



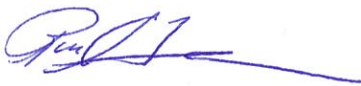
State of New Jersey

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TO: School Business Administrators, Charter School Leads, Non-Public-School Administrators, Food Service Directors, Food Service Management Companies

FROM: Rose Tricario, Director
Division of Food and Nutrition 

DATE: November 2, 2018

SUBJECT: Compliance with Federal Regulations Affecting Rebates, Discounts and Other Applicable Credits in Cost Reimbursable Contracts with Food Service Management Companies (FSMCs)

This guidance memo reaffirms the importance of ensuring compliance with the procurement requirements established in federal regulations affecting the National School Lunch Program, School Breakfast Program and Special Milk Program that became effective November 30, 2007. Title 7, Code of Federal Regulations (7 CFR), sections 210.21(f), 215.14a(d), and 220.16(e) require school food authorities (SFA) to maintain oversight and regularly monitor the performance of their contractors to ensure compliance with the terms, conditions and specifications of their contracts and purchase orders.

Findings from Procurement Reviews in New Jersey revealed that SFAs have not thoroughly reviewed document submissions from FSMCs prior to payment. Procurement Reviews have also shown that FSMCs are establishing alternative company policies and procedures for the handling of rebates, discounts, and applicable credits after signing the State Agency Cost Reimbursable contract with SFAs. Many FSMCs are not consistently demonstrating that rebates, discounts, and other applicable credits are being returned to the SFAs.

The Division of Food and Nutrition is providing this guidance to reiterate the importance of SFAs ensuring FSMC compliance with procurement requirements specifically related to rebates, discounts and other applicable credits in FSMC Cost Reimbursable contracts. These requirements specifically mandate that SFAs MUST receive the full value of any rebates, discounts, or applicable discounts, or other applicable credits resulting from purchases made under Cost Reimbursable contracts on behalf of the school meal programs.

Identification of Allowable/Unallowable Costs and Rebates, Discounts and Other Applicable Credits on Monthly Invoices

All FSMCs must provide sufficient detailed information to permit an SFA to identify allowable and unallowable costs, as well as the amount of all such rebates, discounts, and other applicable credits on invoices, bills and operating statements the FSMC presents for payment to an SFA. Any rebates, discounts, or other applicable credits obtained from local vendors or through national or regional purchasing arrangements by the FSMC must be retained by the SFA. The guidelines are as follows:

- Allowable charges to an SFA must be net of all rebates, discounts and other applicable credits.
- A SFA must receive the full value of all rebates, discounts, and other applicable rebates resulting from purchases made by the FSMC on behalf of the SFA.
- Monthly operating statements must clearly detail the date, amount(s), and applicable items that were rebated, discounted, and/or credited.

Federal regulations describe in detail the information a FSMC must provide to the SFA {7 CFR 210.21 (f)}:

- (vi) – The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the SFA for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the SFA may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;
- (v) -- The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contracts; and
- (vi) – The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the SFA, the State agency or the USDA.

To facilitate this monthly process for SY 2019-2020, the Division of Food and Nutrition will make available Sample Invoice, Operating Statement and Special Events/Catering Invoice template forms for both Cost Reimbursable and Fixed Price contracts.

Effective SY 2019-2020 – New State Agency FSMC Registration Requirement - Certification of Rebates, Discounts and Other Applicable Credits Company Policy

The New Jersey Division of Food and Nutrition will require all FSMCs registering with the State to certify that they will comply with the federally mandated regulations regarding reporting of rebates, discounts and credits to the SFAs on a monthly basis in Cost Reimbursable contracts using the above mentioned forms or an equivalent format that contains all the information. The FSMCs will also certify that they understand that they may be required by the State Agency or the SFA to substantiate the specific rebate, discount and credit amounts received from their vendors or national or regional purchasing arrangements.

FSMCs who submit documentation of official company purchasing procedures that result consistently in “net pricing” to the SFAs will be reviewed by the Division of Food during the annual FSMC registration process. Net pricing would include rebates and discounts negotiated upfront resulting in the SFA being charged actual net prices. FSMCs will then be required to substantiate these alternative purchasing procedures during the SFA solicitation process.

The Division of Food and Nutrition will continue to provide guidance and encourage SFAs to monitor the provisions of their contracts pertaining to the tracking of rebates, discounts, and applicable credits.

Questions regarding the content of this memo may be directed to Emma Davis-Kovacs at (609) 984-1438.