Reply to attn of: NT 6 January 16, 2001

Subject: FY 01 School and Community Nutrition Policy Memorandum #01-05

Food Service Management Company Procurement Responsibilities

State Directors

Child Nutrition Programs

We have been asked to clarify whether Food Service Management Companies (FSMCs) are obliged to follow the Federal procurement rules that are used by School Food Authorities (SFAs). In other words, when an SFA hires an FSMC, can the FSMC limit its suppliers to a certain group with which it has an ongoing business relationship, or must it use Federal procurement procedures which provide for maximum free and open competition?

The answer is that Food Service Management Companies that have cost-based contracts with School Food Authorities must follow the Federal procurement rules. If competitive sealed bids or competitive negotiations were used to establish a cost-based contract, the FSMC cannot limit its suppliers to a certain group. This would limit free and open competition. If small purchase procedures were used, quotes need to be obtained from an adequate number of qualified sources.

The basic reason for applying the Federal procurement rules to FSMCs that have cost-based contracts with SFAs is that Program costs must still be controlled, even though the SFA has hired an FSMC to run its food service program. Part 210.21(a) says, with regard to the SFA’s procurement of supplies, food, equipment and other services, “These requirements ensure that such materials and services are obtained for the Program efficiently and economically.” In addition, Part 210.16(a)(2) emphasizes that an SFA that has contracted with an FSMC must still “ensure that the food service operation is in conformance with the school food authority’s agreement under the Program.”

The June 1995 Guidance for School Food Authorities, “Contracting with Food Service Management Companies,” recognizes this obligation on page 3-10, where it recommends, “In the case of cost-reimbursable contracts, the SFA should include a provision requiring a FSMC to demonstrate that the prices it is charging the SFA for food, supplies, etc. are reasonable and necessary.”

If the contract between the School Food Authority and the Food Service Management Company is not cost-based, but instead uses a flat fee or per-meal rate, then all of the charges by the FSMC to the SFA have been properly procured. In such a situation it is not necessary to control the charges between the FSMC and its suppliers by obliging the FSMC to follow Federal procurement procedures when obtaining goods and services.

Of course, the School Food Authority must have followed the Federal procurement rules when contracting with the Food Service Management Company. All the costs of the FSMC to the SFA are subject to the Federal procurement rules.

If you have any questions, you may contact Mary Jane Getlinger at (312) 886-5519.



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