



State of New Jersey

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To: School Business Administrators, Charter School Leads;
Non Public School Administrators; Food Service Directors

From: Arleen Ramos-Szatmary, SNP Coordinator 

Date: July 31, 2017

Subject: Update on State Agency Launch of Fixed Price Contracts

The New Jersey Department of Agriculture (NJDA) has received feedback from the New Jersey Association for School Business Officials (NJASBO), individual School Business officials, School Food Authorities (SFAs) and representatives from the New Jersey School Nutrition Association (NJSNA) in response to the NJDA memorandum dated June 14, 2017 announcing food service contract changes and the required use by all SFAs of Fixed Price Contracts beginning with those SFAs entering into a base year contract in SY 18-19.

After careful consideration of the feedback provided, the Department has determined the following:

A) Cost Reimbursable Contracts and addendums will continue to be allowed in SY 18-19. NJDA will eliminate Article II from the base year Cost Reimbursable Contracts for SY 18-19. In addition, the Guarantee language in Article I will have a limit on the number of conditions allowed.

B) Procurement reviews of SFAs participating in the School Nutrition Programs in New Jersey identified that SFAs were consistently out of compliance with federal procurement regulations 2 CFR Part 200.318-326 and program specific regulations contained in 7 CFR Part 210, 215, 220 and 250, as applicable. SFAs were not regularly monitoring the operation of their FSMCs to ensure the FSMCs' compliance with the contract provisions and any applicable Federal, State and local rules and regulations. Therefore, Federal procurement requirements and procurement review procedures, in addition to FSMC contract training, will be provided during the SY 17-18.

C) The launch of the Fixed Price Contracts will be postponed to SY 19-20. Fixed Price Contracts will be required for all SFAs by SY 20-21.

D) SFAs will have the opportunity to pilot the use of the Fixed Price Contract during SY 18-19. SFAs that are entering into a base year contract in SY 18-19 are strongly encouraged to participate in the pilot program. SFAs that are not entering a base year and would like to participate in the pilot will be reviewed on a case-by-case basis.

The pilot program will provide business administrators with first-hand experience in the use of Fixed Price Contracts and allow them the opportunity to provide NJDA with feedback and suggestions regarding enhancements to the Fixed Price Contracts process and the new electronic approval system.

We thank you for the feedback provided and look forward to the pilot program, which we hope will facilitate a smoother transition for all.

FAQs are attached to this memorandum to provide additional guidance.

School Nutrition Programs – Fixed Price Contracts
Frequently Asked Questions

1. What is a cost reimbursable Food Service Management Company (FSMC) contract?

A cost reimbursable contract is one in which all costs, including the FSMC fee (whether it is calculated by the FSMC as a flat fee, a cents per meal fee, or a combination flat and cents per meal), are charged to the School Food Authority (SFA) as they are incurred on a monthly basis. The contract also provides the SFA with a return or guarantee of a negotiated amount of money.

2. What is a fixed price FSMC contract?

A fixed price contract is one in which total costs are calculated by the FSMC and then divided by the anticipated number of meals and meal equivalents that are expected to be served. The result is a fixed price per meal rate that will be charged to the SFA each month. The FSMC management fee is a part of the total cost. Rather than paying the FSMC for the expenses, and management fee, incurred on a monthly basis, the SFA is charged a fixed cost per meal rate for the number of meals that are documented as served each month.

3. What is the difference between a Request for Proposal (RFP) for a fixed price contract and an RFP for a cost reimbursable contract?

There is no difference between an RFP for a fixed price contract and an RFP for a cost reimbursable contract. The information contained in both RFPs is the same. Each should contain current district data that includes:

- Meal counts by type
- Revenue by type
- Meal service times
- # Serving lines
- Labor including hours, fringe benefit costs, hourly rates and salaries, and if the labor is district labor or FSMC labor
- Cost responsibilities
- Cost of food
- Cost of supplies
- 21 Day Cycle Menus
- Food specifications

This is a list of data for example purposes only, and it may not contain all of the significant costs and revenue items that should be provided by the SFA in the RFP. However, **the RFP process is the same regardless of the type of contract.** If an SFA expects to renew the contract for additional years, it is recommended that it plan for its needs over a 5 year period to assure that all potential program changes can be identified in the RFP. This planning will help to minimize material changes which will require a new RFP.

