarily in the State of Arizona and therefore most of ADE guidance surrounds the RFP. To learn more about IFB, please contact Ellen Pimental at (602) 542-6208 email at [Ellen.pimental@azed.gov](mailto:Ellen.pimental@azed.gov).

## Arizona Department of Education RFP Template Options

SFAs must use the Request for Proposal (RFP) template provided by ADE. Modifications may be permitted when the SFA uses the *SFA Request for Proposal Modification Request Checklist* form. This form allows the SFA to provide a written explanation to ADE why they would like to modify the ADE RFP.

ADE has developed three different RFPs for SFAs to use and they are:

1. Cost-Reimbursable Pricing Option where the FSMC purchases food.
2. Cost-Reimbursable Pricing Option where the SFA purchases food.
3. Fixed –Fee Pricing Option where the FSMC purchases food.

Note: SFA may not change the purchasing option once it has issued its RFP. Any change would be considered material and require the SFA to begin its procurement process again so that all FSMCs have the same opportunity.

Within these three RFPs there are two other options that the SFA must choose. The options the SFA must select are:

1. Labor Option (*This option can be found in Special Terms and Conditions number 29 Project Personal A in the RFP*)
  - All non-management food service employees will remain employees of the SFA.
  - All non-management food service employees will remain employees of the FSMC.
  - Some non-management food service employees will be FSMC employees and some will be SFA employees.
2. FSMC Presentation Option (*This option can be found in the Special Instructions to the Offeror number 16 Oral Presentation in the RFP*)
  - The FSMC will not present for the Evaluation Committee.
  - The FSMC will present for the Evaluation Committee.

## **Creating an Effective Request for Proposal**

The RFP must clearly communicate the purpose and goals of the food operations program. The quality of the proposals the SFA receives is directly related to the quality of the RFP issued. It is required for SFAs to use the ADE RFP template. The RFP includes the following sections:

- Cover Page;
- Offer of Acceptance and Contract Award;
- Scope of Work;
- Special Terms and Conditions;
- Uniform Terms and Conditions;
- Special Instructions to Offerors;
- Uniform Instructions to Offerors;
- Pricing;
- Attachments; and
- Exhibits.

### **Cover Page**

The RFP Cover Page contains basic information for the FSMCs such as:

- School District name;
- Solicitation number;
- Solicitation release date;
- Solicitation due date and time;
- Proposal submittal information; and
- Description of the procurement.

The Cover Page also explains to the FSMC where the Pre-Offer Conference will be held including the date and time.

**Acceptance of Offer and Contract Award Form**

The Acceptance of Offer and Contract Award form is used to create an Agreement between two parties. Each SFA approved RFP, with all appendices, attachments, exhibits and amendments, becomes the final contract between the SFA and FSMC when the Acceptance of Offer and Award form is signed. When the Offeror (FSMC) submits a signed form with their proposal, this demonstrates that the FSMC is willing to enter an Agreement with the SFA. When the FSMC is selected, the SFA signs the form which states “Your Offer, dated, is hereby accepted as described in the Notice of Award. You (FSMC) are now bound to perform based upon the solicitation and your Offer, as accepted by the SFA.” There is no need for a separate contract to be created.

## Code of Federal Regulations Provisions

The Code of Federal Regulations (CFR) provides rules that SFAs must observe if they are to participate in the NSLP, the SBP, the SMP, and other meal programs. All contracts require that the FSMC conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 245, 250 and FNS instructions and policies, as applicable. Incorporation of program regulations provides a common basis for performance by the FSMC. Under their agreements with ADE, SFAs are responsible for operating the school nutrition programs in schools under their jurisdiction. These programs include the:

- NSLP;
- SBP;
- FFVP;
- Donated Foods;
- SFSP; and
- SMP.

To assist in carrying out this responsibility, an SFA may contract with an FSMC to manage its food service operation involving these programs in one or more of their schools. USDA requires that participating SFAs entering into contracts with FSMCs comply with procurement standards and applicable federal regulations.

The NSLP regulations appear at 7 CFR Part 210, the SBP regulations appear at 7 CFR Part 220, the SFSP regulations appear at 7 CFR part 225 and the SMP regulations appear at 7 CFR Part 215. The CFRs require those contracts between an SFA and an FSMC, need to state specific regulations.

## Scope of Work

The Scope of Work is the section that outlines the objectives that must be met in the SFAs food service operations.

Developing the Scope of Work is the most critical part of the RFP and will be used to select an FSMC. It is important that your Scope of Work be clear and understandable so that the FSMCs can comprehend the food service operation needs of the SFA. Good proposals will make the evaluation process easier and will increase the chances that the SFA will get what is desired. A vague and unclear Scope of Work can result in higher prices as service providers may have a hard time understanding the limits of the SFA requirements.

### Background

The Background should state the specific CNPs that the SFA wants the FSMC to operate. Please note, that the CNP listed in this section are the only programs that the FSMC can operate during the life of the contract. They are:

- National School Lunch Program (NSLP);
- School Breakfast Program (SBP);
- Seamless Summer Food Service Program or Simplified Summer Food Service Program (SFSP);
- Special Milk Program (SMP);
- Fresh Fruits and Vegetable Program (FFVP)
- After School Care Snack Program (ASCS);
- Vending machines;
- Concession stands;
- Catering; and
- Vending to other schools.

Each RFP includes the following SFA responsibilities:

- The SFA retains control of the non-profit school food service account and overall financial responsibility for the school nutrition programs.
- The SFA retains signature authority on the agreement to participate in the NSLP, the SBP, the SFSP and the SMP, including the SFA's free and reduced-price policy statement and the monthly Claim for Reimbursement.

- The SFA must establish an advisory board composed of parents, teachers and students to assist in menu planning.
- The SFAs are not allowed to give the responsibility to determine free and reduced-price eligibility to any company or person(s) working for the FSMC.
- The SFA shall have access to all portions of the food service facilities at all times and shall monitor the performance of the FSMC through periodic on-site visits. The SFA will monitor the operation of the FSMC through periodic on-site visits to ensure that the FSMC complies with the contract and any other applicable Federal, State and local regulations. The SFA will maintain documentation of its monitoring.

### **Method of Approach and Implementation Plan**

The RFP includes a section detailing how the FSMC purchases food or how it will provide input to the SFA to purchase food. Also the FSMC must describe how it will keep food quality high and costs low as well as submit a sample invoice. The RFP requires the FSMC to adhere to nutrition guidelines and include expenses for the program. The FSMC must be knowledgeable about the food and ingredients, menu patterns and production before the FSMC can select food supplies with any degree of accuracy and cost-effectiveness.

The RFP provides detailed specifications for each food component (meat or meat alternate, milk, bread or bread alternate and vegetable/fruit) or menu item specified in the CFRs. Specifications must cover items such as grade, style condition, weight and ingredients. It is crucial to be as specific as possible in this section.

The FSMCs submit with their proposal a suggested 21-day cycle menu. The SFA requires that any changes to the cycle menu made after the first 21 days include foods that are priced the same and have the same quality of those items on the original cycle menu.

The RFP requires the FSMC to submit their HACCP/ Food Safety Plan.

The RFP requests detailed information on the FSMC's internal accounting process. This includes:

- Detailed inventory control for storage areas, including donated foods;
- Accounting controls;
- Method of recording, checking and reporting sales;
- Internal control of cash handling;
- Internal audit system;
- All regular accounting forms used (with explanation of each); and
- Account periods.

The RFP includes language to address the FSMC procedures for controlling cost. This includes:

- Previous track records on meeting budgets and estimating costs;
- Management and accounting tools that the FSMC will implement to monitor costs controls revenue, meal counts and productivity;
- Outline the number of weeks the FSMC management will work, the number of management vacation days and number of management leave days that will be charged to the SFA;
- Amount of any bonus the FSMC will provide to the management staff, which will be charged to the SFA (cost-reimbursement contracts only); and
- Identify the performance guarantee.

