

**Ohio Department of Education
Office for Safety, Health and Nutrition
Nutrition Program Policy Memo**

POLICY STATEMENT

Equipment Specifications for the 2009 Equipment Assistance Grants for School Food Authorities

Source: USDA Memo SP 24-2009
Code: NSLP 10-09
Audience: All School Food Authorities
Effective Date: 07/09/2009
Replaces: None
Program: NSLP

INTRODUCTION

This policy memorandum reviews the Equipment Assistance Grant initiative funded through the American Recovery and Reinvestment Act of 2009 (ARRA), and provides instruction for School Food Authorities in responding to solicitations from equipment manufacturing companies and development of bid documentation for equipment purchases.

STATEMENT OF POLICY

A. OVERVIEW OF THE EQUIPMENT ASSISTANCE GRANT INITIATIVE THROUGH THE AMERICAN RECOVERY AND REINVESTMENT GRANT ACT OF 2009

1. On April 10, 2009, The Ohio Department of Education (ODE), Office for Safety, Health and Nutrition issued a policy memorandum, NSLP 09 09 "2009 Equipment Assistance Grants for School Food Authorities Questions and Answers".
2. This policy memorandum states that Public Law 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA), provides a one-time appropriation of \$100,000,000 for equipment assistance grants to School Food Authorities (SFAs) participating in the National School Lunch Program (NSLP) and addresses questions that the United States Department of Agriculture (USDA) and ODE have received regarding the use and availability of the ARRA equipment assistance grant funds.
3. After publishing this policy memo, ODE and USDA have learned that, due to the availability of the ARRA equipment assistance grant funds, many SFAs and local schools are being approached by vendors, manufacturers and sales representatives of food service equipment companies with marketing material for their products.
4. SFAs and local schools are interpreting these marketing materials as company and/or product endorsement from USDA and/or ODE.
5. USDA and ODE do **not** endorse any company or product, including companies offering food service equipment that may be purchased with the ARRA equipment assistance grant funds.

B. DEVELOPMENT OF PRODUCT SPECIFICATIONS FOR USE IN BID SOLICITATION DOCUMENTATION

1. SFAs may use *many* equipment specifications from *many* different companies as a reference in writing their solicitation documentation.
2. An SFA must not allow any company that plans to bid on the procurement, or its representatives, to write the specifications.

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3. SFAs must also refrain from inadvertently using specific equipment specifications found in a company's feature list.
 - a. This will also exclude that company from competing as it restricts open and free competition and is prohibited.
4. Using a particular company's product specification, which that company has developed or drafted, is anticompetitive and limits the products the SFA or school could award a bid for and; therefore is, a prohibited procurement method.

C. ENSURING FULL AND OPEN COMPETITION WITH EQUIPMENT PURCHASES USING ARRA GRANT FUNDING

1. It is in the vital interest of an SFA and school to review the largest number of approved products from multiple manufacturers to secure the quality desired at the most competitive price.
2. Per 7 CFR section 3016.60, "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 or other documents for use by a grantee [i.e., State agencies] or subgrantee [i.e. SFA and local schools] in conducting a procurement under the USDA entitlement programs specified in Sec. 3016.4(b) [i.e., Child Nutrition Programs] shall be excluded from competing for such procurements. Such persons are ineligible for contract awards resulting from such procurements regardless of the procurement method used.
3. Prospective contractors may provide grantees or subgrantees with specification information related to a procurement and still compete for the procurement if the grantee or subgrantee, **and not the prospective contractor**, develops or drafts the specifications, requirements, statements of work, invitations for bid, and/or requests for proposals used to conduct the procurement."

Please keep this memo on file for reference. A copy of the memo is available for downloading from the Ohio Department of Education (ODE) website at: <http://www.education.ohio.gov/>. If you have any questions regarding this memo, please contact your ODE School Meal Programs Regional Consultant at 1-800-808-6325. The School Meal Programs are administered by the Ohio Department of Education, Office for Safety, Health, and Nutrition. The Office is located at 25 S. Front St, Mail Stop 303, Columbus, OH 43215.

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