



Food and Nutrition Service April 23, 2019

Mid-Atlantic Region

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Lourdes N. García Santiago, MBA, LND  
Acting Director, Food and Nutrition Services  
Department of Education  
Ave. Fernández Juncos, Parada 19½, Edificios 1311  
San Juan, PR 00919-0759

Dear Ms. García Santiago:

The purpose of this letter is to share our understanding of the Puerto Rico Government School Food Authority's (PR SFA) procurement process with Administración para el Desarrollo de Empresas Agropecuarias (ADEA) and to explain our expectations moving forward. As we discussed during our meeting on March 20, 2019, the Caribbean Area Office assisted your staff on the School Year 2017-18 procurement review of the PR SFA. During this review, we determined that the PR SFA's Memorandum of Understanding (MOU) with ADEA does not comply with Federal government-wide and National School Lunch Program (NSLP) procurement requirements, found in 2 CFR 200.318-.326 and 7 CFR 210.21, respectively.

The procurement of goods and services is a significant responsibility of a SFA Per 2 CFR 200.318-.326, SFAs must follow federal, state and local laws and regulations to competitively procure goods and services, award contracts, and oversee contractor performance. State agencies are required to ensure that SFAs comply with the applicable provisions through audits, administrative reviews, technical assistance, training guidance materials and by other means, as stated in 7 CFR 210.19(a)(3).

As the state agency with oversight responsibility for monitoring local level procurement, it is your office's responsibility to ensure the PR SFA's procurement process is in compliance. When noncompliance is found, your office must provide technical assistance and require corrective action, which can range from requiring training attendance, revision of procurement procedures, a contract amendment, or the SFA to rebid a contract. Furthermore, when there are serious or repeat violations of procurement requirements or unallowable costs, the appropriate action may be to require repayment of costs from the Local Education Agency's general fund to the nonprofit school food service account. Your agency's compliance with enforcing these requirements is monitored by our office during management evaluations.

As it pertains to the PR SFA's MOU with ADEA, listed below are some issues identified during the procurement review. We recognize that some of these issues may have been corrected since the review; however we are sharing them now to increase your awareness and ensure requirements are met going forward.

1. The PR SFA has not been allowed to participate in the bid solicitation and selection process to ensure Federal procurement requirements are met and that the bid meets the SFA's specifications. Per 7 CFR 210.21(c), SFA procurements

made with nonprofit school food service account funds must meet Federal requirements. In addition, the PR SFA must ensure its specifications meet the requirements of 2 CFR 200.319(c)(1).

2. The invitation for bid (IFB) notices were not made public and bidders were not provided sufficient time to respond. Per 2 CFR 200.320(c)(2)(i), when procuring by sealed bids, bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, and for local governments, the invitation for bids must be publicly advertised.
3. The IFB does not establish the requirement for the contract to be awarded to the lowest responsive and responsible bidder. Per 2 CFR 200.320(c)(2)(iv), a firm fixed price contract award must be made in writing to the lowest responsive and responsible bidder.
4. ADEA does not allow produce farmers to bid their own prices but instead ADEA sets the prices for the produce farmers. Per 2 CFR 200.319(a), all procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section.
5. ADEA charges a fee to the PR SFA for transportation and staffing based on a percentage of total cost, but the fee is not clearly stated in the MOU. The MOU must include that ADEA will provide to the PR SFA information on the basis of the fees so that the PR SFA can ensure that the fees are reasonable and allocable, as required under 2 CFR 200.404-.405.
6. The IFB is missing required regulatory provisions, as found in 2 CFR 200.326 (Appendix II) and 7 CFR 210.21.
7. Some products provided to the PR SFA do not meet the Buy Puerto Rican requirement and there is no documentation on file at the PR SFA justifying an exception. Per the National School Lunch Act, SFAs in Puerto Rico must purchase commodities or food products produced in Puerto Rico, unless the SFA determines that there is not a sufficient quantity of the product to meet their needs, the product is not available in PR, or the cost of the PR product is significantly higher than the non-Puerto Rican product. In these cases, SFAs can purchase from outside of PR but must be able to produce documentation supporting that decision.

We understand that the PR SFA has recently renewed its MOU with ADEA, with the option to extend for up to two additional years through September 30, 2021. However, the PR SFA must take steps to move into compliance. To do so, there are two options the PR SFA can consider to ensure its procurement meets Federal and program requirements:

1. The PR SFA issues its own solicitation that meets all Federal government-wide and NSLP procurement requirements. ADEA can bid on that solicitation to be one source of prices considered by the PR SFA. The PR SFA must ensure the process meets the requirements of 2 CFR 200.319 to maximize competition. In this option, ADEA would not have to follow Federal procurement requirements to determine the prices it wants to bid.

2. The PR SFA enters into an inter-agency agreement with ADEA. Per SP 05-2017, “*Q&A: Purchasing Goods and Services Using Cooperative Agreements, Agents, and Third Party Services,*” the agreement would require ADEA to follow Federal government-wide and NSLP procurement procedures and to only apply state procurement procedures when they are not in conflict with Federal requirements. Furthermore, the agreement would clearly specify any fees charged by ADEA to cover transportation, storage, administrative and related costs as applicable. The agreement should provide that the PR SFA may review and provide input on product specifications and related issues with regard to the resulting IFB, and be named as a party to the IFB/contract, as a purchaser.

Under either option, our expectation is that your office will ensure that the PR SFA is correctly implementing this guidance. In the first option, this could include having your office review the solicitation prior to issuance and then validating the contract was correctly awarded. In the second option, this would include reviewing the inter-agency agreement prior to signing.

We recognize the complexity of this issue and are prepared to provide guidance and technical assistance as you work with the PR SFA to decide how to move forward. Please review this information with all necessary parties and provide a response by **June 19, 2019**.

Should you have any questions or concerns in the meantime, please contact me at (609) 259-5021.

Sincerely,



Roberta Hodsdon  
Division Director  
Special Nutrition Programs