## **Special Terms and Conditions**

The Special Terms and Conditions section is where the terms and conditions which are specifically relevant to the food service operations are discussed. The Special Terms and Conditions, Uniform Terms and Conditions and Special Instructions to the Offeror will govern the preparation and submission of proposals. Any Special Terms required by the CFRs should be included in this section. SFAs should review all the terms and conditions to consider whether or not they are appropriate for this RFP. However, the following provisions are required for all RFPs.

### **Insurance Requirements**

Contracts for food service operations should contain language about insurance requirements for the FSMCs. The insurance requirements will protect the interests of the SFA. Contracts generally identify three liabilities:

- Comprehensive general liability;
- Workman's compensation; and
- Vehicle insurance.

SFAs are reminded that the cost of unnecessary insurance is unallowable under the federal cost principles. In the ADE RFP template, the insurance information is consistent with what the State of Arizona requires of contractors.

### **Contract Duration**

Clarifies the contract start date and that the contract duration is no longer than 12 months.

### **Contract Options**

Clarifies that the contract may have only four (4) additional one-year extensions and the contract may not exceed five (5) years.

### **Termination**

The SFA may terminate the contract for cause, or for convenience.

### **Non-Performance Sanction**

Any RFP must define non-performance violations and specified sanctions defining "breach of contract" terms by the FSMC. These sanctions must be addressed in accordance with federal and state procurement provisions.

### **Contract Termination**

If the contract is terminated, the FSMC must fully cooperate with the replacement of the FSMC to ensure a smooth and timely transition. In addition the FSMC will purchase back unused supplies from SFA at the termination of the Contract in order to prevent overbuying.

### **Pricing Adjustments**

The Pricing Adjustment section must include a provision which allows the SFA to retain control of the establishment of all prices, including price adjustments, for meals served under the non-profit school food service account (e.g., pricing for reimbursable meals, ala carte service including vending machines and adult meals).

The RFP asks the FSMC to select a Guaranteed No Loss or Minimum Return. The RFP allows the FSMC to describe the guarantee conditions, forecasting of cost, and settlement of losses and/or surpluses. The Guarantee options the FSMC can select are:

- **Guaranteed No Loss:** The FSMC guarantees the SFA no loss for the operation of the food service program; or
- **Guaranteed Minimum Return:** The FSMC guarantees the SFA a return no less than a certain dollar amount for the operation of the food service program.

### **Payment/Invoices**

Any accounting period referenced in an RFP must be defined and utilized in a way that will provide monthly and yearly fiscal integrity for Claims of Reimbursement submitted to ADE. A clear audit trail must be maintained with supporting documentation between FSMC billings and the expenditure of CNP account funds. Any billings from the FSMC to the SFA must be accompanied by specific supporting documentation representing actual number of allowable meals charged. Catered meals and labor must be submitted on a separate invoice. Each RFP must include the required provisions that pertain to the following:

- No payment for meals will be made for meals that are spoiled or unwholesome at the time of service, or do not meet specifications developed by the SFA.
- Requires the FSMC to make purchases according to the standards and specifications in the RFP. Also, in cost reimbursable contracts, the prices charged to the SFA must be reasonable and necessary.
- Requires the FSMC to be transparent in their identification of all rebates, discounts and credits. A USDA audit found that the NSLP was paying hundreds thousands of dollars or more a year because FSMCs were improperly retaining cash-back discounts. For example, one FSMC received rebates ranging from 10% to 50% from companies they dealt with directly. In one year, the FSMC received rebates in the amount of \$15 million out of \$90 million in purchasing.
- Requires that no expenditure can be made from the non-profit SFA food service account for any cost resulting from a cost-reimbursable contract that fails to meet the CFRs.
- Requires the FSMC to provide sufficient information to permit the SFA to identify allowable and unallowable costs on invoices and bills presented for payment to the SFA. It is important to note that the FSMC determination of its allowable costs must be made in compliance with the applicable CNP regulations and Office of Management and Budget cost circulars.

- The FSMC must provide a credit monthly to the SFA for the value of all donated foods received for use in the SFA's food service.
- Require the FSMC to send the billing claim information to the SFA promptly at the end of each month.

The RFP must require that all cost-reimbursable contracts include a breakdown of administrative and management fees in order to prevent double billing. The terms are defined as follows:

- Administrative overhead is the costs necessary for the managing the food operations but not directly associated with providing the food service operations. All indirect and overhead costs must be included in the administrative fee. This can be reflected as a cost per meal or as a flat monthly amount.
- Management fee is the profit to the FSMC and will be reflected as a cost per meal amount. All bonuses must be paid from the management fee charged by the FSMC and bonuses cannot be billed to the SFA, as part of the direct cost for labor.

### **Buy American Provision**

This required provision must be correctly applied to the procurement process to ensure that its application does not restrain or restrict competition. This provision requires the SFA to purchase domestically grown and processed foods, to the maximum extent practicable. The law defines "domestic commodity or product" as one that is substantially produced and processed in the United States using agricultural commodities that are produced in the United States. The report accompanying the Law stipulates that "substantially" means that over 51% of the final processed product consists of agricultural commodities that were grown in the United States.

### **Local Wellness Policy - WIC Reauthorization Act of 2004**

The Child Nutrition and WIC Reauthorization Act of 2004, requires that SFAs implement local school wellness policies. The local wellness policies ensure that SFAs determine how they can foster an environment that supports healthy eating and physical activity at the local level. By the start of the 2006 school year, each SFA was required to develop a local wellness policy that includes:

- Goals for nutrition education, physical activity and other school-based wellness activities;
- Nutrition guidelines for all foods available on school campus;
- A plan for measuring implementation of the local wellness policy; and
- Community involvement, including parents, students, school food-service, the school board, school administrators.

### **Equal Employment Opportunity**

This provision prohibits federal contractors from discriminating in employment on the basis of race, sex, religion, color or national origin. It also requires contractors to take affirmative action so that minorities and women have equal job opportunities and requires federal contracts to include a clause spelling out contractor's non-discrimination and affirmative action obligations.

**Contract Work Hours and Safety Standard Act**

The Contract Work Hours and Safety Standards Act (CWHSSA) applies to federal service contracts \$100,000 or more. The Act requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their base rate of pay for all hours worked over 40 hours in a workweek. This Act also prohibits unsanitary, hazardous, or dangerous working conditions on federal and federally financed projects.

**USDA Rights**

The USDA shall own the right, title and interest in any and all copyrights and copyrightable materials, including data created during the CNP contract period.

**Trade Secrets**

During the term of the contract, the FSMC may grant to the SFA a nonexclusive right to access certain proprietary materials of FSMC, including menus, recipes, signage, food service surveys and studies, management guidelines and procedures, operating manuals, software and similar compilations regularly used in FSMC business operations.

**Clean Air Act, Clean Water Act and Environmental Protection Agency Regulation**

This is a federal policy to improve environmental quality. This policy ensures that any grant, loan or contract using federal dollars will enforce the Clean Air Act and the Water Pollution Control Act.

**Energy Policy and Conservation Act**

All contractors who are paid with federal dollars are required to follow the Energy Policy and Conservation Act. This Act requires each contractor to adopt energy efficiency measures. The Energy Conservation Act creates a legal framework to promote energy efficiency.

**Debarment, Suspension, Ineligibility and Voluntary Exclusion**

This certification is required by the regulations in Executive Order 12649. The FSMC certifies that neither the FSMC nor its leaders are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from contracting with the SFA. The FSMC must complete the attachment and submit it with their proposal.

**Certification Regarding Lobbying**

Each FSMC must certify that no federal appropriated funds have been paid or will be paid, for influencing or attempting to influence an officer or employee of any agency. The FSMC must complete the attachment and submit it with their proposal.

**Disclosure of Lobbying Activities**

The regulation is intended to prevent the use of federal funds for lobbying and also to monitor the lobbying expenditures of federal funds recipients. The FSMC must complete the attachment and submit it with their proposal.