4. How are rebates/discounts /credits handled in each contract type?

One significant difference between the contracts is that cost-reimbursable contracts require the return of rebates, discounts and credits on all costs from the FSMC to the SFA each month. Fixed price contracts do not have this requirement.

Cost reimbursable contracts require discounts and rebates to be credited each month as received.

Fixed rate contracts do not require this monthly crediting. While the requirement to obtain documentation of all costs, rebates, and discounts is not applicable to fixed-price contracts, SFAs must ensure that all costs paid are allowable. To ensure that the SFA only pays the FSMC for allowable costs, the State agency encourages SFAs to obtain a description of all goods and services included in the fixed price during the bidding process and to seek further detail of questionable costs.

5. Will fixed price contracts place price over the quality of the food and services received?

No, the SFA retains control of the quality, extent and general nature of its food service regardless of the type of contract. The RFP process remains the same. The requests made in the RFP and the evaluative and scoring criteria used to choose a vendor allow the SFA to dictate the level of quality and service that it will receive.

6. Why isn't New Jersey allowing the SFA to choose between fixed price and cost reimbursable contracts?

Since 2002, the United States Department of Agriculture (USDA) Office of Inspector General (OIG) has conducted various reviews of the effectiveness of Federal and State oversight and monitoring of SFA cost reimbursable contracts with FSMCs. These reviews have consistently identified instances where SFAs were not receiving the purchase discounts and rebates to which they were entitled. Despite the USDA's on-going technical assistance, training and guidance, State Agencies, including New Jersey, continue to report challenges, which are costly to SFA nonprofit food service accounts. This on-going federal concern resulted in USDA's publication of the Proposed Child Nutrition Program Integrity Rule on March 29, 2016, which proposed the elimination of cost-reimbursable contracts. State agencies are not required to develop and offer a variety of contract types, and may limit contract types offered within the State based on the level of expertise and skills with procurement, contract negotiation, and evaluation of responses available within SFAs and the State Agency.

New Jersey's decision to move from cost reimbursable to fixed price contracts is based on all of these factors. In essence, fixed price contracts promote and will enable the SFAs to realize a clearer audit trail, a more simplified reconciliation, and a greater transparency of costs. USDA supports the State Agency with the new process as it is implemented.

7. Will the award be based on price only or price plus evaluative criteria?

The solicitation will continue to be through the use of an RFP, which awards the contract based on price plus evaluative criteria. SFAs will be required to create evaluation criteria and a scoring system in order to choose the proposal that is most advantageous to the SFA's meal program(s) with price and other factors considered. Price/cost must have the most weight of all scoring criteria; however, it does not have to be equal to or greater than 51 on a total value of 100 percent/ points. Price is **not** the sole basis for the contract award; however, price will be the primary consideration once the most qualified proposal is identified.

8. Will there be flexibility for the SFA to add specifications to the State Agency RFP template?

Yes, SFAs will be required to ensure that all of their desired specifications are included, and therefore added if necessary, to the State Agency RFP template. The RFP must be properly planned, and each specification must be explicitly detailed. This includes food specifications, POS systems, staffing requirements and conditions, transitional labor, wages, equipment, additional meal requirements should an SFA choose to provide meals to other SFAs, program improvements, items to enhance a wellness program, higher/lower end food products, organic products, block scheduling, vehicles and future/anticipated requirements.

Without these detailed specifications, a change to the scope of the contract provisions for items and FSMC services that are not included in the original solicitation and contract may represent a material change that will require a new RFP or in some cases, a need for the SFA to add the item and pay for it directly. The process is the same regardless of whether the contract is Fixed Price or Cost Reimbursable.

