



March 27, 2013

United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

TO: Office of the State Attorney General

ATTN:

FROM: Kevin Concannon, Under Secretary for Food, Nutrition and Consumer Services

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

The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA) administers the National School Lunch Program (NSLP) and other child and adult nutrition programs. FNS provides funding to State agencies to reimburse school districts for the NSLP meals they serve to more than thirty-one million children every day. In an effort to strengthen program integrity, FNS is requesting the assistance of State Attorneys General to ensure these Federal funds are used responsibly and for their intended purpose.

The USDA Office of the Inspector General 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 school districts' school food authority (SFA) contracts with food service management companies (FSMC) and whether SFAs are receiving the full benefits of purchase discounts and rebates received by FSMCs on their behalf. 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 in this area. As you may know, in 2010, a major FSMC entered into a significant settlement agreement with the State of New York as the result of an investigation by the State Attorney General into the FSMC's contracting relationships with schools districts.

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 is 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

AN EQUAL OPPOR

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Office of the State Attorney General
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and rebates and FNS could withhold funds from State agencies for failing to enforce these requirements.

As part of its continuing efforts to ensure effective oversight, we are requesting that the offices of State Attorneys General work with our State agency partners to determine what role their office can play in State investigations. We believe such cooperation at the state level would ensure that SFAs which contract with FSMCs adhere to contractual requirements and receive the full benefit of the Federal funds provided for operating school meals programs. 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. Please have your staff contact the Child Nutrition Division, FNS at 703-305-2590, if you have any questions about this request.

Sincerely,

Original Signed

Kevin Concannon
Under Secretary for Food, Nutrition and Consumer Services
United States Department of Agriculture

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BEST PRACTICES

Introduction

Federal regulations require School Food Authorities (SFAs) that have cost reimbursable contracts with Food Service Management Companies (FSMCs) receive the full value of any discounts, rebates and applicable credits (credits) that accrue as a result of purchases made by FSMCs for the SFA.

These regulations for cost reimbursable contracts are in place to make the identification of credits more transparent to SFAs and to maximize Federal funds for the service of healthy and nutritious meals to students through the School Meal Programs. These best practices are intended to assist SFAs with meeting this requirement.

A RESOURCE FOR SCHOOL FOOD AUTHORITIES

*Monitoring Cost
Reimbursable
Contracts for
Rebates, Discounts,
and Applicable
Credits*

Executing the Contract

An important first step in complying with these requirements is to ensure that your contracts include all necessary provisions. **Cost reimbursable contracts** must include the following provisions [7 CFR Part 210.21 (f)(1)(i),(iv),(v),(vi)]:

- ✚ The mandatory return of all credits to the SFA's nonprofit food service account.
- ✚ The frequency and the method FSMCs will use for reporting credits on invoices and billing statements (e.g., monthly, quarterly, annually).
- ✚ All credits must be clearly identified on billing statements and invoices submitted by FSMCs to the SFA.
- ✚ All records of credits must be maintained by FSMCs, and made available to SFAs and State agencies upon request.
- ✚ The reporting of credits by FSMCs is required no less frequently than annually; however, State agencies may approve more frequent reporting. FNS encourages monthly reporting to facilitate SFA monitoring of the credits.

Helpful Tip

SFAs must obtain documentation from the FSMC to allow for the identification of allowable and unallowable costs, and reconciliation of all rebates, discounts and applicable credits.

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Monitoring the Contract

The SFA's responsibilities do not end when the contract is signed. Monitoring the contract throughout the year is essential to ensure the SFA receives the full value of credits and is in compliance with Federal regulations. Monitoring activities may include the following best practices:

- ✚ Begin the process of monitoring the contract immediately by identifying the person or persons within the SFA who will be responsible for oversight.
- ✚ Designate the position that will monitor the credits (e.g., school food service director, school business or procurement official or other SFA-designated employee).
- ✚ Examine the invoices and other documentation provided by the FSMC as agreed to in the contract. Remember, it is important to maintain this documentation as support for credits and for review by the State agency.
- ✚ Determine the percentage of credits reported in relation to the value of food purchased early in the contract year as a benchmark for future comparison.
- ✚ Calculate the average credit-purchase proportion received (see example on the left). The industry average is between 10 to 15 percent.
- ✚ Examine products to ensure that to the maximum extent practicable, domestic commodities are purchased. Visit storage facilities (freezers, refrigerators, and dry storage) to observe the origin of purchased food printed on food labels and case units.

Helpful Tip

Credit-Purchase Proportion equals

Value of Credit Reported
divided by
Value of Purchased Food

$$CPP = VCR \div VPF$$

Additional Resources

Policy Memorandum SP-23-2013

USDA State Agency Guidance to
Procurement Web-Based
training:

<http://nfsmi.org/Templates/TemplateDefault.aspx?qs=cEIEPTIzOA>

Contact your State agency for
additional assistance and
support.

Questioning Discrepancies

If you notice potential discrepancies during monitoring activities, follow up with the FSMC to resolve the issues. If necessary, request additional documentation from the FSMC to substantiate these discrepancies. Potential discrepancies to consider may include:

- ✚ Frequency of reporting that does not agree with contract provision.
- ✚ Labels identifying countries other than the U.S. may serve as a red flag that the FSMC is not complying with contractual provisions regarding "Buy American", possibly resulting in lower credits.
- ✚ Credit-purchase proportions that fall below the average credit-purchase proportion established early in the year.

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United States
Department of
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Food and
Nutrition
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3101 Park
Center Drive
Alexandria, VA
22302-1500

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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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?q=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 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.

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Regional Directors
State Directors
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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

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