### **Civil Rights Compliance**

Each FSMC must agree to comply with all federal Civil Rights Acts and Amendments. Each FSMC must be in compliance with the following:

- Title VI of the Civil Rights Act of 1964 and implementing regulations, which prohibit discrimination on the basis of race, color and national origin.
- Title IX of the Education Amendments of 1972 and implementing regulations, which prohibit discrimination on the basis of sex.
- Section 504 of the Rehabilitation Act of 1973 and implementing regulations, which prohibit discrimination on the basis of disability.
- The Age Discrimination Act of 1975 and implementing regulations, which prohibit discrimination on the basis of age.
- The U.S. Office for Civil Rights Career Education Programs Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap" prohibits unlawful discrimination in career education programs.
- The Americans with Disabilities Act of 1990 was signed into law to prohibit discrimination against individuals with disabilities.

### **Compliance with Program Regulations**

The FSMC will conduct program operations in accordance with CFR Parts 210, 215, 220, 225, 245 and 250. These CFR provisions regulate the CNP.

### **Certification of Independent Price Determination**

The FSMC admits that all prices in the FSMC proposal have been arrived at independently. This certification ensures that the FSMC is not trying to restrict competition or conduct collusion. The FSMC must complete the attachment and submit it with their proposal.

### **Claim Liability**

The FSMC accepts liability caused by the FSMC's negligence or for claims assessed as a result of Federal/State reviews/audits. Also, a provision must be included that ensures the FSMC accepts liability for any negligence on its part that results in any loss or damage to donated foods.

### **Location of Records**

The SFA is required to maintain any books, documents, papers and records directly pertinent to the solicitation, Award, or extension of any given contract and the implementation of that contract. All records must be maintained for a period of five (5) years. The SFA is required to make all records available to ADE upon request. Periodic reviews conducted by the SFA documenting the FSMC's compliance or lack thereof, with all federal, state and local regulations must be maintained on file and accessible to ADE upon request.

## **Program Conformance**

Each RFP must require the FSMC to agree to offer free, reduced-price and paid reimbursable lunches to all eligible children.

## **Bonding**

Bonding is only required for the Simplified Summer Food Program. The SFA should be advised that bonding requirements, like any other cost, will be reflected into the proposed cost of the program. Evaluate the risk in terms of actual cost to the SFA if the FSMCs were to default. If the FSMC defaults, the SFA could most likely continue operating the food service operations in the interim by employing the FSMCs onsite staff. Thoroughly evaluate the FSMCs references with other SFAs. The following are descriptions of the bonds:

- The Bid Bond ensures that on acceptance of the Offer by the SFA, the FSMC will proceed with the contract and will replace the Bid Bond with a Performance Bond.
- A Performance Bond is a method available to obtain financial recourse in the event the FSMC defaults.
- If the SFA requires the FSMC to obtain a Bid Bond and Performance Bond, the FSMC can only obtain a bond from surety companies listed in the current Department of the Treasury Circular 570. The SFA cannot allow the FSMC to post any "alternative" forms of bid or performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts.

## **Prohibitions**

The CFRs establish allowable and unallowable costs for FSMC contracts. The following are prohibited contract provisions:

- Those that permit all income and expenses to accrue to the FSMC and "cost-plus-a-percentage-of-cost" and "cost-plus-a-percentage-of-income" provisions.
- Fee structures that permit an FSMC to bill management fees and charge the same cost as cost-reimbursable expenses.
- Clauses that limit the selection of vendors to only FSMC-approved vendors.
- An acceleration clause that has a provision (multi-year) requires full payment (e.g. program equipment purchases) if the contract is renegotiated.
- Interest payments to the contractor, however represented, including interest payments for equipments purchases.
- Any "guaranteed return" must remain in the nonprofit food service account. "Returns" cannot be contingent upon multi-year contract duration.
- Allow an FSMC to be responsible for any functions that must be retained by the SFA.

- Automatic renewal of the contract provisions, which permits the FSMC to subcontract donated foods for further processing.

### **Project Personnel**

The SFA must select if food service non-management employees will remain with the SFA or FSMC. Each RFP must address how much professional experience the SFA is requiring for the FSMC Food Service Director. In this section, the SFA explains to the FSMC how they will manage the FSMC and/or SFA staff and should be modified to meet the SFAs needs.

### **Proposed Personnel Schedule and Training**

Each RFP should require the FSMC to ensure that the staffing level meets the needs of the SFA and can be modified to meet the SFAs needs. Also, the FSMC must train its employees to abide by all the SFA policies, rules and regulations with respect to its use of SFA premises.

### **USDA Donated Foods**

The SFA retains title to USDA donated foods and ensures that all donated foods received by the SFA are made available to the FSMC. This includes processed donated foods accrue which must only to the benefit of the SFA's non-profit school food service and are fully utilized therein. Specifically, the SFA should:

- Evaluate the utilization of the donated food by the FSMC. Under cost-reimbursable contracts, this may include a review of production records and food cost documentation.
- Ensure the FSMC credits the SFA for the value of all donated foods received for use in the SFA's meal service in the school year or fiscal year. All forms of crediting must include clear documentation of the value received from the donated foods.
- Ensure the FSMC uses all donated ground beef, donated ground pork and all processed end products, in the SFA's food service.
- Ensure that when the contract terminates and is not extended or renewed, the FSMC returns all unused donated ground beef, donated ground pork and processed end products.
- Ensure the FSMC meets the CFR general requirements for the storage and inventory management of donated foods.
- Ensure the FSMC has a system of inventory management which does not result in the SFA being charged for donated foods under cost-reimbursable contracts.

### **Health Certification**

The FSMC will maintain valid and necessary health certification(s) and assure that all state and local regulations are being met by the FSMC preparing or serving meals at an SFA facility.

### **Housekeeping**

The Housekeeping section describes who is responsible for inventory and repair of kitchen equipment.

**School Meal Initiative Reviews**

The FSMC shall meet all School Meals Initiative (SMI) requirements.

**Financing of Equipment**

The FSMC may finance equipment for the SFA's Food Service Program in an amount not to exceed \$10,000. The SFA will follow its usual procurement procedures for any transaction that is financed by the FSMC. The FSMC cannot be the vendor for any procurement that it finances for the SFA. If the FSMC contract expires or is terminated prior to the complete repayment of the investment, the RFP provides resolutions for both parties.

**E-Verify Requirement A.R.S. § 41-4401**

The FSMC must comply with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

**Licenses**

The FSMC must maintain all federal, state and local licenses and permits required for the operation of the business conducted by the FSMC.

**Removal of Contractor Personnel**

The FSMC agrees to utilize only experienced, responsible and capable employees in the performance of the work.

**Cooperation with Other Contractors and Subcontractors**

The FSMC must cooperate with other SFA contractors, subcontractors and will plan and perform its own work to accommodate the work of other SFA contractors.

**Availability of Funds**

Every SFA payment will be contingent upon the availability of funds appropriated or allocated for the payment of the contract.

**Taxes**

If during the term of the contract where any taxes are added or deleted, or there is a revision of an existing law or regulation such that the responsibility for any tax is shifted or altered, any of which results in increased or decreased costs to the FSMC, then the financial terms of this Agreement shall be adjusted to reflect the change in cost retroactive to the commencement of the change.

## **Uniform Terms and Conditions**

In this section, the SFA should use the Uniform Terms and Conditions that are used for all the other SFA's RFPs. The Uniform Terms and Conditions are available in the ADE RFP template and represent those commonly used by Arizona SFAs.

### **Contract Order of Precedence**

ADE highly recommends that each RFP includes a section named the "Contract Order of Precedence." This section describes that, in the event of a conflict in the provisions of the contract, the following sections shall prevail in the order set forth below:

- Special Terms and Conditions;
- Uniform Terms and Conditions;
- Statement of Scope of Work;
- Specifications;
- Attachments;
- Exhibits;
- Special Instructions to Offerors; and
- Uniform Instructions to Offerors.

## **Uniform Instructions to the Offerors**

In this section, the SFA should use the Uniform Instructions to the Offerors that are used for all the other SFA's RFPs. The Uniform Instructions to the Offeror are included in the ADE RFP template and represent those commonly used by Arizona SFAs.

