Center for Students, Families & Communities

Susan Tave Zelman

Superintendent of Public Instructi

Office for Safety, Health and Nutrition
Cecelia Torok
Associate Director of Nutrition Programs

POLICY STATEMENT

School Districts and Federal Procurement Regulations

Source:	USDA Memo SP 19-2006, and SP 15-2006
Code:	NSLP-12-08
Audience:	All LEAs
Effective Date:	**6/11/2008**
Replaces:	N/A
Program:	**NSLP**

INTRODUCTION

This memorandum advises Local Education Agencies (LEAs) of violations related to Federal Regulation 7 CFR Part 3016.36(b), and 7 CFR Part 3016.60(b), and provides Questions and Answers to procurement related issues.

STATEMENT OF POLICY

In recent years, the Ohio Department of Education (ODE), Office for Safety, Health, and Nutrition (OSHN) and the United States Department of Agriculture (USDA) have become aware of violations to Federal Regulations 7 CFR Part 3016.36(b) which prohibit the awarding of contracts to any entity that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions or other procurement documents.

Additionally, an LEA which copies a list of features or evaluation and ranking criteria drafted by a potential vendor and then permits that potential vendor to submit a bid has violated §3016.60(b). In both cases, while schools have broad discretion in gathering information for use in connection with procurements, information from potential bidders must be appropriately modified to develop tailored specifications; otherwise these bidders must be

excluded from competing for such procurements. This is to ensure objective contractor performance and eliminate unfair competitive advantage.

A person that develops or drafts specifications, requirements, statements of work, invitations for bid, requests for proposals, contract terms and conditions or documents specifically for use by an LEA in conducting procurement under child nutrition programs shall be excluded from competing for such procurements. Any action which diminishes open and free competition seriously undermines the integrity of the procurement process and may subject the LEA to bid protests.

Please note, pursuant to §3016.36(b) (12), LEAs 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 ODE OSHN. Additionally, ODE OSHN must review and approve invitations for bid or requests for proposal for procuring a Food Service Management Company (FSMC) prior to bid solicitation. Upon FSMC selection, ODE OSHN must review and approve the FSMC contract prior to execution.

Attached are questions and answers received and responded to by the USDA in relation to procurement regulations. If you have any questions, please contact Brigette Hires, Assistant Director, Office for Safety, Health, and Nutrition at (614) 466-0522.

Prepared by:	Brigette Hires
Approved by:	Cecelia Torok

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