9. Since the RFP is the contract will the RFP have to be pre-approved by NJDA?

Yes. The RFP and contract will be standard templates created by NJDA. All RFPs will require NJDA approval before being published and again before the contract is executed by the parties.

10. What transparency will BAs have with fixed price contracts?

SFAs can request and review budget back-up documentation. However, the SFA should specify in the RFP and the contract which information it is looking to receive and review.

11. Will a fixed price contract be good for the SFAs and the children?

Fixed price contracts allow the SFA to forecast costs based on participation instead of on variable costs (as in cost-reimbursable contracts) that fluctuate on a month to month basis. Fixed Price contracts are a different method of calculating and paying the costs of running the SFA's food service program, and have no impact on the benefits of the food service program to the SFAs or the students.

It remains the responsibility of the SFA to carefully monitor FSMC performance, the same monitoring that is required under the cost reimbursable method. A well thought out and well written RFP, and most importantly a well-managed contract, are keys to success.

12. Are fixed price contracts mandated by the USDA?

No, fixed price contracts are not mandated by the USDA at this time. They are, however, strongly recommended by the USDA. Federal regulations allow the State Agency to impose additional contract requirements which meet or exceed the Federal standards, as long as they are consistent with the Federal standards.

13. Can NJDA provide a standard RFP for cost reimbursable contracts before requiring all SFAs to use fixed price FSMC contracts?

Yes, NJDA will be providing a standard RFP for cost reimbursable contracts for the SY 2018-19. A standard RFP for fixed price contracts will also be offered for the SY 2018-19 for those SFAs that wish to enter into the fixed price contract pilot program.

14. Will guarantees be allowed? If so, will conditions to those guarantees be allowed?

Yes, guarantees will be allowed, but must be calculated into the per meal price. Guarantee conditions will be limited.

15. How will assumptions be handled? (Example: if the SFA's number of serving days changes, or enrollment levels change after the pricing has been established.)

There will always be times when things such as serving days and enrollment changes occur regardless of what was included in the RFP. As long as the per meal cost to the FSMC does not change and participation is not sharply reduced, this will be a non-material change that could be made without the need to go out to bid.

16. How will meal equivalent rates be determined?

NJDA will establish the meal equivalent rate annually. The rate will be established by using the Federal and State Free Meal Rate, the USDA entitlement (rate per meal), and the HHFKA additional .06 per meal. Establishing a standard rate for all contracts will allow SFA's to clearly compare costs when evaluating the RFP.

17. Will special functions/catering be part of the bottom line or will the requirement be to bill them separately?

Separate billing for food and products purchased and used in special functions is necessary to ensure that school food service costs and special function costs are not intermixed, thus preventing double billing.

18. How does the SFA handle changes that are decided after the RFP is complete?

If a change is made after the RFP is complete and has been published but before responses are received, the SFA can send the additional requirements to all FSMCs that request, or have requested, the solicitation documents. If a decision for changes has been made after the execution of a contract, the SFA must determine if the change will be a material change and proceed accordingly.

19. How is the inventory in the building handled? How would a freezer loss due to a power loss in the SFA's facility be managed?

The way these problems are currently handled is not affected by a fixed price contract. SFA procedures will remain the same.

20. Will budget exceptions be permitted in a fixed price contract?

Yes, budget exceptions will be permitted in a fixed price contract. However, budget exceptions must be restricted to requests that were not reasonably anticipated during the development of the RFP and that are of an emergent nature. Failure to properly anticipate requested enhancements, improvements and other changes in and of itself must not be the only justification for the requested budget exception.

In addition, the SFA and FSMC must ensure that the requested change(s) can be implemented without an increase in the cost per meal and does not constitute a material change. If the requested change(s) constitutes a material change, the contract would have to be re-bid.

21. What resource can I reference for more guidance?

The USDA guidance entitled Contracting with Food Service Management Companies for School Food Authorities provides guidance on contracting with FSMCs and can be accessed at <https://www.fns.usda.gov/sites/default/files/cn/FSMCGuidance-sfa.pdf>