

## Five Acres Procurement Policy

### Open and Free Competition

Both federal regulations and California state laws require all procurements—without regard to dollar value—to be conducted in a manner that promotes maximum open and free competition. School food authorities (SFA) must conduct either a formal or an informal bidding process.

According to *Title 7, Code of Federal Regulations (2 CFR 200.319(a))*, situations limiting competition include, but are not limited to:

- i. Placing unreasonable requirements on firms in order for them to qualify to do business
- ii. Requiring unnecessary experience and excessive bonding
- iii. Noncompetitive pricing practices between firms or between affiliated companies
- iv. Noncompetitive awards to consultants that are on retainer contracts
- v. Organizational conflicts of interest
- vi. Requiring a specific brand name product, rather than allowing products of equal value to be offered
- vii. Any arbitrary action in the procurement process

Any action that diminishes open and free competition undermines the integrity of the procurement process and may subject the SFA to bid protests. Pursuant to *(2 CFR 200.318(k))*, Five Acres has protest procedures in place to handle and resolve disputes about procurement and will disclose information regarding any protests to the California Department of Education (CDE).

Five Acres will not enter into a contract prepared by a bidder. Federal regulations in *(2 CFR 200.319(a))*, prohibit sponsors from awarding a contract to any contractor that prepares or has a significant role in developing the contract and related bid documents; e.g., a price quote, Request for Proposal (RFP), Invitation for Bid (IFB), or bid specifications. After contract negotiations, the SFA (not the selected contractor) must incorporate all changes into the final contract.

### Request for Proposal

**Request for Proposal (RFP)**, also known as competitive proposals, is a method of procurement whereby Five Acres publicly solicits a technical proposal that explains how the prospective contractor will meet the objectives of the solicitation and includes a cost element that identifies the costs to accomplish the technical proposal. While price alone is not the sole basis for award, it remains the primary consideration when awarding a contract under the RFP method. Five Acres seeking proposals for contract management for the food service program from a **food service management company (FSMC)** will use the RFP method of procurement.

Five Acres will award the contract to the lowest bidder who best meets the Five Acres needs and stated objectives. Five Acres must retain all bidding documents for three years after the final contract payment and, in the event of an audit, three years beyond the final audit resolution.

Five Acres will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: Placing qualified small and minority businesses and women's business enterprises on solicitation lists; Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources; Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises; Establishing delivery schedules, where the requirement permits, which encourage

participation by small and minority businesses, and women's business enterprises; Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above (2, *CFR 200.321*).

The RFP is an important document for setting parameters and conditions for the resulting contract with a **food service management company**. Five Acres will adhere to their existing procurement plan to ensure a consistent procurement process. Preparing and issuing an RFP includes the following steps:

1. Evaluating which types of services are needed and preparing a Scope of Work (SOW) that describes the services and tasks or products requested
2. Drafting the RFP, which must include the SOW and a sample contract
3. Submitting the RFP to the CDE for review and approval prior to publishing (Five Acres should allow 90 days for the CDE to review and approve)
4. Providing the RFP to contractors known to offer the desired services or products
5. Publicly advertising the RFP
6. Establishing a date and time for opening proposals/bids
7. Evaluating the proposals
8. Submitting the negotiated contract and all bidding documents to the CDE for review and approval (allow 30 days)
9. Awarding the contract and publicly posting the outcome of the RFP

### **Clarification of Roles**

The formal bidding process will be conducted solely by Five Acres personnel without any input from current or potential FSMC personnel. The current structure is to have the Safety & Facilities Manager prepare the RFP documents and submit to the agency administration for approval. Once approved, the documents are to be submitted to the State for approval. All proposals are to be reviewed by the Safety & Facilities Manager as well as the administration. The administration has the final approval of the FSMC to be awarded the contract.