## **Special Instructions to the Offeror**

The Special Instructions to the Offerors section provides proposal submission instructions to the FSMC.

### **Definition of Terms**

In this section, the RFP must list all terms that will be used in the Special Instructions, as well as the definition of the term. The SFA can add additional terms to the RFP.

### **Required Information**

This section lists all the attachments that the Offeror must submit with their proposal. Each SFA can modify this section to meet their needs.

### **Authorized signature**

In this section, the FSMC must include the owner, partner or corporate office authorized to sign the contractual agreements. This section also explains who must sign for the Vendor depending on the type of ownership, such as:

- Privately owned;
- Partnership; or
- Corporation.

### **Pre-Offer Conference**

In this section it specifies:

- Where the Pre-Offer Conference will be held; and
- The SFA staff contact information.

### **Proposal Opening**

This section identifies the location of the proposal opening. Also, explains to the FSMC that the proposals will not be subject to public inspection until after contract Award.

### **Award of Contract**

Each RFP must state that the Award of a contract will be made to the most “Responsible” Offeror whose Offer is determined to be the most advantageous to the SFA based on the evaluation criteria set forth in the RFP.

### **Suspension or Debarment Certification**

This section provides information to the FSMC about the suspension or debarment certification and the attachment the FSMC must complete for the proposal.

### **Certification Regarding Lobbying**

The certification regarding lobbying information section explains the attachment the FSMC must complete for the proposal.

**Certificate of Independent Price Determination**

The certification of independent price determination information specifies and identifies the attachment the FSMC must complete for the proposal.

**Inclusive Offeror**

The FSMCs are encouraged to make every effort to utilize subcontractors that are small, women and/or minority owned business enterprises in this section.

**Federal Immigration and Nationality Act**

The FSMC states that they shall remain in compliance with all federal, state and local immigration laws and regulations relating to the immigration status of their employees.

**Offer Format and Content**

This section details proposal format requirements and the number of proposal copies that must be submitted to the SFA. Also, explains procedures to be used by vendors when submitting any exceptions to the RFP.

- “If the Offeror finds it necessary to take exception(s) to any of the requirements specified in this Solicitation, clearly indicate each such exception in the proposal along with a complete explanation of why the exception was taken and what benefit accrues to the State thereby. All substantive exceptions and supporting rationale shall be identified as such and consolidated into one section of the Offer.”

**Format**

The Format of the submitted proposal should have four (4) sections:

- Section One will be titled Executive Summary. The Procurement Officer can review this section to determine if the FSMC meets the Qualifications of the Offeror.
- Section Two will be titled Pricing. In the Pricing section, the FSMC places their proposed price per meal charged to the SFA. Also, the FSMC will submit a Financial Projected Worksheet including estimates of the costs of running the SFAs food service operations.
- Section Three will be titled Method of Approach and Implementation Plan. This section describes how the FSMC will complete the Scope of Work responsibilities to the extent possible for evaluation purposes.
- Section Four will be titled Offeror’s Experience, Expertise and Reliability. In this section the FSMC provides information about their knowledge and dependability.

**Evaluation and Optional Terms**

The RFP must specify methods used by the SFA to evaluate proposals. Only proposals that are “Responsive” will be evaluated and the proposal selected will be the most advantageous to the SFA.

**Discussions**

The RFP must state that the SFA reserves the option to conduct discussions with those Offerors who submit an Offer determined by the SFA to be “Reasonably Susceptible” of being selected for Award.

### **Final Proposal Revisions**

In the event the Procurement Officer determines discussions are required, discussions on the areas, items and factors specified in the solicitation will be held with all FSMCs determined to be in the competitive range. These discussions require that:

- The FSMC will be permitted to make revisions during negotiations.
- The FSMC will be aware that a complete understanding as to pricing, technical and all other terms and conditions of the proposed contract must exist between the FSMC and SFA at the conclusion of negotiations.
- Discussions will be concluded when a mutual understanding has been reached with each Offeror remaining in the competitive range. This mutual understanding will become the basis for the FSMCs final proposal revision.
- The final proposal revision must be signed, dated and returned to the SFA by the FSMC within the time and date specified to be eligible for Award.

## Meal Equivalents/RFP Pricing Options

### Meal Equivalents

RFPs must define the per meal equivalency that relates to the cost of producing the reimbursable meals. The ADE RFP meal equivalents are:

1 Reimbursable Lunch	=	1 Pattern Meal
2 Reimbursable Breakfasts	=	1 Pattern Meal
3 Reimbursable Snacks	=	1 Pattern Meal.

Also, each RFP must define how a la carte meals will be calculated such as:

- The meal equivalency factor is defined as the total sales of non-reimbursable meals (adult meals, a la carte, special functions or catering) divided by the approved free lunch reimbursement rate plus the per meal value of commodities for the current school year.

### RFP Pricing Options

There are two pricing options used in the State of Arizona and the determination of the SFAs pricing option must be included in the RFP. For evaluation purposes it is recommended that only one pricing option be included in a RFP. The two options are a fixed fee or cost-reimbursable contract.

- The FSMC will be paid at a fixed rate per meal/meal equivalent. The fixed fee price per meal/meal equivalent will include all their costs such as labor, food, supplies and any administrative and management fees in a per meal cost. The offer amount should be based on assumption that no donated commodities will be available for use.
- Cost-Reimbursable contract. The FSMC will be paid on the basis of the direct cost incurred plus a fixed fee. In cost-reimbursable contracts, the FSMC shall provide a breakdown of administrative and management fees in order to prevent double billing. The value of donated foods used must be itemized in the regular monthly billing so the SFA can document savings resulting from donated foods usage.

## Comparing Financial Structures of the FSMCs Proposal

The below chart provides a comparison between the two Pricing Options:

Pricing Options	PROS	CONS
<b>Fixed- Fee</b>	<ol style="list-style-type: none"> <li>1. Covers all operating and administrative costs with no additional charges to the SFA.</li> <li>2. The FSMC is now responsible for controlling costs to achieve their own financial objectives of the contract.</li> <li>3. Tends to lead the contractor towards increasing participation as a means of reaching financial objectives.</li> <li>4. Easier to compare proposals</li> </ol>	<ol style="list-style-type: none"> <li>1. In periods of declining costs, the SFA will not immediately benefit.</li> <li>2. The FSMC may be perceived as, or may actually be, cutting food quality to control costs. The SFA should require and monitor clear food quality specifications.</li> </ol>
Pricing Options	PROS	CONS
<b>Cost - Reimbursable</b>	<ol style="list-style-type: none"> <li>1. In periods of falling prices, the SFA may benefit financially.</li> <li>2. The SFA may have more proposals submitted by FSMCs.</li> <li>3. The break-even guarantee may be higher.</li> </ol>	<ol style="list-style-type: none"> <li>1. There is no incentive for the contractor to control costs.</li> <li>2. The SFA could have a difficult time determining if true costs are being reflected.</li> <li>3. SFA would incur complex monitoring or revenue and expenses for conformity to costing principles. This may mean additional staffing, or greater workload on the existing staff.</li> <li>4. The contractor may be negotiating and receiving substantial discounts from manufacturers and distributors that are not passed on to the SFA and are almost impossible to detect when they occur.</li> <li>5. Unbudgeted costs to the district or charter school during periods of rising prices.</li> </ol>

## **Attachments**

RFP attachments are documents that the FSMC completes and submits with their proposal. Each attachment should only include one topic and provides information to the SFA about the FSMC abilities to conduct the SFA food service operations. Below are the attachments contained in the ADE RFP template.

### **Qualification of Offeror**

The FSMCs provides information about their qualifications to conduct food service operations. The information in this document will allow the Procurement Officer to determine if the proposal is “Responsive.”

### **References**

SFAs can contact the references to gain information on how the FSMC previously performed, as well as, professional qualities and attributes.

### **Contract Pricing Summary**

Details the FSMCs price per meal.

### **Labor Costs**

Details the SFAs and FSMCs Labor costs

### **Schedule of Terms for the FSMC Guarantee**

The FSMC will document their projected “guarantee” and the conditions of the “guarantee”.

