CACFP Book

United States Department of Agriculture
Food and Nutrition Service
Mountain Plains Region
1244 Speer Boulevard
Denver, CO 80204

Reply to Attn. of: SP 94-64
CACFP--384
SFSP--222

MAR 9 1994

Subject: Letter to Institutions Operating Special Nutrition Programs Regarding Food and Nutrition Service's (FNS) Debarment and Suspension Activities

To: STATE AGENCY DIRECTORS (Special Nutrition Programs) - Colorado ED, Colorado DH, Colorado SS, Iowa, Kansas, Missouri ED, Missouri DH, Montana OPI, Montana DHES, Nebraska ED, Nebraska SS, North Dakota, South Dakota, Utah, Wyoming ED, Wyoming DHSS

"Debarment and suspension" activities have received attention recently as a result of State and Federal investigations and prosecutions of dairies and related individuals involved in bid rigging on contracts to supply dairy products to local School Food Authorities (SFAs) participating in the National School Lunch (NSLP), School Breakfast (SBP) and Special Milk Programs (SMP). The issues addressed in this letter also affect institutions that operate the Child and Adult Care Food Program (CACFP) and sponsors of the Summer Food Service Program (SFSP). For convenience sake, in the balance of this letter, we will refer to SFAs, institutions and sponsors by using the term "local-level administrators."

The purpose of this letter is to explain how the FNS handles debarment and suspension actions and how these administrative actions affect you. We have also enclosed a letter which explains these administrative actions to local-level administrators. Please feel free to use the enclosure to assist in explaining to your local-level administrators how debarment and suspension actions affect local-level food service operations in any of the Special Nutrition Programs.

In general, debarment and suspension actions are imposed on companies and individuals for causes set forth in the nonprocurement debarment and suspension regulations (7 CFR Part 3017) issued January 30, 1989 (54 FR 4722). Such causes include a conviction or civil judgment for violation of Federal or State antitrust statutes as well as other offenses and activities indicating a lack of business integrity. The imposition of debarment and suspension actions results in the exclusion of companies or individuals from participating in certain transactions involving Federal nonprocurement programs at both the State agency level and at the local administrative level. It is important to understand that these actions are not imposed as punishment but, rather, are initiated in the public interest and to protect the Federal government.

A local-level administrator is prohibited from contracting with a company or individual that has been debarred or suspended. This prohibition does not extend to contracts in existence at the time of the debarment/suspension or to most contracts under $25,000. Rather, it applies to new contracts and extensions or renewals of existing contracts of $25,000 or more and to contracts for audit services, regardless of amount. Furthermore, the prohibition does not apply to proposed debarments.

Following is a procedural overview on the initiation and imposition of debarment and suspension actions, including the timing and effect of each action as it progresses:

Debarment Procedures: Upon receipt of information concerning the existence of a cause for debarment, FNS must investigate and, when appropriate, refer the information to the Administrator for consideration and possible action. If the Administrator determines that debarment is the appropriate course of action, FNS issues a notice of proposed debarment to the company or individual ("respondent"), explaining the cause for the action and the procedures for opposing the proposed debarment.

The notice of proposed debarment does not excuse the respondent from fulfilling existing contracts involving Federal nonprocurement programs. Furthermore, under a proposed debarment, the respondent may continue to extend or renew existing contracts and enter into new contracts involving Federal nonprocurement programs.

Within 30 days after receipt of the notice of proposed debarment, the respondent may submit information in person or in writing, in opposition to the proposed debarment. The Administrator then considers that information and other information FNS has gathered in order to made a final determination on the matter. Should the Administrator determine that debarment is appropriate, the respondent is debarred for a period commensurate with the seriousness of the cause, generally not to exceed 3 years.

During the period of debarment, the respondent is excluded from any transactions involving Federal nonprocurement programs, including the extension or renewal of existing contracts. However, even though debarred, a respondent is not excused from fulfilling a contract that involves a Federal nonprocurement program and that is in existence at the time of the debarment. For example, a company or individual which is debarred by FNS and which is under contract to supply milk to a local-level administrator of the Programs is not excused from fulfilling its obligation. The local-level administrator and the company may continue to do business under that contract, but no extension or renewal of that contract is permitted.

The existence of a cause for debarment does not necessarily require that a company or individual be debarred. For example, if a company was convicted of bid rigging on contracts to supply dairy products to local SFAs several years ago but is determined by the Administrator to be presently responsible (i.e., conducting its business in a responsible manner) and found by the Administrator to pose no apparent threat to the Child Nutrition Programs, the public interest, and the Federal government, FNS may consider an alternative course of action, such as a Compliance Agreement. Under such an agreement, a company could be required to institute ethics education programs for its employees, report to FNS on its bidding practices, and even restructure management in order to prevent any future misconduct like that which led to the conviction. Such an agreement would allow the company to continue to participate in transactions involving Federal nonprocurement programs, while providing the guarantees necessary to assure FNS that the Federal government and the public are protected.

