



United States
Department of
Agriculture

Food and
Nutrition
Service

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DATE: April 19, 2013

MEMO CODE: SP 35-2013

SUBJECT: State Agency Oversight and Monitoring of School Food Authority
Contracts with Food Service Management Companies

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The purpose of this memorandum is to emphasize the importance of the State agency and school food authority (SFA) oversight and monitoring of contracts with food service management companies (FSMC) and to provide guidance for these activities.

The U.S. Department of Agriculture Office of the Inspector General (OIG) recently conducted an audit entitled, "National School Lunch Program-Food Service Management Company Contracts," at the request of U.S. Senate Committee on Homeland Security and Governmental Affairs Subcommittee on Contracting Oversight. Specifically, the audit assessed the effectiveness of Federal and state oversight and monitoring of SFA contracts with FSMCs and whether SFAs are receiving the full benefits of purchase discounts and rebates, and the value of USDA foods. In short, the audit found that Federal funds may be at risk due to difficulty experienced by SFAs in enforcing contractual terms and regulatory requirements.

State agencies are responsible for ensuring that SFAs with FSMC contracts structure and manage such contracts, as required by Federal law. As underscored by the recent audit findings, it is critical to make certain that these contracts include the provision, required by 7 CFR Part 210.21(f)(1)(i), that all purchase discounts and rebates be returned to the SFAs' nonprofit school food service account and the appropriate records necessary to ensure compliance are maintained.

Monitoring and oversight of SFA contracts throughout the school year are also essential to ensure SFAs receive the full value of purchase discounts and rebates and are in compliance with Federal law. Failure by a State agency and SFA to undertake necessary oversight and monitoring measures puts Federal funds at risk for both affected SFAs and the State agency. SFAs potentially would not receive the full value of purchase discounts and rebates and FNS could withhold funds from State agencies for failing to enforce these requirements.

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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.

States should evaluate the extent to which issues related to FSMC cost-reimbursable contracts and credit for USDA foods are present among their SFAs and take appropriate action to remedy those issues. As part of FNS' plan to address the recommendations in the OIG audit and assist State agencies, FNS will:

- Collaborate with State partners to develop appropriate guidance and tools for States to assess SFA-FSMC compliance with all NSLP requirements.
- Add a new module to 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 4th quarter of FY 2013.
- Work with relevant State agencies to take appropriate action in the cases identified in the audit.

Attached to this letter, we have provided a brief list of best practices for FSMC contract management. This information provides a training and technical support framework for State agency and SFA oversight of FSMC contracts. In addition, FNS strongly recommends State agencies evaluate the technical assistance and training programs they provide to SFAs in the area of FSMC contract monitoring, incorporate this information in their training efforts, and share these practices with SFAs engaged in FSMC contracts.

In addition to the actions describe above, FNS urges State agencies to ensure that 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=cELEPTIzOA> . 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 review the training periodically.

FNS stands ready to work with State agencies in their efforts to support effective FSMC contract management. As part of its continuing efforts to ensure effective oversight, FNS is contacting Attorneys General in each State to encourage them to collaborate with State Child Nutrition agencies concerning these issues as appropriate. In addition, FNS will soon begin a process of consultation with key program partners and stakeholders to identify challenges and opportunities for oversight improvement. We greatly appreciate your support with our efforts to ensure that Federal funds provided to serve nutritious meals to children are fully available for this purpose.

Regional Directors
State Directors
Page 3

State agencies should direct any questions concerning this memorandum to the appropriate FNS Regional Office. Regional Offices with questions should contact the Child Nutrition Division.

Sincerely,

Original Signed

Melissa A. Rothstein
Acting Director
Child Nutrition Division

Attachment