### **Procurement Training**

All Five Acres staff involved in the procurement process of an FSMC for the agency will be trained in the proper procedures to follow. Training will include the concept of open and free competition, the RFP process and timeline, the RFP documents and a thorough review of the Procurement Policy and Code of Conduct. The training will be conducted by the Safety & Facilities Manager.

### **Procurement History and Records**

As required by (2 *CFR 200.318(i)*), Five Acres and FSMCs must maintain records sufficient to detail the significant history of the procurement process. These records include, but are not limited to:

- Public notice
- RFP
- Contract
- Rationale for the method of procurement
- Selection of contract type
- Justification for lack of competition
- Basis for contractor selection or rejection
- Basis for award cost or price

### **Cost and Price Analysis**

Five Acres must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, Five Acres must make independent estimates before receiving bids or proposals (2 CFR 200.323(a)).

Five Acres entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work (2 CFR 200.323(b)).

Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles (2 CFR 200.323(c)).

The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used (2 CFR 200.323(d)).

### **Buy American Provision**

Five Acres participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. The Buy American provision defines a ‘domestic commodity or product’ as one that is either produced in the U.S. or is processed in the U.S. substantially (51% or more by weight or volume) using agricultural commodities that are produced in the U.S. as provided in (7 CFR 210.21(d)).

Five Acres participates in meal programs that require the use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A ‘domestic commodity or product’ is defined as one that is either produced in the U.S. or is processed in the U.S. substantially (51% or more by weight or volume) using agricultural commodities that are produced in the U.S. as provided in (7 CFR 210.21(d) and 7 CFR 220.16(d)).

The FSMC will document why a non-domestic food is being substituted for domestic foods. The documentation is intended to indicate if the alternative food is due to the cost of domestic is significant higher than non-domestic foods and/or the domestic foods is not produce or manufactured in sufficient and reasonable available quantities of a satisfactory quantity. The Respondent will provide documentation justifying their use of exceptions to the Buy American Provision.

The FSMC will provide certification of domestic origin for products which do not have country of origin labels. If the percentage is less than 51% then the Respondent will notify the SFA of the non-domesticity of the process end product.

### **Bid Process for Food Service Management Company Contracts**

FSMC contracts must be obtained through a competitive bidding process, using formal bidding procedures. Five Acres must submit all bid documents to the CDE’s Procurement Resources Unit (PRU) for approval prior to issuance (7 CFR 210.16(a)(7)).

Five Acres shall conduct all procurement transactions in a manner that provides maximum open and free competition. Five Acres must share with every Respondent all information necessary for submitting a competitive proposal. The release of this RFP, evaluation of Respondents, and award of a contract will

use competitive bidding standards established in all applicable California state and federal statutes and regulations.

Outlined below are competitive bidding basic standards:

1. The purpose of soliciting competitive proposals is to secure public objectives in the most effective manner and avoid the possibilities of graft, fraud, collusion, etc.
2. The SFA released this RFP to benefit the SFA and not the Respondents.
3. Fulfillment of RFP specifications is based on full and fair competition and acceptance by the SFA of the most responsive and responsible Respondent to the SFA's requirements, as determined by the SFA when evaluating proposals based on the criteria contained in the RFP.
4. The RFP must provide a basis for full and fair competition among Respondents to a common standard, free of restrictions that tend to stifle competition.

The above four points are for illustrative purposes only, and do not include all California state and federal requirements to achieve competitive bidding.

To respond to this RFP, interested FSMCs must present evidence of experience, ability, and financial standing necessary to meet the requirements stated in this RFP. Five Acres will measure this evidence by scoring the proposals, using a point system that will rank each proposal from highest to lowest, to determine which proposals they will consider for the award of a contract.

