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DIVISION OF PUBLIC HEALTH

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Memorandum

TO: Institutions Participating in the Child and Adult Care Food Program

FROM: Arnette Cowan, Head 
Special Nutrition Programs

SUBJECT: Market Basket Analysis when Procuring Program Goods and Modifying Contracted-For Product Lists

The Food and Nutrition Service (FNS) is aware of a procurement practice utilized by program operators in the National School Lunch Programs, School Breakfast Programs, Summer Food Service Programs, Child and Adult Care Food Programs, and Food Distribution Programs (collectively referred to herein as "Programs") of awarding contracts based on an evaluation of the lowest price a vendor can offer for a representative sample of goods the Program operators wish to obtain. This practice, sometimes called a "market basket" analysis, is used to evaluate bids/proposals to a solicitation for awarding a contract. In this memorandum FNS provides clarity as to how to ensure this evaluation and award process is compliant with the Federal procurement standards. Program regulations at 7 CFR 210.21, 215.14a, 220.16, 225.17, 226.22, and 250.4(d) direct Program operators to comply with procurement requirements as outlined in those parts. In addition, all procurements should be undertaken consistent with State and local requirements, and may benefit from consultation with State agency and local counsel.

Program operators must also comply with the requirements of 2 CFR Part 200, which include procurement standards required for all Federal awards to non-Federal entities. Evaluating the price on *all* goods, either as an aggregate (bottom line or total cost) or by line item, is the preferred method of awarding a contract. However, we recognize price analysis can be simplified and a valid price analysis can still be achieved when only the bottom line costs of major items are totaled to determine lowest price between bidders. As always, consistent with 2

CFR 200.320, all contracts must be awarded to responsive and responsible contractor(s), price must be the primary factor when evaluating bids and proposals, and contracts must be awarded to the lowest bid or proposal most advantageous to the Program.

FNS is also aware of Program operators purchasing additional goods from the contractor with which they have a contract without using any of the approved procurement methods in 2 CFR 200.320. An example of this practice is the addition of new goods after a competitive solicitation was published and a contract was awarded. This guidance and the attached questions and answers address these practices.

I. “Market Basket Analysis” Evaluation and Scoring for Contract Award

Market basket analysis allows a Program operator to review bids using an established, representative sample of goods and use this subset of prices to award a contract as long as the published solicitation includes language that allows for this type of an evaluation. Sample language is included in Q. 4, below. This, however, is not acceptable for awarding equipment or service contracts, such as pest control, as service contracts do not lend themselves to this type of market basket analysis. In determining the goods to be used for evaluating an award, the Program operator must select a representative sample; FNS recommends the aggregate value be 75% or more of the estimated value of the contract to be awarded.

Market basket analysis is permissible when procuring processed end products containing USDA Foods purchased using the Net-Off-Invoice (NOI) value pass through system. Under NOI, processed end products are sold to an eligible distributing or recipient agency, as appropriate, at a net price that incorporates a discount from the commercial case price for the value of donated food contained in the end products. NOI is used in many different circumstances but is often used when a commercial distributor exists in the supply chain between the processor and distributing or recipient agency. Market basket analysis is not appropriate in fee-for-service processing contracts as these are service contracts and do not lend themselves to this type of analysis.

When using a market basket analysis, the Program operator must obtain pricing for the remaining listed goods that were not included in the market basket analysis prior to the final award. The pricing of these miscellaneous goods must be reasonable. 2 CFR 200.404 discusses factors to consider when determining whether a cost is reasonable, including whether the cost is “ordinary and necessary,” and the “[m]arket prices for comparable goods. . . for the geographic area.” All items on the list of goods to be procured must have clear and accurate descriptions (specifications), and estimated quantities to be used in evaluating responses for awarded contracts.

II. Modifications of Contracted Product Lists to Acquire Additional Goods or Increase Quantities of Listed Goods

There are occasions when the Program operator needs to purchase goods not included in its existing contract. For example, a new food is introduced by the supplier that may benefit the Program. Such purchases should be made using applicable procurement methods such as micro purchases, small purchase procedures, sealed bids, or competitive proposals depending on the value of the purchase. If it is determined that purchases are needed on an ongoing basis, they may be added to an existing contract if the following conditions are met:

- The option to add goods must be included in the original solicitation and contract.
- The total value of all additional goods and quantities of listed goods that exceed estimated quantities may not exceed the limit specified in the solicitation and contract, such as a percentage of the estimated value of the contract at the beginning of the contract year. If the value of additional goods exceeds the specified limit, a separate procurement procedure for those goods must be conducted or these purchases will be considered an unallowable cost. FNS recommends limiting additional costs to 5-10% of the estimated value of the contract.
- If the contract allows a renewal option and the renewal is approved as established in the original contract, then upon renewal, any goods added to the contract must be included in a contract amendment.
- For each year of a renewed contract, a new basis for contract value, *including the actual expenditures of the previous year, plus the value of the additional items*, must be established. Likewise, actual expenditures that fall below the initial estimated value of the contract could result in a lower contract value in subsequent contract years.
- Program operators must maintain records of all additional goods purchased to ensure that the value of additional goods purchased does not exceed the specified limit.

This policy is effective immediately and the market basket procurement methods used by Program operators will be subject to monitoring during State agencies' upcoming procurement reviews. If the State agency determines that a Program operator's procurement is inconsistent with this memorandum, technical assistance will be provided and implementation of a compliant process will be required by the start of the school year following the review and may require the re-solicitation of the purchase if the original solicitation was non-compliant with this policy.

If you have questions or need additional information, please contact your Regional Consultant.