

March 2, 2004

SUBJECT: Summer Food Service Program (SFSP) Policy Memo #1-04 — Contract Requirements for School Sponsors

Regional Directors
Child Nutrition Programs
All Regions

We have been asked to clarify SFSP requirements for school food authorities (SFAs) in year-round contracts with food service management companies (FSMCs), specifically whether SFSP meals may be included in a contract that was competitively procured on cost-plus-fixed fee basis.

SFSP regulatory provisions, codified in 1981, exempt SFAs in exclusive year-round contracts from the following SFSP contracting requirements:

- The requirement to use the standard contract developed by the State agency (§225.6(h)); and
- Competitive bidding procedures (§225.15(h)(4)).

Based on these regulatory provisions, the current SFSP policy for SFAs in exclusive year-round contracts with FSMCs may be summarized in the following points:

1. SFAs in exclusive year-round contracts with FSMCs are not required to use separate competitive bidding procedures in procuring SFSP meals, provided all SFSP-related requirements are included in the procurement document, i.e., either an Invitation for Bid (IFB) or a Request for Proposal (RFP), before the contract is awarded.

This policy recognizes that SFAs have already utilized competitive procurement procedures in obtaining the FSMC's services for the National School Lunch Program (NSLP) and enables SFAs to realize administrative savings through their year-round contractual arrangements.

2. If the SFA decides to participate in the SFSP after the contract has been awarded, the SFSP meals must be procured separately through competitive sealed bids as outlined in § 225.15(h)(4)(i)-(xii).

These requirements may be waived, however, if there is not enough time to complete the procurement process before the start of the SFSP and the resulting delay in beginning program operations would deny meal services to children. In this situation, as we have stated in previous guidance, the SFA may be permitted to amend the contract to add SFSP meals for the current year only. The contract for NSLP and SFSP meals services must then be rebid for the next year. Similarly, if a State agency has determined that a year-round contract does not meet SFSP requirements, the contract must be rebid in the following year.

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

3. Year-round contracts that include the SFSP may be awarded on a cost-plus-fixed-fee basis, which is an allowable financial arrangement for NSLP meals during the school year. It should be noted that the SFA could require a fixed-price contract instead of a cost-type contract for year-round services.

4. The contract should clearly specify what tasks must be performed for NSLP meal services compared to SFSP meals. It is critical that companies responding to a competitive procurement for exclusive year-round management of the school's food service understand that there are regulatory differences between the NSLP and the SFSP in allowable management functions. Section 225.1 5(a)(3) of the SFSP regulations prohibits sponsors from contracting out the management responsibilities of the program, including but not limited to:

- Ordering meals for sites
- Maintaining program records
- Submitting claims for reimbursement
- Training and monitoring sites
- Determining eligibility for free or reduced price meals (in order to establish site eligibility)

5. In specifying services to be provided by the FSMC, the SFA should consider the differences between the NSLP and SFSP in allowable management functions, number of meals, number of sites, reimbursement rates, and rate structures. Through careful analysis of these factors, the SFA can better determine contract specifications that will deliver the maximum benefits to the children participating in both programs. Because of the differences between the programs, we recommend but do not require that SFAs use separate cost structure for the SFSP meals in their procurement and contract documents.

Original Signed

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