To be competitive in this solicitation, the Respondent must:

1. Carefully read the entire RFP, attachments, exhibits, addenda, and Five Acres responses to questions before submitting a proposal
2. Ask appropriate questions or request clarification before the deadline in the RFP
3. Submit all required responses by the required deadlines
4. Follow all instructions and requirements of the RFP thoroughly and appropriately

If a Respondent discovers any ambiguity, conflict, discrepancy, omission, or other errors in this RFP, the Respondent shall immediately notify Five Acres of the error in writing and request clarification or a modification of the RFP. If the Respondent fails to notify the SFA of the error prior to the date for submission of proposals, and is awarded the contract, the Respondent shall not be entitled to additional compensation or time by reason of the error or its later correction.

Proposals will be opened on or after the date and time specified in the Schedule of Events included in the RFP. During the evaluation process, Five Acres may ask Respondents to clarify information in the proposals, but Respondents may not change their proposals.

An error in the proposal may cause Five Acres to reject that proposal; however, Five Acres may, at its sole discretion, retain the proposal and make certain corrections. When determining if a correction will be made, Five Acres will consider the conformance of the proposal to the format and content required by the RFP and that the Respondent's intent is clearly established based on review of the whole proposal. Based on that established intent, Five Acres may choose to correct errors such as obvious grammatical or punctuation errors and arithmetic errors. The Master Copy of the proposal shall have priority over additional proposal copies.

Five Acres will open proposals to determine if they contain all the required information in accordance with the RFP. Five acres will evaluate qualifying proposals using the following criteria:

CRITERIA	MAXIMUM POINTS
Administrative Requirements: did the Respondent include all required information in accordance with the General Instructions and Proposal Requirements?	5 points maximum
Experience with School Breakfast and National School Lunch Programs.	20 points maximum
Based on the Proposal Questionnaire responses and the Cover Letter, the Respondent demonstrates a complete understanding of Five Acres' food service program and its service requirements, as described in the RFP and the Scope of Work and can perform those services to Five Acres' satisfaction.	20 points maximum
The financial stability of the Respondent.	15 points maximum
Corporate capability and experience as measured by performance record, years in the industry, relevant experience, number of SFAs served, client retention and satisfaction, and references.	15 points maximum
Cost	25 points maximum
<b>TOTAL POINTS</b>	<b>100 points maximum</b>

Five Acres will score and rank selected proposals by assigning a score between zero and the maximum score to each proposal criterion. Five Acres will recommend awarding the contract to the most responsive and responsible Respondent with the highest total proposal score.

**Contract Management**

Five Acres welcomes input on menu planning from all staff, clients and parents of clients. Staff are encouraged to submit their suggestions via our internal Five Acres website, to either the Wellness Committee or Team Five Acres, or directly to the Director of Facilities. Suggestions are vetted by an advisory board consisting of the Director of Facilities, the Chief Program Officer, the Head of School, as well as several rotating members of the Residential and School staff. Guardians of clients routinely provide input not only about their children's likes, but also requirements, the latter of which is strictly followed. (7 CFR 210.16(a)(8))

Five Acres' food service areas comply with all health inspection regulations through frequent, scheduled and surprise inspections and audits by Child Care Licensing, the LA County Health Department, and qualified Agency personnel. Valid LA County Health Department Public Health Permits are posted at the Agency's main campus. (7 CFR 210.16(a)(7)) and (7 CFR 210.16(a)(3)).

Bid documents can be sent to the PRU by e-mail to [SFContracts@cde.ca.gov](mailto:SFContracts@cde.ca.gov). The PRU may also be contacted by telephone at (800) 952-5609.

The Procurement Resources Unit (PRU) provides guidance to school food authorities (SFA) to ensure that all procurements for SFA food service programs comply with federal and California regulations and statutes. As codified in *Title 7, Code of Federal Regulations (CFR), sections 210(a)(9) and (10), 210.18(c), 210.19(a)(5), and Title 2, CFR, sections 200.106 and 200.324*, the U.S. Department of

Agriculture (USDA) tasked state agencies with the oversight and administration of the USDA School Nutrition Programs to ensure such compliance.