



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

DATE: February 12, 2013

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SUBJECT: Guidance Reaffirming the Requirement that State agencies and School Food Authorities Periodically Review Food Service Management Company Cost Reimbursable Contracts and Contracts Associated with USDA Foods

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The purpose of this memorandum is to call attention to previously published memoranda providing clarification on the requirement to oversee and monitor school food authority (SFA) contracts with Food Service Management Companies (FSMC) and to ensure ongoing technical assistance and training provided by State agencies includes this information.

In 2011, the U.S. Senate Committee on Homeland Security and Governmental Affairs Subcommittee on Contracting Oversight requested the Secretary of Agriculture conduct an audit titled, *National School Lunch Program-Food Service Management Company Contracts* (the Audit). The goal of the Audit was to identify potential issues concerning Food and Nutrition Service (FNS) controls over State agencies and SFAs that contract with FSMCs.

The Department of Agriculture (USDA) Office of Inspector General (OIG) completed the Audit and identified findings related to Program regulations at 7 CFR Part 210.19(a), 210.21(b), 210.21(f), 250.16(a), 250.51(b), 250.54(a), and 3016.36 regarding the crediting of discounts, rebates, and applicable credits and accounting for the value of USDA Foods to the nonprofit food service account. Guidance issued by the Child Nutrition Division (CND) and Food Distribution Division (FDD), designated below, clarifies the requirements of State agencies to periodically review FSMC supporting documentation for all rebate credits received and ensure the value of USDA Foods provided to FSMCs are properly accounted for and credited to the SFA on the FSMC invoice. The following policy memoranda are available on the FNS website <http://www.fns.usda.gov>:

- FD-080: *Revised, Guidance in Crediting for, and Use of, Donated Foods in Contracts with Food Service Management Companies*, dated January 25, 2011;

- FD-089: *Clarification of State Agency Review Requirements for Donated Foods in the National School Lunch Program and Other Child Nutrition Programs*, dated May 21, 2009;
- FD-110: *Revised: Clarification in Crediting for, and Use of, Donated Foods in Contracts with Food Service Management Companies-First and Final Contract Years*, dated January 25, 2011;
- SP 07-2009: *Reminder: Procurement Requirements for the National School Lunch, School Breakfast and Special Milk Programs*, dated January 9, 2009;
- SP-08-2009: *Procurement Questions*, dated January 9, 2009;
- SP 28-2009: *Procurement Questions*, dated July 22, 2009;
- SP 44-2009: *Guidance in Crediting for, and Use of, Donated Foods in Contracts with Food Service Management Companies*, dated September 24, 2009;
- SP 01-2011: *Reaffirming the Requirement that School Food Authorities Comply with Federal Regulations Affecting Rebates, Discounts, and Other Applicable Credits in All Cost Reimbursable Contracts*, dated April 5, 2011; and
- SP 05-2011: *Further Clarification in Crediting for, and Use of, Donated Foods in Contracts with Food Service Management Companies*, dated October 22, 2010.

Program regulations at 7 CFR Part 250.51(b), in cost-reimbursable contracts, FSMCs may credit the value of USDA Foods by disclosing, in its billing for food costs submitted to SFAs, the savings resulting from the receipt of USDA Foods for the billing period. In their SFA-FSMC contracts, SFAs must require documentation to allow the SFA to identify allowable and unallowable costs, and reconcile the amount of all rebate credits and the value of USDA Foods received on invoices presented for payment to the SFA 7 CFR Part 210.21(f)(1)(i) and 250.51(b). Likewise, per 7 CFR Part 210.19(a)(6), State agencies must annually review each contract (including all supporting documentation) to ensure compliance with all provisions and standards before execution of the contract. In addition, State agencies must include a periodic review of SFAs' and FSMCs' compliance with all Program requirements as part of the State agency local administrative review process.

Therefore, FNS strongly encourages State agencies to review and re-issue the guidance to SFAs contracting with FSMCs in their state, and evaluate the technical assistance and training programs the State agency provides to SFAs in the areas of overseeing and monitoring FSMC contracts to ensure training programs include this information. Also, while 7 CFR Parts

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250.51(b) and 210.21(f)(1)(iv) allows FSMCs to identify and report credits on a less frequent basis than annually, FNS strongly encourages State agencies and SFAs to incorporate in their contracts with FSMCs a monthly reporting requirement for rebate credits and USDA Food values and monitor reporting for such. According to the Audit, SFAs who monitor the reporting on a monthly basis receive the highest value of rebates and USDA Food credits.

In addition, staff with procurement responsibilities must be properly trained. FNS urges State agencies to ensure staff with responsibilities in this area take the web-based procurement training, USDA State Agency Guidance to Procurement Topics 1 and 2 – available at the following address: <http://nfsmi.org/Templates/TemplateDefault.aspx?qs=cEIEPTIzOA> . In addition, any SFA staff tasked with procurement issues, wholly or in part, should be strongly encouraged by State agencies to complete all relevant training to ensure program integrity. Upon completion of the training, State agency and SFA staff are encouraged to establish a training schedule to ensure staff periodically refresh their procurement knowledge.

FNS is developing a new module for its existing web-based procurement training tool to incorporate procedures, examples, and best practices that will assist State agencies and SFAs in providing better oversight of FSMC contracts. We expect this module to be available by the fourth quarter of fiscal year 2013. In addition, FNS will soon be providing guidance describing best practices for FSMC contract monitoring. This guidance will be issued along with a letter to State agencies discussing FNS' plans to address the recommendations in the Audit.

FNS stands ready to work with State agencies in their efforts to support effective FSMC contract oversight and monitoring. State agencies are reminded to distribute this information to Program operators immediately. Program operators should direct any questions regarding this memorandum to the appropriate State agency. State agencies should direct questions to the appropriate FNS Regional Office.

Sincerely,

Original Signed

Cynthia Long
Director
Child Nutrition Division