



**United States
Department of
Agriculture**

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

SUBJECT: Food Service Management Company Contracts – Renewal and
Rebidding

TO: Regional Directors
Child Nutrition Programs

We have received a inquiry from a food service management company (FSMC) representative concerning our memo, dated July 9, 2004, “Reaffirming FNS’ Position on Rebates, Discounts, and Other Applicable Credits in Cost Reimbursable Contracts”. The FSMC requested confirmation that: “(1) states and SFAs are not required under federal law to include contractual language regarding rebates, discounts, and other applicable credits, (2) but that if they choose to do so, they may include such provisions in their contacts with food service management companies, and (3) if states or SFAs decide to include such provisions in their contracts, it would be lawful as a matter of USDA/FNS regulation and policy for them to do so upon the next RFO cycle, rather than seek to impose such new provisions in mid-cycle contract renewals or through the issuance of an unscheduled new RFP.”

We previously addressed (1) and (2) in memoranda, copies attached, dated July 9, 2004, “Reaffirming FNS’ Position on Rebates, Discounts, and Other Applicable Credits in Cost Reimbursable Contracts” and May 20, 2003, “Applicability of Federal Requirements to School Food Service Procurements”. In response to the item (3), we provided the FSMC representative with the following response:

“The National School Lunch Program regulations (7 Code of Federal Regulations Part 210) at §210.16(d) limits the duration of contracts between a SFA and a FSMC to one year, with options for yearly renewals, not to exceed 4 additional years. The option to renew does not create a multi-year contract between the SFA and the FSMC because each renewal results in a separate one-year contract. Since the decision to renew the contract is an affirmative decision that is made by both parties to the contract each year, either party, for any reason, may decide not to exercise the renewal option. An SFA that opts not to renew its FSMC contract must either conduct a new procurement or self-operate its food service.

As long as the SFA has conducted a proper procurement and both parties have met their obligations under the terms of the contract, the renewal option is generally exercised, except where prohibited by applicable law or regulations. Should either party determine revisions to the contract are needed, non-material changes are generally made when the contract is renewed. Usually, an SFA will incorporate changes resulting from its experience under the current contract and FNS and State agency guidance, recommendations and policy changes in its next invitation for bid/request for proposal. Neither party may

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make or impose material changes to an existing contract during the contract year or as part of the annual contract renewal process. All material changes require rebidding.

Because the annual renewal provision is an option and not a guarantee or obligation of either party, FNS cannot require or recommend that an SFA exercise the renewal option in lieu of conducting a new procurement. Likewise there is no requirement to recompile an otherwise legal contract until all renewal options have been exercised.”

Please share this information with your State agencies. If you have any questions, please contact Terry Hallberg, Branch Chief, Program Analysis and Monitoring Branch, at 703-305-2590.

A handwritten signature in black ink that reads "Terry A. Hallberg". The signature is written in a cursive style with a large initial 'T'.

STANLEY C. GARNETT
Director
Child Nutrition Division

Attachments

cc: Rachel Bishop, OGC