



**United States
Department of
Agriculture**

May 24, 2005

Food and
Nutrition
Service

SUBJECT: Procurement Questions

TO: Regional Directors
Child Nutrition Programs

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We have recently received a series of questions regarding the procurement of automated meal accountability systems in conjunction with the procurement of a food service management company. Attached are the questions and our answers. As in the past, please share these questions and answers with your State agencies and request that they provide this information to their school food authorities. If you have any questions, please contact Terry Hallberg, Branch Chief, Program Analysis and Monitoring Branch, at (703) 305-2590.

Original Signed

STANLEY C. GARNETT
Director
Child Nutrition Division

Attachment

May 24, 2005

Question 1: Can a food service management company (FSMC) act as the school food authority's (SFA) agent to procure automated accountability systems (point of service, inventory, financial management, etc.)?

Answer: Generally, the SFA can use a single contractor to perform more than one function. For example, an SFA can contract with a FSMC to manage its food service and act as its procurement agent for acquiring an automated accountability system. However, the SFA must ensure that its procurement solicitation and contract identifies the scope of duties the FSMC must fulfill and the FSMC's responsibilities as the agent of the SFA. The solicitation and contract documents should also include a description of the procedures the FSMC must follow in procuring the automated accountability system since the FSMC, as the SFA's agent, must comply with the same requirements the SFA would use to procure the system. The solicitation and contract documents must also identify whether the SFA or the FSMC as the SFA's agent will sign the contract with the successful system's bidder. Finally, the SFA should include an adequate description of how the FSMC will be paid for these services and how the SFA will pay for the system.

Question 2: Some FSMCs apparently have pre-existing arrangements with specific software companies. Is this a problem if the SFA seeks to use a FSMC that has such an arrangement for its automated accountability system?

Answer: While it is not a problem in the procurement of the FSMC, it may render the FSMC's software partner ineligible to compete for the SFA's software acquisition. Department regulations at 7 CFR Part 3016 prohibit the participation of an employee, officer or agent in the award or administration of a contract when an actual or apparent conflict of interest exists. A conflict of interest can arise when the employee, officer or agent or an organization which employs or is about to employ any of the preceding has a financial interest in the firm selected for award. If the SFA's solicitation document for a FSMC requires the FSMC act as the SFA's agent to acquire the automated accountability system, then the FSMC must follow the same procurement procedures that SFA would use to obtain the software system. Since the FSMC has a pre-existing relationship with a specific software partner at least the appearance, if not an actual, conflict of interest, could arise.

Question 3: Can the SFA issue a FSMC procurement solicitation that requires the FSMC provide an automated accountability system?

Answer: Yes, but there are factors the SFA must consider. First, the SFA must develop its own software and hardware specifications for the automated accountability system and include those with its FSMC procurement solicitation. The ranking and evaluation of a combined FSMC and automated accountability system solicitation will require a higher degree of technical expertise than would normally be required to obtain a FSMC. Second, the SFA needs to ensure that it has not unduly restricted competition by requiring the FSMC provide both food service management and the automated

accountability system. Third, the SFA needs to remember that it will not “own” the software system, but will only have access to it for the period of its FSMC contract. This means that the automated accountability system must be viewed as a one year acquisition since its FSMC contract is only a one-year contract (with up to 4 one-year renewals).

Question 4: As an alternative to question 3, can the SFA issue a FSMC procurement solicitation that requires the FSMC provide an automated accountability system that the SFA will own?

Answer: Yes. However, the SFA will still need to develop its software and hardware specifications so that the system it acquires is not dependent on the renewal of its FSMC contract. Additionally, the SFA must ensure that the automated accountability system is not integrated with FSMC’s system so that it would be able to function with another FSMC or a self-operated food service.

Question 5: Are there any other factors an SFA needs to consider when it seeks to combine its procurement of some type of automated accountability system with its procurement of a FSMC?

Answer: Yes, there are a number of other factors the SFA needs to consider. Among these are that the automated accountability system may require multi-year implementation. If a multi-year approach is required, it cannot be dependent upon the renewal of its FSMC contract. Second, if the automated accountability system’s cost will be amortized over more than one year, non-renewal of the FSMC’s contract cannot cause acceleration of the payment schedule without approval of the SFA. Third, if the automated accountability system will include student eligibility information, the SFA must ensure adequate controls exist to prevent improper use or disclosure of that information. Fourth, the SFA needs to ensure any automated accountability system is compatible with its school district’s current and long term automation plans including its district’s requirements for software and hardware compatibility and integration. Finally, if the FSMC will use a subcontractor to provide the automated accountability system, the SFA needs to determine the extent to which it will have authority to accept or reject a particular subcontractor and whether subcontracting is permitted under applicable State and local rules.