



United States
Department of
Agriculture

Food and
Nutrition
Service

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SUBJECT: Allowability of Procurement Fees in School Food Authority (SFA)
Contracts

TO: State Directors
Child Nutrition Programs
All States

Regional Directors
Special Nutrition Programs
All Regions

We have received a number of inquiries recently regarding the allowability of procurement fees in School Meal Program contracts. Many of the questions resulted from publication of the final procurement rule in October 2007, and involve the interaction of procurement fees with discounts, rebates, and applicable credits. This memorandum is intended to provide clarification of what is allowable, for contracts executed both prior to and after publication of the final rule.

For contracts executed after the November 30, 2007, effective date of the final rule, discounts, rebates and applicable credits must be returned to the SFA's nonprofit school food service account. Therefore, any fee (including a procurement fee) that is directly tied to the amount of discounts, rebates, and applicable credits to be returned to the SFA is an unallowable nonprofit school food service account cost, as it undermines the intent of the new regulation. A fee structured in this way is clearly intended to return some or all of the discounts, rebates, and applicable credits to the company with whom the SFA has contracted for services rather than to ensure that they accrue to the nonprofit school food service account. This is true whether the fee is set forth in the solicitation/contract or not.

SFAs may, however, develop solicitations in a way that allows for management and/or administrative fees that include fees for procurement services. The procurement fee could be a separate fee or part of another contract fee, as long as it remains fixed.

For contracts that pre-date the effective date of the final procurement regulation, procurement fees are allowable, even if they are tied directly to the amount of discounts, rebates, and applicable credits to be returned to an SFA, as long as they were properly considered in the solicitation document.

Guidance documents lack the force and effect of law, unless expressly authorized by statute or incorporated into a contract. USDA may not cite, use, or rely on any guidance that is not available through their guidance portal, except to establish historical facts.

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State agencies that have questions may contact your regional office. Regions may contact Lynn Rodgers-Kuperman.

Original Signed

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Director
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