### **Financial Projected Worksheet**

This worksheet allows the FSMC to detail the costs of operating the SFAs food service operations. This should include a four (4) year estimate of the food service program revenues, costs, labor, etc.

### **Breakfast Menu and Lunch Menu**

The FSMC develops 21-day menus that will meet the CNP meal plan requirements.

### **FSMC Detail Internal Accounting Information**

The FSMC details their internal accounting system.

### **Organizational Chart**

The FSMC will place an organizational chart of their company in this attachment. This reflects the size of the company and the location of the SFA Food Service Director within the organization.

### **Personnel Information**

The FSMC will include the résumé of the Food Service Director, as well as, the résumés of all other pertinent employees.

**Drug Free Workplace Policy**

The FSMC declares it will abide by the Drug Free, Alcohol Free rules and regulations of the SFA and all local policies.

**Staffing Scheduling**

The FSMC will include the proposed staffing and schedule to meet the needs the SFAs food operations program.

**Training Program**

The FSMC will describe the training program in place for FSMC employees working in the food service operations.

**Food Services Programs List**

The FSMC provides a list of their current contracts with SFAs in Arizona.

**Discontinued or Terminated Services**

The FSMC includes a list of SFAs with whom food service operations were terminated or discontinued within the last three to five years.

## Sample Reference Questions

Prior to evaluating the proposals, the SFA Procurement Officer should contact the FSMC's references. Below are some sample questions an SFA can ask about an FSMC's performance.

How would you overall rate the performance of the FSMC at your SFA?

Excellent                      Average                      Poor

Were there any start-up issues with this FSMC?

Yes                      No

Did the FSMC provide results in a timely manner?

Yes                      No

How would you rate the FSMC staff morale?

Excellent                      Average                      Poor

Have there been any billing issues?

Yes                      No

Please describe:

Did the FSMC give the SFA a guaranteed amount?

Yes                      No                      Not Applicable

Please describe:

How would you evaluate the FSMCs management participation when "issues" arise?

Excellent                      Average                      Poor                      Not Applicable

Did the FSMC assist in the preparation for Reviews/Audits (CRE & SMI)?

Yes                      No                      Not Applicable

Please describe:

## Exhibits

Exhibits are used by the FSMC in the preparation of their proposals, but not returned with their proposal. The SFA should include information in the Exhibit section that will assist the FSMC in developing their proposals for the SFAs RFP. The Exhibits that ADE recommends are:

- Student populations served and participation figures;
- SFA meal prices/income;
- SFA policies, rules and regulations;
- 21-day sample breakfast menu;
- 21-day sample lunch menu;
- Nutrient analysis; and
- Sample product descriptions and specifications for 21-day cycle menus.

## RFP Evaluation Rubric

While developing the RFP, the SFA must create an effective RFP Evaluation Rubric. The RFP Evaluation Rubric is used during the planning and procurement phase of a RFP, to analyze the submissions received in response to a RFP. The Evaluation Rubric is an explicit summary of the criteria for assessing each section of the FSMC's proposal. It evaluates only the information in the RFP Scope of Work and Attachments. Note that any part of the solicitation requiring a response by the FSMC should be part of the evaluation. The Evaluation Rubric must accomplish the following:

- Evaluates the FSMCs responses to the information in the Scope of Work.
- Evaluates the FSMCs responses to the information in the attachments.
- Points are clearly documented on the Evaluation Rubric.
- There is space available for each evaluation team member to document their comments.
- Uses a scoring method where the responses can be evaluated fairly.

ADE requires that SFAs use the ADE RFP Evaluation Rubric. For evaluation purposes, the RFP presents a weighting system, listed in the order of importance:

- Pricing (weight 40%);
- Method of Approach and Implementation Plan (weight 35%); and
- Offeror's Experience, Expertise and Reliability Section (weight 25%).

### Pricing Scoring

When scoring the Pricing section, each proposal will receive a ranking based on price and the points will be given depending on the pricing as compared to the other proposals.

Once the lowest price is chosen, the evaluation will score based on percentages. The formula is:

X = Lowest Price out of all respondents

Y = Respondent being evaluated

Z = Number of Points available

The Formula is: X divided by Y times Z = Total Points  $(X/Y) \times Z$

### Scoring

Below is the scoring that may be used to subjectively evaluate the "Method of Approach and Implementation Plan" and "Offeror's Experience, Expertise and Reliability" sections. This scoring can provide the evaluation team members some structure to score each proposal section they review.

"Poor" shall mean the prior services and technical experience stated in the proposal do not meet the RFP requirements. The evaluator should give 0% to 19% of the points available.

“Fair” shall mean that the prior services and technical experience stated in the proposal meet most, but not all of the requirements. The evaluator should give 20% to 39% of the points available.

“Good” shall mean that the prior services and technical experience stated in the proposal met the RFP requirements. The evaluator should give 40% to 59% of the points available.

“Very Good” shall mean that the prior services and technical experience stated in the proposal exceeds most, but not all, of the RFP requirements. The evaluator should give 60% to 79% of the points.

“Exceptional” shall mean that the prior services and technical experience stated in the proposal far exceeds all of the RFP requirements. The evaluator should give 80% to 100% of the points.

## ADE Checklists

The ADE checklists makes certain the SFA signs off on all the solicitation documents and allows ADE to ensure the options selected are correctly implemented in the SFA's RFP.

### SFA-FSMC RFP Checklist

This document must be submitted along with the SFA's RFP and Evaluation Rubric to receive ADE approval. The checklist requests the SFA the following information.

1. The SFA must provide ADE with the following:

- Solicitation Release Date
  
- Pre-Offer Conference Date/Time
  
- Solicitation Due Date/Time

2. The SFA must select one of the following Pricing and Food Purchasing RFP Options:

- Cost Reimbursable contract where the FSMC purchases food
  
- Cost Reimbursable contract where the SFA purchases food
  
- Fixed-Fee contract where the FSMC purchases food

(Note: SFA may not change the food purchasing option once it has issued its RFP. Any change would be considered material and require SFA to begin its procurement process again so that all FSMC's have the same opportunity.)

3. The SFA must state all Child Nutrition Programs listed in the RFP:

- NSLP
  
- SBP
  
- ASCS
  
- SFSP
  
- Etc.

4. The SFA must select which of the following Labor Options the SFA will implement:

- All non-management food service employees will remain employees of the SFA
  
- All non-management food service employees will remain employees of the FSMC
  
- Some non-management food service employees will be FSMC employees and some will be SFA employees

5. The SFA must determine if the FSMC will conduct a presentation to the Evaluation Committee.

#### **SFA-FSMC RFP Modification Checklist**

If the SFA wants to modify the ADE RFP template, the SFA must make a request to ADE prior to making any modification(s). It is highly recommended that the SFA contact ADE before sending the RFP to ADE. The form the SFA must use to make a request is titled *SFA-FSMC RFP Modification Checklist* form. The form asks the same questions as the *SFA-FSMC RFP Checklist* and also asks the SFA to list the modification(s) in the following format:

- Place a number 1,2,3... to the modification if more than one is requested
- Provide the exact language the SFA is adding to the RFP
- Provide a written explanation for modification
- Provide the page number of where the modification is located
- Provide the paragraph number of where the modification is located

ADE will notify the SFA in writing if the modification(s) was approved.

#### **SFA Selected FSMC Proposal Checklist**

After the contract award has been made, the SFA must send the *SFA Selected FSMC Proposal Checklist* to ADE along with the following:

- Selected FSMC proposal
- All evaluation team members scores and comments for each proposal
- The list of FSMC vendors who were sent the RFP

The *SFA Selected FSMC Proposal* checklist asks the SFA to provide the following information:

- SFA Name
- Contract Value (1<sup>st</sup> year)
- School Site Names
- The Selected FSMC name
- The RFP Pricing and Food Purchasing Contract Option
- The contract start date

- All Evaluations team members' *RFP Evaluation Rubric Template* scores for each proposal submitted
- The list of FMSC vendors who were sent the RFP
- SFA Authorized Representative Signature

## ADE Review Process

The contract between an SFA and an FSMC not only should meet the best interest of the SFA but also must conform to federal, state and local requirements in a cost-effective manner. The CFRs require ADE to annually review each contract (including all supporting documentation) between any SFA and FSMC to ensure compliance with all the CFR provisions. ADE has developed a RFP template for use by the SFA that meets the required provisions and standards.