Suspension Procedures: In instances in which FNS receives information concerning the existence or likelihood of a cause for debarment and if immediate action is necessary to protect the public interest, FNS may refer the information to the Administrator for consideration of a suspension action. If the Administrator determines that suspension is the appropriate course of action, FNS issues a notice of suspension to the respondent explaining the cause for the action and the procedures for opposing the suspension.

A suspension immediately excludes the respondent from transactions involving Federal nonprocurement programs pending completion of legal and/or debarment proceedings. As with a debarment, the respondent is not excused from fulfilling contracts involving Federal nonprocurement programs that are already in existence. And while the respondent and a local-level administrator may continue to do business under an existing contract, the contract may neither be extended nor renewed, nor may the local-level administrator enter into a new contract with a suspended respondent.

The respondent may oppose a suspension by following essentially the same procedure as for opposing a proposed debarment. A suspension cannot extend beyond 18 months unless administrative or legal proceedings have been initiated within that period.

Certification Statement: Each local-level administrator must require that each responsive bidder include a certification statement with each bid on each contract. By signing the certification statement, the bidder certifies that neither it nor any of its principals (e.g, key employees) have been proposed for debarment, debarred or suspended by a Federal agency. It is the responsibility of each bidder to sign the certification statement and submit it with any bid. It is the responsibility of each local-level administrator to require the certification as part of a responsive bid.

A local-level administrator may rely upon the certification statement submitted by a bidder unless the local-level administration's personnel know that the certification is erroneous. In such cases, the local-level administration should contact the SA for confirmation of the bidder's status relative to debarment and suspension.

We hope this overview clarifies FNS's debarment and suspension process and its effect on you and SFAs or sponsors with which you have agreements to operate FNS Special Nutrition Programs. SAs will continue to be advised of all FNS decisions to suspend or debar. If you have further concerns, please do not hesitate to contact our office for additional information.

Edward F. Campbell

for ANN C. DEGROAT
Regional Director
Special Nutrition Programs

Attachments

NOTE: CHOOSE OR EXCLUDE BRACKETED TERMS OR WORDING ACCORDING TO WHO IS ADDRESSED IN THE LETTER

Dear **[Food Service Director, Administrator, etc.]**

"Debarment and suspension" actions have received a lot of attention recently as a result of State and Federal investigations and prosecutions of dairies and related individuals involved in bid rigging on contracts to supply dairy products to local school food authorities participating in the National School Lunch, School Breakfast and Special Milk Programs. The purpose of this letter is to explain how the Food and Nutrition Service (FNS) handles debarment and suspension actions and how these administrative actions affect you **[even as an administrator of the Child and Adult Care Food Program (OR) administrator of the Summer Food Service Program].**

Debarment and suspension actions result in the exclusion of companies or individuals from participating in certain transactions involving Federal nonprocurement programs at both the State agency and school food authority levels. These actions are not imposed as punishment but, rather, are initiated in the public interest and to protect the Federal government.

In general, debarment and suspension actions are imposed on companies and individuals for causes set forth in the nonprocurement debarment and suspension regulations (7 CFR Part 3017) issued January 30, 1989 (54 FR 4722). Such causes include a conviction or civil judgment for violation of Federal or State antitrust statutes as well as other offenses and activities indicating a lack of business integrity.

A **[school food authority (OR) institution (OR) sponsor]** is prohibited from contracting with a company or individual that has been debarred or suspended. This prohibition does not extend to contracts in existence at the time of the debarment/suspension or to most contracts under $25,000. Rather, it applies to new contracts and extensions or renewals of existing contracts of $25,000 or more and to contracts for audit services, regardless of amount. Furthermore, the prohibition does not apply to <u>proposed</u> debarments.

While a **[school food authority (OR) institution (OR) sponsor]** is prohibited from contracting with a company or individual that has been debarred or suspended, a debarment, suspension or <u>proposed</u> debarment action does not excuse a company or individual from fulfilling existing contracts involving Federal nonprocurement programs. However, as indicated above, the **[school food authority (OR) institution (OR) sponsor]** may not extend or renew an existing contract with a debarred or suspended company or individual.

FNS may consider lifting a suspension or forgoing a proposed debarment, provided that the company or individual agrees to provide assurances necessary to assure FNS that the Federal government and the public are protected. The agreement, termed a "Compliance Agreement," outlines the terms and conditions deemed necessary by FNS for the company's

or individual's continued participation in transactions involving Federal nonprocurement programs.

