



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

MEMO CODE : SP 24-2009

DATE : April 16, 2009

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

TO: Regional Directors
Child Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

On March 9, 2009, FNS issued a memo (memo number SP18-2009) entitled “2009 Equipment Assistance Grants for School Food Authorities” stating 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). Subsequent memos have been issued on March 20, 2009 and April 8, 2009 addressing questions Regional Offices and State agencies have had regarding the use and availability of the ARRA equipment assistance grant funds, memo number SP20-2009 entitled “2009 Equipment Assistance Grants for School Food Authorities Questions and Answers,” and memo number SP23-2009 entitled “Additional 2009 Equipment Assistance Grants for School Food Authorities Questions and Answers,” respectively.

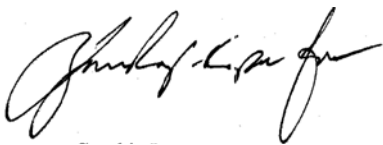
FNS has recently learned from several Regional Offices that, due to the release of the ARRA equipment assistance grant funds, many school food authorities (SFAs) and local schools are, understandably, being approached by vendors, manufacturers and sales representatives of food service equipment companies. Many of these companies are providing the SFAs and schools with marketing material of their products; however, some SFAs and local schools are interpreting these marketing materials as company and/or product endorsement from USDA. To be clear, USDA does **not** endorse any company or product, including companies offering food service equipment that may be purchased with the ARRA equipment assistance grant funds.

In addition, there has been some concern that the marketing materials or equipment specifications provided by the food service equipment companies may be used in the SFA’s solicitation document (i.e., request for proposal or invitation for bid) to purchase equipment with the ARRA equipment assistance grant funds. While SFAs may use *many* equipment specifications from *many* different companies as a reference in writing their

solicitation documentation, an SFA must not allow any company that plans to bid on the procurement, or its representatives, to write the specifications. SFAs must also refrain from inadvertently picking up specific equipment specifications found in a company's feature list as this will also exclude that company from competing as it restricts open and free competition and is prohibited. Using one company's 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. It is in the vital interest of an SFA and school to have the largest number of approved products from multiple manufacturers to secure the quality desired at the most competitive price.

As stated in 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. However, 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." [emphasis added]

State agencies with questions on this memo should contact their Regional Offices. Regional Office questions should be directed to Lynn Rodgers-Kuperman.



CYNTHIA LONG
Director
Child Nutrition Programs