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Food and Nutrition Service
Mountain Plains Region
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Reply to Attn. of: SP 02-09
CACFP-668
SFSP-440

Subject: Procurement Standards for Public and Non-Profit Private Agencies

To: STATE AGENCY DIRECTORS - (Child Nutrition Programs) Colorado ED, Colorado DPH, Iowa, Kansas, Missouri ED, Missouri DH, Montana OPI, Montana DPHHS, Nebraska, North Dakota, South Dakota, Utah, Wyoming ED

When we issued the policy memorandum entitled "Final Grants Management Regulations for USDA Entitlement Programs (SP-01-01, CACFP-635 and SFSP-420), we provided a copy of the regulatory changes and memorandum with questions and answers explaining the effect of this rulemaking. This rule change altered the way public and non-profit organizations operating FNS programs procure supplies and equipment.

Governmental organizations include county and municipal agencies, public school districts, public residential or non-residential institutions, etc. The preamble to this rule stated that "implementation shall be phased in by incorporating the provisions into awards made after the start of the next Federal entitlement program year." This meant that the final rule took effect on October 1, 2000, except for public and nonprofit school food authorities operating the School Nutrition Programs. Since the School Nutrition Programs operate according to a school year cycle, State administering agencies were permitted to delay implementation until July 1, 2001, to coincide with the beginning of school.

Public agencies operating entitlement programs such as the National School Lunch, School Breakfast, Special Milk, Child and Adult Care, and Summer Food Service Programs are required to follow procurement regulations at 7 CFR Part 3016, while 7 CFR Part 3019 applies to institutions of higher education, hospitals, and other nonprofit organizations.

It is impossible to discuss every nuance between the old and new rules briefly, but there are several things of which an agency operating a Child Nutrition Program should be aware.

Governmental Agencies:

- Part 3016 instructs a governmental entity to use its own procurement rules where they are consistent with Federal rules at 7 CFR Part 3016.36(b) through (i).

- Section 3016.36(d) sets the small purchase threshold at $100,000 level established by 41 U.S.C. 403(11). However, the small purchase threshold actually available to a governmental program operator is the lower of $100,000 or the threshold set by State or local laws and regulations. We are not aware of any State or local laws or regulations that currently set a threshold as high as $100,000. A governmental program operator will be unable to fully realize the benefits of this change until State and local governing bodies take action to raise the thresholds.

- Section 3016.60(b) excludes any person that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions, or other documents for use by a grantee or subgrantee in conducting a procurement under USDA entitlement programs from competing for contract awards resulting from that procurement, regardless of the procurement method used.

- Sections 3016.60(c) prohibits the use of statutorily or administratively imposed in-State or local geographical preferences, except when procuring certain architectural or engineering services.

- The State procurement office should be contacted for questions concerning State and local procurement standards.

Institutions of Higher Education, Hospitals and Non-profit Organizations:

- Part 3019 instructs a nongovernmental entity to use its own procurement rules where they are consistent with Federal rules at 7 CFR Part 3019.40 through 3019.48. The board of directors of a nongovernmental organization is the governing body and responsible for ensuring that its rules comply with the Federal standards. It is also responsible for maintaining any necessary records for documenting compliance.

- Section 3019 currently shows the small purchase threshold as established by 41 U.S.C. 403(11) as $25,000, but the Federal Acquisition Streamlining Act of 1994 raised the small purchase threshold from $25,000 to $100,000. Therefore, the small purchase threshold for a non-governmental, not-for-profit organization operating USDA entitlement programs is $100,000.

- Section 3019.43 excludes any person that develops or drafts specifications, requirements, statements of work, invitations for bids, and/or requests for proposals, contract terms and conditions from competing for such procurements.

The State Agency (SA) in accordance with 7 CFR Part 210.19(a)(4), Part 226.22(a) and Part 225.17(a) and (b), respectively, is required not only to ensure that each organization is apprised of the foregoing standards, but to ensure that each organization under its jurisdiction is in conformance with the these standards.

Education and technical assistance are always the first steps in improving program compliance. Therefore, procurement requirements should be communicated in writing, as well as the SA's expectations for compliance, implementation and documentation. If after a good faith effort, the SA is unable to obtain compliance, the SA can use other means, such as the serious deficiency process in the Child and Adult Care Food Progam. However, the SA can disallow improperly procured costs and require the Child Nutrition Program operator to use funds from sources other than the non-profit food service account to fund these disallowed costs.

From a management standpoint, we do not believe that the SA can enforce the State procurement code unless a copy is on file. We recommend, therefore, that the SA obtain a reference copy of its State procurement code and regulations.

If you have any questions concerning these issues, please let us know.

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