To ensure that the **[school food authority (OR) institution (OR) sponsor]** does not enter into a contract with a debarred or suspended company or individual, each **[school food authority (OR) institution (OR) sponsor]** must require that each responsive bidder include a certification statement with each bid on each contract. By signing the certification statement, the bidder certifies that neither it nor any of its principals (e.g., key employees) have been proposed for debarment, debarred, or suspended by a Federal agency.

The enclosed fact sheet provides a procedural overview of debarment and suspension actions, including the timing and effect of each action, Compliance Agreements, and certification statements. Should you have any questions regarding debarment and suspension, please do not hesitate to contact the State agency.

Sincerely,

Enclosure

DEBARMENT AND SUSPENSION

A local-level Program administrator (whether school food authority, institution, or sponsor) is prohibited from contracting with a company or individual that has been debarred or suspended in accordance with 7 CFR Part 3017. This prohibition does not extend to contracts in existence at the time of the debarment/suspension or to most contracts under $25,000. Rather, it applies to new contracts and extensions or renewals of existing contracts of $25,000 or more and to contracts for audit services, regardless of amount. This prohibition does not apply to proposed debarments.

Debarment Procedures:

- Upon receipt of information concerning the existence of a cause for debarment, FNS must investigate and determine whether debarment is the appropriate course of action. If so, FNS issues a notice of proposed debarment to the company or individual, explaining the cause for the action and the procedures for opposing the proposed debarment.

- A notice of proposed debarment does not excuse a company or individual from fulfilling existing contracts involving Federal nonprocurement programs. Furthermore, a company or individual may continue to enter into new contracts or extend or renew existing contracts involving Federal nonprocurement programs during this period of time.

- Within 30 days after receipt of the notice of proposed debarment, the company or individual may submit information in opposition to the proposed debarment. Should FNS determine that debarment is appropriate, the company or individual is debarred for a period of time which reflects the seriousness of the cause, generally not to exceed 3 years.

- During the period of debarment, the company or individual is excluded from any transactions involving Federal nonprocurement programs, including the extension or renewal of existing contracts. *However, a debarred company or individual is not excused from fulfilling a contract that involves a Federal nonprocurement program and that is in existence at the time of the debarment.* For example, a company or individual which is debarred by FNS and which is under contract to supply milk to a school food authority receiving funds under the National School Lunch Program may continue to do business under that contract, but no extension or renewal of that contract is permitted.

Compliance Agreement:

- The existence of a cause for debarment does not necessarily require that a company or individual be debarred, if FNS determines that the company or individual is currently conducting business in a responsible manner and does not pose a threat to the Child Nutrition Programs, the public interest, and the Federal government. In such cases, FNS may consider an alternative course of action, such as a Compliance Agreement.

- Under such an agreement, a company could be required to institute ethics education programs for its employees, report to FNS on its bidding practices, and even restructure management in order to prevent any future misconduct. *Such an agreement would allow the company to continue to participate in transactions involving Federal nonprocurement programs, while providing the guarantees necessary to assure FNS that*

the Federal government and the public are protected.

Suspension Procedures:

- FNS may consider a suspension action if FNS receives information concerning the existence or likelihood of a cause for debarment and if immediate action is necessary to protect the public interest. If suspension is deemed to be the appropriate course of action, FNS issues a notice of suspension to the company or individual explaining the cause for the action and the procedures for opposing the suspension.

- A suspension immediately excludes the company or individual from transactions involving Federal nonprocurement programs pending completion of legal and/or debarment proceedings. A suspension may be opposed by the company or individual in essentially the same procedural manner as a proposed debarment and cannot extend beyond 18 months unless administrative or legal proceedings have been initiated within that period.

- As with a debarment, the company or individual is not excused from fulfilling contracts involving Federal nonprocurement programs. And while the company or individual and a local-level Program administrator may continue to do business under an existing contract, the contract may neither be extended nor renewed, nor may the local-level Program administrator enter into a new contract with a suspended company or individual.

Certification Statement:

- To ensure that a local-level Program administrator does not enter into a contract with a debarred or suspended company or individual, each local-level Program administrator must require that each responsive bidder include a certification statement with each bid on each contract. By signing the certification statement, the bidder certifies that neither it nor any of its principals (e.g., key employees) have been proposed for debarment, debarred, or suspended by a Federal agency. It is the responsibility of each bidder to sign the certification statement and submit it with any bid.

- A local-level Program administrator may rely upon the certification statement submitted by a bidder unless local-level Program personnel know that the certification is in error. In such cases, the local-level Program administrator should contact the State agency for confirmation of the bidder's status relative to debarment and suspension.