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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.

QUESTIONS AND ANSWERS

Market Basket Analysis

Q. 1: How do I create the list of all goods to be purchased when developing a solicitation?

A. 1: Program operators should have a forecasting plan/process for determining the type and quantity of goods needed. Forecasting is normally based on menus, Program participation, and prior orders. Basing procurements on menus and Program participation is a best practice and prior orders/contracts should be used to assist with forecasting. In addition, suppliers often provide velocity reports to notify Program operators of the volume of goods purchased and may contain the number and total value of goods purchased for the prior year through an awarded contract. Thus, a velocity/usage report could be used when developing a list of all goods anticipated for purchase in a solicitation. Best practices would be to include a provision in the solicitation and contract documents that suppliers will provide velocity reports as requested.

Forecasting resources include: Institute of Child Nutrition's (ICN's) *Forecasting the Procurement of Foods*; and FNS's *Menu Planning* webpage, *Food Buying Guide*, and *Procuring Local Foods for Child Nutrition Programs*.

Q. 2: Do I need to estimate quantities when using a market basket analysis?

A. 2: Yes. All solicitations, regardless of the process for contract award, must include reasonable estimates of usage for every item to be included in the solicitation. This includes solicitations for processed end products containing USDA Foods purchased using any value pass through system. The estimated usage quantity is essential for evaluation of the contract award.

FNS understands there is considerable concern about effective forecasting by Program operators, specifically whether they will procure what they forecasted and in the quantities that are included in the solicitation and contract. Forecasted quantities represent an estimate of usage and actual purchases may be more or less than the estimated quantity. However, the forecasted quantity must be a reasonable expectation of the actual quantity to be purchased and the Program operators should make every effort to purchase the estimated quantities. If the actual quantities purchased exceed the estimated quantities listed in the contract, the net increase is subject to the limit on increases in the total contract value for that contract period.

Q. 3: In my solicitation, do I have to list all goods I will procure under the contract (whether or not a market-basket evaluation method is used)?

A. 3: Yes, however some goods might be overlooked at the time the solicitation's list of goods is drawn up. Additional goods may be added if allowed under the original solicitation and contract. The requirement to list all anticipated goods is in keeping with the requirement that all procurement transactions be conducted in a manner providing full and open competition as required by 2 CFR 200.319(a). Likewise, clear and accurate descriptions and estimated quantities are required for all goods and services listed in the solicitation per 2 CFR 200.319(c)(1).

Q. 4: Do I need written procurement procedures for how I conduct my market basket analysis to award a contract?

A. 4: Yes. All program operators must use their own documented procurement procedures which conform to State, local, and tribal laws and regulations, and which conform to applicable Federal law in 2 CFR Part 200. All cost analysis procedures must be part of these written procurement procedures, including a market basket analysis, if used. If using a market basket analysis, you must include the percentage of the estimated total purchase value used to determine the representative sample. Program operators can refer to the sample language provided immediately below, and modify for their specific needs. FNS recommends a sample size of at least 75% of the value of the contract.

Sample Language for the Written Procurement Procedures

“The Market Basket Analysis sample is established to represent [75] % of the total estimated value of the contract to be awarded. The most recent velocity/sales report from our current supplier(s) was used to project the balance of the year and adjusted for any estimated change in menu and participation for the following year. As a result, the list of [100] goods to be purchased under the solicitation includes the top [60] goods purchased by dollar volume representing the [75] % threshold. Prices for the remaining [40] goods listed in the solicitation should also be included, though they will not be a part of the market basket analysis.”

Q. 5: How do I determine a representative sample for my market basket analysis?

A. 5: FNS recommends using a representative sample that reflects 75% or more of the estimated contract value. For example, suppliers often provide velocity reports to notify Program operators of the value and volume of goods purchased for the prior year through an awarded contract. The program operator’s written procurement procedures state they will use a sample representing 80% of the value of goods when using the market basket analysis. When looking at the products purchased from the prior school year, the Program operator determined that 35 goods represented 80% of the value of total purchases during that year. These 35 goods then become the representative sample for the market basket analysis. Program operators need to consider forecasted changes and usage for the upcoming contract period in determining the representative sample and value of total purchases. It should be noted that the number of goods in the sample will vary depending on purchase needs, purchase price, product quantities and total contract value.

A best practice is to include a provision in the solicitation and contract documents that suppliers will provide velocity reports as requested.

Q. 6: What documentation of procurement must I maintain and make available during a review in order to support my evaluation process of price/cost analysis?

A. 6: All procurements must be documented including those using market basket analysis. This would include related documents/spreadsheets listing prices/costs and estimated quantities of goods, and any other supporting documentation used for developing and analyzing the market basket. Additional procurement records should include an evaluation matrix used to evaluate bid/proposal costs, copy of solicitation documents used to award a contract, bids/proposals received, any communications with potential respondents, and any bid/proposal disputes received as a result of the awarded contract.

Modifications to the Contracted List

Q. 7: Am I allowed to add goods to an existing contract?

A. 7: Yes. Additions must be consistent with this guidance and the solicitation and contract must contain language allowing such additions. Contract monitoring by the Program operator is the best approach for ensuring compliance with this limitation.

When additional goods under an existing contract are needed, the addition is limited to a total value established at the beginning of that contract period and at the beginning of renewal years and must be specified in the solicitation document and resulting contract.

Sample Solicitation and Contract Language

“During the term(s) of a contract awarded under this solicitation, additional purchases not included in this solicitation list and resulting awarded contract may become necessary and benefit the Program. Both parties agree that the aggregate value of added purchases during each year of the contract, if renewable, shall not exceed [10] % of the estimated total value of the contract. The total value of the contract must be agreed upon and the dollar value listed in every contract and contract renewal. Such additions may be included in the awarded contract list during the contract renewal through a contract amendment, and the total contract value adjusted accordingly. For each contract renewal, the total actual value of the contract in the preceding year and the additions made during the contract term, will be the basis for determining the maximum dollar amount (not to exceed [10]%) of additional goods that will be allowed during the next contract renewal year.”

Q. 8: What goods should I list in a solicitation and contract?

A. 8: All foods and supplies necessary for reimbursable and non-Program meals and foods served in Program operations should be listed in the solicitation and ensuing contract including processed end products containing USDA Foods purchased using any value pass through method.

Q. 9: What is considered an addition to the list of goods in a solicitation and contract?

A. 9: Any food or supply that was not part of the original solicitation or contract list is considered an addition. An example would be a new food available for purchase on the market. An occasional, approved substitution a contractor may make to fulfil an order is not considered an added product.

Q. 10: How should I monitor my contracts so they do not exceed the limit the contract allows?

A. 10: Program operators must maintain records of their solicitation, contract (which includes the list of goods to be purchased), and the list of goods added, including prices and the value of added purchases. This documentation must be available during reviews. Further, they must, on a regular basis, analyze the value of the added goods against the total estimated value of the contract established at the beginning of the contract period to ensure they do not exceed the limit allowed by the contract.

Q. 11: What do I have to do in order to amend a contract in order to include additional goods?

A. 11: Program operators may issue an amendment to the contract that incorporates the added goods as part of the ongoing contract list, subject to the allowed limitation. When the option to renew a contract is present in the solicitation and contract, and when the optional renewal is agreed upon by both parties, a new base calculation of the value of the contract is to be established for the purpose of resetting the allowable limit on added goods during the new contract renewal period.