New regulations governing procurement requirements in the NSLP, SBP, SFSP and SMP, issued on October 31, 2007 made a small but important modification to the requirements. The regulations require ADE to review contracts (and supporting documentation) prior to the execution. This change is meant to ensure that contracts containing unallowable terms and conditions are corrected prior to the contract being executed. Another important change made by the procurement regulation is that all contracts must contain a provision clearly requiring that all costs to the program be net of applicable discounts, rebates and credits.

Also, the procurement must specify the method used to determine the donated food values to be used in crediting, or the actual values assigned, in accordance with the federal regulations. The method used to determine the donated food values may not be established through a post-award negotiation, or by any other method that may directly or indirectly alter the terms and conditions of the procurement or contract.

When reviewing the SFA's documents, ADE must ensure that the solicitation documents have been developed by the SFA and not the FSMC competing for the procurement. That is why ADE is requiring the SFAs to use the documents developed by ADE.

ADE must ensure that the SFA procurement documents include all required provisions and do not contain any unallowable provisions. This is why the SFAs are required to use ADE's solicitation documents. To gain ADE approval, the SFA must use the ADE solicitation documents such as:

- RFP;
- Evaluation Rubric; and
- SFA-FSMC RFP Checklist.

When the above documents have been approved, the SFA can begin the solicitation process. Once a proposal has been selected and before notifying the successful FSMC is awarded the contract, each SFA must send to ADE:

- Selected FSMC Proposal;
- All evaluation team members' scores and comments for each proposal scored;

- SFA Selected FSMC Proposal Checklist; and
- Copy of the Vendor List that the RFP was sent to.

ADE will then review all of the above materials to ensure CFRs are met. If the CFRs are met, ADE will approve the SFA to move forward with the procurement process. When the Award has been made the SFA must send ADE the following within ten (10) days:

- Signed copy the Offer of Acceptance and Contract Award form;
- Signed copy of contract (if applicable); and
- Signed copy of the Certification of Independent Price Determination form.

## Free and Open Competition Procurement Process

The underlying foundation of all procurement, without regard to dollar competition value, is that, regardless of the method used, the procurement must be conducted in a manner that provides maximum open and free competition. Procurement procedures must not restrict or eliminate competition. Examples of such restrictions include, but are not limited to unallowable procurement methods:

### Unreasonable Requirements

Placing unreasonable requirements on firms in order for them to qualify to do business, e.g., requiring unnecessary experience and bonding requirements. Promoting or supporting noncompetitive practices.

### Noncompetitive Practices

Encouraging or fostering noncompetitive practices, e.g., collusion between firms.

### Conflicts of Interest

Allowing conflicts of interest to occur. Conflicts of interest can occur when the individual(s) responsible for determining bid/proposal responsiveness can be overruled by other individuals within the organization or if the individual responsible for determining responsiveness (or any member of his or her family) has any personal or corporate ties or any financial interest in any of the offering firms.

### Inappropriate Practices

Using information prepared by FSMCs in the IFB or RFP; entering into negotiations with a firm prior to evaluating proposals; negotiating with any bidder at any time when the competitive sealed bid procurement method is used; and providing only certain firms with the results of pre-bid meetings or releasing the contents of a bid proposal to other bidders/proposal offerors. The following would be considered inappropriate:

- Using specific information or other documents prepared by FSMCs in the IFB or RFP.
- Entering into discussions with a company prior to evaluating every proposal that was submitted to the school for that service.
- Discussions with any bidder at any time when the competitive sealed bid procurement method is used, unless specifically allowed in the procurement code.
- Providing only certain firms with the results of the Pre-Offer Conference or releasing the contents of a proposal to other Offeror(s).

### **Insufficient Time**

Not allowing bidders/Offerors enough time to submit an Offer when advertising/soliciting the IFB/RFP.

### **Geographical Preferences**

Allowing geographic preference to occur without following Federal regulations. Even if there are State or local laws for geographic preferences, in-State or local geographic preferences are prohibited in Federal procurements except where applicable Federal laws expressly permit their use.

The recently enacted Food, Conservation, and Energy Act of 2008 (P.L.FSMC Guidance for SFAs - April 2009 2-2110-246), also known as the Farm Bill, amended the National School Lunch Act to allow institutions receiving funds through the Child Nutrition Programs to apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products.

Unprocessed products are those products that have not been cooked, seasoned, frozen, canned, or combined with any other products. Acceptable useable forms of these unprocessed products include: “washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton.”

While the statute permits institutions to apply a geographic preference to the maximum extent practicable and appropriate, it does not require institutions to purchase locally grown and locally raised agricultural products, or to apply a geographic preference in their procurements of these products. Moreover, States cannot mandate through law or policy that institutions apply a geographic preference when conducting these procurements, because the NSLA grants this authority directly to the institutions. The institution responsible for the procurement has the discretion to determine whether and how a geographic preference meets its needs.

Another key to a “good procurement” is “fairness and integrity”. “Fairness and integrity” in all aspects of the procurement process are critical to achieving “free and open competition”. The procurement process cannot be both effective and self-serving. No matter how strongly an SFA official may prefer a particular product or supplier, other comparable products and suppliers must be given every reasonable consideration. An SFA must ensure ethical safeguards exist and are maintained at all levels in the organization and in all aspects of the procurement process.

Another key principle to a “good procurement” is all Awards must be made to “Responsive” and “Responsible” contractors. SFA officials sometimes believe the USDA states that the procurement must be awarded on the basis of price alone and they fear that the lowest bidder may provide inferior goods or services. However, regardless of which procurement method the SFA uses, Awards must be made only to “Responsive” and “Responsible” contractors.

SFAs must make Awards only to those contractors:

- Who are "Responsive" because their product or service meets the SFAs specifications.

- Who are "Responsible" because they can and will successfully fulfill the terms and conditions of the proposed procurement.

To gauge contractor responsibility, the SFA can begin by investigating the contractor's:

- Integrity;
- Compliance with public policy;
- Record of past performance; and
- Financial and technical resources.

If it is determined that the contractor is "Not Responsible" the decision must be carefully documented and the contractor becomes ineligible for Award.

Finally, a "good procurement" process must always be transparent. "Transparent" means all actions taken by the SFA must be:

- Clear;
- Above-board; and
- Out in the open.

## **RFP Timelines**

Adequate time period should be allowed for an FSMC to receive and respond to a released RFP. ADE requires 45 days for RFPs be allowed from the time proposals are solicited to the time that they are due. (It should be noted that additional time must be given for procurement under an RFP to allow for such things as proposal evaluation, discussion with Offerors, contract development, etc). Provided the IFB/RFP has been properly prepared, an adequate amount of solicitation time works to the advantage of both the SFA and the Offeror and contributes to an effective and efficient procurement process.

## **Advertising Methods**

Under both the IFB and RFP procurement types, bids/proposals shall be solicited directly from an adequate number of prospective vendors. The IFB/RFP shall be publicized in order to provide for maximum open and free competition if there are less than four (4) or fewer prospective vendors (Refer to R7-2-1022 for more information). To ensure the RFP is sent to four or more vendors, copies of the complete IFB/RFP should be mailed or emailed to those FSMCs that are believed to be qualified and that might reasonably be expected to respond to the solicitation. This may include FSMCs that are currently doing business with other SFAs in the State, in adjoining States, or elsewhere. ADE has a complete list of all vendors who are contracting with SFAs in Arizona. The SFAs are required to send the RFP to each vendor on the ADE FSMC Vendor list.

## **Pre-Offer Conference**

An SFA may conduct a Pre-Offer Conference to explain the procurement requirements within a reasonable time before the bid opening. It is recommended that such a conference should be conducted two weeks prior but no less than seven days before the date Proposals are due. There are two important reasons for holding a Pre-Offer Conference:

- To provide information about the contract performance requirements that may be helpful in the preparation of proposals; and
- To answer any questions that an FSMC may have regarding the RFP.

