



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

RICK SNYDER
GOVERNOR

BRIAN J. WHISTON
STATE SUPERINTENDENT

**FISCAL YEAR 2016
CHILD AND ADULT CARE FOOD PROGRAM
FAMILY DAY CARE HOME SPONSOR MEMORANDUM #6**

TO: Family Day Care Home Sponsors

FROM: Marla J. Moss, Director
Office of School Support Services

DATE: December 2, 2015

SUBJECT: Guidance on Competitive Procurement Standards for Program Operators

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

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

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

STATE BOARD OF EDUCATION

JOHN C. AUSTIN – PRESIDENT • CASANDRA E. ULBRICH – VICE PRESIDENT
MICHELLE FECTEAU – SECRETARY • PAMELA PUGH – TREASURER
LUPE RAMOS-MONTIGNY – NASBE DELEGATE • KATHLEEN N. STRAUS
EILEEN LAPPIN WEISER • RICHARD ZEILE

608 WEST ALLEGAN STREET • P.O. BOX 30008 • LANSING, MICHIGAN 48909
www.michigan.gov/mde • (517) 373-3324

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

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

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

For questions regarding this memo, contact the CACFP office at 517-373-7391.

ⁱ <http://www.fns.usda.gov/sites/default/files/2005-07-14.pdf>