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Dr. Norbert Kennerknecht  
Director of Buildings and Grounds  
Warren County School District  
185 Hospital Drive  
Warren, PA 16365

RE: Food Service Bids

Dear Dr. Kennerknecht:

I write in follow-up to our meeting last week, during which you informed me that, after opening the bids, you determined that Nutrition Group had not complied with the bid specifications. Specifically, you noted that:

1. Page 1 of the RFP states that the RFP may not be "changed in any way" by a bidder. However, Nutrition Group modified an expense sheet that was a part of the RFP by adding an expense entitled "FSMC Management Labor."
2. The same expense sheet required certain expenses "to be included in a budget summary and itemized in full detail." Nutrition Group failed to itemize these expenses in detail as was required by the RFP.

You also informed me that this was the second time that Nutrition Group failed to comply with the bid specifications. The first time that Nutrition Group failed to comply with the bid specifications, you re-bid at the recommendation of PDE and because there was adequate time to re-bid. However, given the time frames associated with awarding the contract, obtaining PDE approval of the contract, and getting the contract executed, you feel that there is no time to again re-bid.

Last, you informed me that Aramark had complied with the bid specifications in all regards on both occasions and that, in the past, you have always strictly enforced the bid specifications and rejected any bids that did not strictly adhere to the bid specifications.

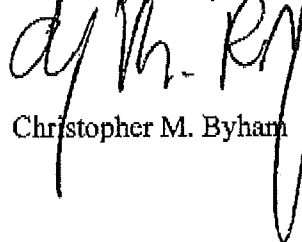
Pennsylvania courts have repeatedly held as follows:

1. The specifications set forth in bidding documents are mandatory and must be strictly followed for the bid to be valid. R. & B. Builders, Inc. v. School District of Philadelphia, 415 Pa. 50, 52, 202 A.2d 82, 83 (1964); Harris v. City of Philadelphia, 283 Pa. 496, 503, 129 A. 460, 462 (1925); Kimmel, 159 Pa. Commw. at 482, 633 A.2d at 1274-75.
2. An award of a contract in a competitive bidding process must be overturned if the mandatory requirements in the bid instructions are not strictly followed. Smith v. Borough of East Stroudsburg, 694 A.2d 19, 23 (Pa. Commw. Ct. 1997).
3. The School District had no discretion to waive defects even if they were mere "technicalities." Kimmel v. Lower Paxton Twp., 159 Pa. Commw. 475, 481, 633 A.2d 1271, 1274 (1993)
4. It is well-settled that a defective bid cannot be remedied once the bids have been opened. Kimmel, 159 Pa. Commw. at 484, 633 A.2d at 1275; City of Philadelphia v. Canteen Co., Div. of TW Services, Inc., 135 Pa. Commw. 575, 583, 581 A.2d 1009, 1013 (1990); Nielson v. Womer, 46 Pa. Commw. 283, 286, 406 A.2d 1169, 1171 (1979).

Based on the above principles of law; the District's past practice of strictly enforcing bid specifications and rejecting any bids that did not comply with the bid specifications; and the provision in the RFP which reads, "The SFA reserves the right to reject any or all bids, if deemed in the best interest of the SFA," my advise is as follows. The District should reject Nutrition Group's bid because Nutrition Group did not comply with the mandatory bid specifications. The District can then either (i) award the contract to Aramark as the remaining bidder (so long as the Committee feels that Aramark is a responsible bidder) or (ii) reject all bids and re-bid (I will leave it up to your discretion as to whether time permits another re-bid at this point).

I hope that this letter adequately addresses your questions, and please feel free to contact me with any additional questions that you may have.

Very truly yours,



Christopher M. Byham

CMB/sdn

c: Dr. Robert Terrill  
Kimberly Angove  
Petter Turnquist