



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

DATE: February 24, 2012

MEMO CODE: SP 19-2012

SUBJECT: Soliciting Bids from Commercial Distributors for End Products

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The attached memorandum, FD-119, provides clarification for the option to combine the solicitation of procurement of end products and commercial food products. Some school food authorities (SFA) may solicit bids for procurement of end products in their solicitation for procurement of commercial food products from commercial distributors, rather than conducting two separate solicitations. The memorandum also clarifies the requirements, and the parties responsible for ensuring compliance with requirements, in exercising this option. As in the past, please share this information with your SFAs.

Original Signed

Cynthia Long
Director
Child Nutrition Division

Attachment



Food Distribution National Policy Memorandum

United States
Department of
Agriculture

Food and
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Service

3101 Park
Center Drive

Alexandria, VA
22302-1500

DATE: FEB 13 2012

POLICY NO.: FD-119: Processing

SUBJECT: Soliciting Bids from Commercial Distributors for End Products

The procurement of goods and services in the National School Lunch Program (NSLP) must be conducted in a manner that ensures free and open competition, in accordance with Federal regulations under 7 CFR Part 3016 or 7 CFR Part 3019, as applicable, and must also comply with procurement requirements in 7 CFR 210.21. This is true for procurement of both commercial food products and end products produced through the further processing of USDA donated foods (hereinafter referred to as "end products"). In most cases, school food authorities (SFAs) solicit bids for procurement of commercial food products from commercial distributors and, in a separate solicitation, solicit bids for procurement of end products from processors, even when identical food products are sold commercially through distributors. In this policy memorandum, we clarify that the SFA may, in some cases, include bids for procurement of end products in its solicitation for procurement of commercial food products from commercial distributors, rather than conduct two separate solicitations. This policy memorandum also clarifies the requirements, and the parties responsible for ensuring compliance with requirements, in exercising such option. Although the memorandum focuses on SFA procurements in NSLP, it is also applicable to procurements conducted by recipient agencies in other child nutrition programs.

Requirements for Solicitation

In instances where the services of a processor have already been procured by a commercial distributor, in accordance with Federal procurement requirements, the SFA may solicit bids from that commercial distributor to procure both commercial food products and end products, as long as the solicitation and resulting contract clearly address the specific requirements relating to end products. In the solicitation, the SFA must provide for the following:

- 1) End products must be obtained from a processor that has a State processing agreement (or State participation agreement, as appropriate) with the State distributing agency (SDA);
- 2) Only end products with approved end product data schedules, and that meet substitution and grading requirements in 7 CFR 250.30, may be provided;
- 3) The SFA must receive credit for the value of the donated foods contained in the end products, either through a discount from the gross case price, or a refund or rebate after the sale of the end product;

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.

- 4) The distributor must collaborate with the processor to ensure that the SFA is an eligible recipient of end products and to ascertain the quantity of end products, or the value of donated food, for which the SFA is eligible.
- 5) The distributor must provide notification to the processor of end product sales so that the appropriate inventory draw-down may occur.

Coordination between the SFA and SDA

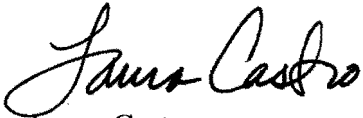
The SFA must coordinate with the SDA to ensure that processors providing food products to its commercial distributor have a State processing or participation agreement with the SDA. Multi-State processors must also have a National Processing Agreement with FNS. The SFA may only order donated foods for delivery to processors that have such agreements in place. The SFA must also verify with the SDA the types of approved end products, the quantity of end products that it is eligible to receive, and the value of donated foods contained in the end products. The SDA must ensure that the SFA is aware of any restrictions in the State processing or participation agreement relating to approved end products or methods of end product sales, or other provisions. Such restrictions must be included in the SFA's solicitation for the services of a commercial distributor.

Coordination between the Distributor and Processor

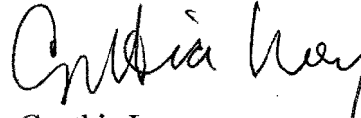
The distributor and processor should collaborate closely to ensure that processed end products are provided only to SFAs eligible to receive them. In many cases, end products will be identical to commercial products—i.e., the commercial products meet substitution requirements in 7 CFR 250.30(f) and grading requirements in 7 CFR 250.30(g) for the processing of donated foods. In such cases, the distributor may commingle commercial food products and end products at its facility, and sell such commingled food products to any of its customers. Sales of such food products to the SFA must ensure provision of credit for the value of donated foods for the quantity of end products that the SFA is eligible to receive. However, for end products produced from non-substitutable donated foods (i.e., beef and pork), the distributor must ensure that only the SFA receives such end products.

The distributor must notify the processor of its sales of end products to the SFA in a timely manner, so that the processor may report such sales and reductions of donated food inventories to the SDA in its monthly performance reports. Such notification may be provided by electronic means—e.g., through sales velocity reports or other automated sales reports.

Further guidance on coordination between the processor and distributor in the distributor's sales of end products to SFAs or other recipient agencies may be found in Policy Memorandum FD-007.



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Food Distribution Division



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