However, the Pre-Offer Conference should not be held to formally make corrections to specifications that are incomplete or confusing, or to distribute performance requirements in addition to those listed in the solicitation. The following are some items to consider in planning and facilitating a Pre-Offer Conference.

### **Information Regarding Conference**

Information regarding the Pre-Offer Conference should be a part of the RFP solicitation package. Vendors should send questions several days before the conference to allow the SFA to prepare a response for each question at the Pre-Offer Conference.

### **Recommended Attendance of Offerors**

Attendance at the Pre-Offer Conference by prospective FSMCs is strongly recommended, but not required for the FSMC to submit a proposal. ADE will not approve an RFP if the Pre-Offer Conference is mandatory. The SFA should maintain a sign-in sheet that will record all the FSMCs that attended the Pre-Offer Conference. Keep this document for the SFA records.

### **Information Provided in Writing**

A statement needs to be made at the beginning of the Pre-Offer Conference by the SFA that information provided by the SFA at the meeting should not be considered official until provided in writing to all FSMCs that have received the RFP.

## **Proposal Evaluation Plan**

The purpose of the Evaluation Plan is to describe how the proposals will be received, logged and evaluated to select a proposal. The overall goal of the evaluation process is to select the proposal that is most advantageous to the SFA for performing the food service operations. Proposals must be thoroughly reviewed and receive an impartial evaluation. The items that would be included in the Evaluation Plan are listed below.

### **Information on Evaluation Team**

It is recommended that there be a minimum of three (3) team members. The team may be comprised of principals, teachers, parents, administrators, school board members or other individuals who may have involvement with the food service operation. Due to the complexity of the process, it is recommended that students should not serve as committee members. When developing a team, the SFA should determine the:

- Size of the evaluation team;
- Expertise required of the evaluation team; and
- Names of the team members.

### **Scoring System**

Each section must evaluate information from the Scope of Work and attachments listed. The Evaluation Rubric must assist all the evaluation team members to clearly understand what items they are scoring. The Evaluation Rubric must include team member's comments.

### **Ancillary Materials**

Put together the Evaluation Rubric and any other documentation that may be needed. The Evaluation Rubric should include the evaluation criteria, standards to be applied, scoring columns and room for comments. The individuals who will be evaluating the proposals should have appropriate knowledge of the goals of the SFA, experience in school food service or congregate feeding, financial management experience (food service, if possible) and experience in evaluating proposals.

### **Proposal Opening and Evaluation**

Proposals should not be opened or reviewed until after the due date specified in the RFP. The person responsible for receiving the proposals must store each proposal in a secure location to prevent the opening of the documents before the deadline. It is important to involve people from the SFA administration and those who will have day-to-day contact with the FSMC in the evaluation process. This group, or team of members, should have the same goals and ideas as to what they want from an FSMC and what impact the FSMC will make on their food service operation. Additionally, having more than one person making the decision is a good business practice and should help keep the selection process equal and fair.

On the date specified for opening and evaluating the proposals, each member of the evaluation team must sign a disclosure/confidentiality statement and score each proposal individually. If the SFA determines an FSMC's proposal is unacceptable, they shall notify the FSMC of the determination and the Offeror shall not be afforded an opportunity to amend its Offer.

If oral presentations are a part of the RFP, great care must be taken to make sure the presentation is scored only for its content and not based how well the presentation was completed. FSMCs are not allowed to change their proposals through the presentation process.

## **RFP Evaluation Committee Guidelines**

### **Committee Objective**

The objective of the evaluation committee is to recommend the FSMC whose proposal is most “Responsive” to the SFAs needs within available resources. The FSMC must demonstrate their capacity successfully complying with all the requirements.

### **Committee Tasks**

In order to fulfill this objective, the committee members will be required to perform the following tasks:

- Read each proposal independently to begin the evaluation.
- Evaluate each proposal against established evaluation criteria.
- Compile and analyze results and prepare preliminary draft of recommendation report.
- Aid in defending the Award against vendor protests if applicable.

### **Committee Rules and Procedures**

Below are some suggested committee rules and procedures for an SFA to use for guidance in operating their RFP Evaluation Team.

- Each member will be asked whether he/she has a personal interest in any participating vendor and if he/she understands and can perform within the ground rules and procedures.
- Each member should have no personal/financial interest in the vendor that is recommended for Award. All personal/financial interest situations must be reported on the Conflict of Interest Statement.
- Each member should have a professional interest in ensuring the results of the committee can be supported and defended.
- Each member should have a professional interest in ensuring the recommendation of the committee will lead to the selection of a vendor that can and will operate the SFAs Food Service Operations in an acceptable manner.

### **FSMC Contact**

The FSMC contact must only occur via the SFA Procurement Officer. If the FSMC contacts a member of the committee, the SFA Procurement Officer must be immediately notified. Members should not participate in individual meetings, lunches, entertainment or any other direct contact with FSMCs once the member has been appointed to the evaluation committee. In addition, the committee should set aside all prejudices and perform proposal evaluations in as fair a manner as possible. Prior knowledge of an FSMC shall be used judiciously and pertain only to current situations.

**Confidentiality**

During the evaluation process and while meetings are in session, the committee must maintain confidentiality. No member should communicate preliminary conclusions or results of what was bid by the vendors, or that a given vendor will be selected. All internal workings of the committee shall be kept confidential until the committee has completed its work and its report and all FSMCs have been officially notified of the selection. After receipt of proposals, each member shall conduct an individual evaluation of each proposal. The committee will meet to discuss their individual evaluations. During committee discussions, each member may change their initial scoring as they see fit. Final scores for each vendor will be totaled for the committee as a whole.

## **Only One Proposal**

If only one response was received for the released RFP and the SFA determined that the one proposal is acceptable, the SFA must state in a document that adequate time was allowed for any and all parties to respond and all other requirements for soliciting adequate competition were met. Also, the document must state that the evaluation criteria were adequately addressed by the respondent as determined by the evaluation committee. In addition, the SFA must state that the price is fair and reasonable based on factors to include current market analysis, similar pricing at other SFAs for same services and historical pricing for similar services. Contact ADE for more information and for a template available to SFAs.

If only one proposal was received, the proposal must be evaluated by an evaluation team with the same consideration as if several had been received.

## **Best and Final**

In many negotiated procurements a provision is made for the FSMC to submit a “Best and Final Offer” prior to completion of the evaluation process and the selection of the winning FSMC. Although “Best and Final Offers” vary in content and depth, the vital constituent of a “Best and Final Offer” is always a final quoted price for accomplishment of the work. Keep in mind that the information in the “Best and Final Offer” cannot result in a material change to the solicitation.

## **Procurement Protest Procedures**

Any action which diminishes open and free competition seriously undermines the integrity of the procurement process and may subject the SFA to bid protests. Pursuant to 7 CFR Part 3016.36(b)(12), SFAs must have Protest procedures in place to handle and resolve disputes relating to their procurements and must in all instances disclose information regarding a protest to ADE.

In the event that a vendor believes that there has been a violation during the procurement process, the vendor has the right to file a Procurement Protest. If a SFA receives a Procurement Protest, ADE requires the SFA to do the following:

- Notify ADE of the Procurement Protest;
- Provide ADE with a copy of the SFAs Procurement procedures; and
- Provide ADE with copies of all the Procurement Protest documentation

ADE’s will ensure that the SFA followed their Procurement Protest Procedures and expects SFAs to resolve disputes relating to procurements. If you have any questions or concerns please contact ADE Contracts Management Officer at 602-542-6208.

## Managing the Contract

In some cases, once an SFA has successfully completed the procurement process, they may assume that they are finished with their work. Once the SFA has entered into an appropriately priced contract for high-quality products or services, the SFA still needs to devote considerable time to managing the contract. This is known as "contract administration". "Contract administration" refers to all of the steps taken after contract Award to make sure that the contractor lives up to its end of the bargain. Effective contract administration provides the SFA with regular feedback on contractor performance throughout the life of the contract. An effective contract administration system will include tasks that regularly report on whether the contractor is delivering a product:

- In the right quantity;
- On time;
- To the right location(s); and
- That meets the quality specifications defined in the SFAs solicitation that follows the SFAs substitution policy (should substitutions be required).

## **Contract Amendments**

Per the CFRs, contracts must be of duration no longer than one-year. Annual contract amendments are allowable as long as they do not exceed four (4) additional one-year extensions from the original contract period. Contracts must not contain automatic renewal provisions. Any provisions, including adjustments to payments that will be used for contract amendment, must be stated in the contract and the IFB or RFP, as applicable. While contract amendments are permitted, a SFA is not required to renew the contract for an additional year and should do so only after careful evaluation of the FSMC's performance and a determination that the renewal will benefit the SFA. The elements that should be used when deciding whether to renew a contract are listed below.

### **Performance**

The SFA must evaluate the FSMC's overall performance including the FSMC's completion of planned activities as described in the proposal or contract. The SFA should document its findings while conducting its monitoring requirements of the FSMC and refer to these documents when making a performance determination. In addition to reviewing the deficiencies noted in the FSMC's performance, the SFA should review the effectiveness of the FSMC's corrective action plans, including:

- The meal quality, including adherence to menu cycle/food specifications and complaints;
- The full cost of using an FSMC versus the projected costs under the contract;
- The overall financial status of the food service operation and the food service account;
- Any unexpected costs incurred as a result of using an FSMC and any unexpected cost reductions that have resulted from using an FSMC. (The SFA should ascertain these costs based on information received from the FSMC and other sources);
- Participation trends including NSLP/SBP participation compared to a la carte sales;
- Comments and recommendations of the advisory board and the FSMC's responsiveness to these recommendations;
- Any increase in the prices requested by the FSMC or any change in the basis upon which the FSMC is paid;
- Utilization of donated foods, including the current inventory on hand; and
- Recommendations from local, state and federal reviews and audits, including the status of required corrective actions.

### **Contract Material Change**

The following changes would not constitute material changes to the contract:

- Number of schools added;
- Changes in enrollment such as decreases and increases in student enrollment and the corresponding change expected in participation;
- Changes in the price per meal;
- Cost increases cost increases limited to a measurable index (such as the Consumer Price Index for All Urban Consumers); and
- Minor adjustments to the per meal equivalency.

Examples of material changes that may require the SFA to re-solicit the contract include, but are not limited to, the following:

- The addition of a program, such as the SBP or SFSP;
- Major changes to the formula for determining meal equivalency;
- A major shift in responsibilities for SFA/FSMC staff; and
- Significant changes in the basis for determining guaranteed returns.

If an SFA is unsure if something is a material change, they should contact ADE. ADE reserves the right to review a material change for compliance with the original solicitation documents in the interest of open and fair competition.

### **ADE Approval**

ADE must review and approve the contract amendment prior to obtaining signatures from both parties. Keep in mind, any changes to the contract cannot result in a material change. In order to approve the amendment, the SFA must provide the following documents:

- Copy of an unsigned contract amendment;
- Completed Contract Amendment Checklist;
- Signed copy of the Certification Regarding Debarment and Suspension;
- Signed copy of Certification of Independent Price Determination; and
- Signed copy of the Certification Regarding Lobbying.

Once ADE has approved the contract amendment, the SFA must send ADE the signed copy within ten (10) days.

## **Glossary of Terms**

For the purposes of this guidance, the term:

**ADE** means the Health and Nutrition Office of the Arizona Department of Education.

**Attachment** means any item the Solicitation requires an Offeror to submit as part of the Offer.

**Bid** means an Offer to perform, in accordance with specifications and conditions, for a stipulated price.

**Child Nutrition Programs** means the federally assisted meal programs operating in public and non-profit private schools and residential child care institutions.

**Code of Federal Regulations (CFR)** means the codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the federal government. Refer to CFR 3016.36 for the federal standards governing procurements made by State Agencies, Local Education Agencies and other local program operators. For more information go to: [www.access.gpo.gov/nara/cfr/waisidx\\_04/7cfr3016\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/7cfr3016_04.html)

**Commodities** mean foods donated or available for donation, by the United States Department of Agriculture (USDA).

**Competitive Sealed Proposals** means a method of procurement whereby proposals are requested from a number of sources and the request for proposal is publicized, discussions are conducted, if applicable, with more than one of the sources submitting Offers and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive sealed proposals may be used if conditions are not appropriate for the use of competitive sealed bids. See RFP

**Competitive Sealed Bids** means a method of procurement whereby sealed bids are publicly solicited and a firm fixed-price contract is awarded to the "Responsible" and "Responsive" bidder whose bid, conforming to all the material terms and conditions of the invitation for bid, is lowest in price. See Invitation for Bids (IFB)

**Contract** means a formal, legally enforceable agreement duly executed by the authorized representatives of the SFA and the food services contractor that calls for the provision of services, materials, supplies or equipment by the food service contractor in accordance with all conditions and specifications in the bid/proposal documents, for a price to be paid by the SFA.

**Contract Documents** means the bid specifications, requirements and the invitation for bid, the request for proposal and the contract, as applicable.

**Cost-type Contract** means a contract in which the contractor is paid on the basis of the costs as it incurs. The term includes cost-plus-fixed-fee contracts and subcontracts therein. However, the term does not include any subcontracts under a fixed-price contract.

**Donated Foods** see Commodities

**Equipment** means an article of tangible personal property that has a useful life of more than one year and an acquisition cost of \$1,000 or more. State law or policy may set stricter capitalization thresholds for equipment than the one set by federal standards. Any SFA may use its own definition if its definition at least includes all items of equipment as defined here.

**Exhibit** means any item labeled as an exhibit in the solicitation or placed in the exhibits section of the solicitation.

**FNS** means the Food and Nutrition Service of the United States Department of Agriculture (USDA).

**Fixed-price** means a price is guaranteed for a specific period of time.

**Fixed-price Contract** means any contract except a cost-type contract. The term includes firm fixed-price contracts. It also includes contracts under which the contractor is paid at a fixed rate per meal of service or unit of labor time.

**Food Service Management Company (FSMC)** means a commercial enterprise or a non-profit organization that is, or may be, contracted with by the SFA to manage any aspect of the school food service.

**Invitation for Bids (IFB)** means an instrument of competitive sealed bids. An IFB is used to publicly solicit sealed bids. An IFB contains specifications and pertinent attachments that clearly define the items or services needed in order for bidders to properly respond to the invitation.

**Non-profit School Food Service** means all food service operations conducted by the SFA principally for the benefit of school children, including all of the revenue which is used solely for the operation or improvement of such food services.

**Offer** means bid, proposal or solicitation.

**Offeror** means a vendor who responds to a solicitation.

**Processor** means, as defined in CFR 250.3, "... any commercial facility, which processes or repackages donated foods. However, commercial enterprises which handle prepare and/or serve products or meals containing donated foods on-site solely for the individual recipient agency under contract are exempt under this definition."

**Procurement** means the process of obtaining goods and/or services in accordance with applicable rules and regulations.

**Request for Proposal (RFP)** means an instrument of competitive sealed proposals. The RFP is used to solicit proposals from a number of sources. The RFP identifies the goods or services needed, including all significant evaluation factors and the importance of each factor.

**Responsible Offeror** means an Offeror who is qualified by experience, equipped to perform the work required, or furnish the necessary material indicated in the specifications and who has the necessary financial backing and ability to complete the contract.

**Responsive Offeror** means an Offeror whose bid conforms to all the material terms and conditions of the IFB.

**School Food Authority (SFA)** means a sponsoring organization (district or charter) of the Child Nutrition Programs.

**Solicitation** means an Invitation for Bid (IFB), a Request for Proposals (RFP) or a Request for Quotations (RFQ).

**Small Purchase** means relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property.

**Vendor** means a merchandiser of complete meals, meal components, or raw materials.