



Office for Safety, Health and Nutrition  
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## POLICY STATEMENT

Procurement Requirements for the National School Lunch,  
School Breakfast and Special Milk Programs

Source:	USDA Memo SP 09-2008 and SP 15-2008
Code:	NSLP-11-08
Audience:	All SFAs
Effective Date:	6/11/2008
Replaces:	N/A
Program:	<u>NSLP</u>

## INTRODUCTION

The purpose of this memorandum is to highlight the key provisions of the Procurement Requirements for the National School Lunch, School Breakfast, and Special Milk Program Final Rule as published in the Federal Register October 31, 2007.

## STATEMENT OF POLICY

### A. OVERVIEW OF THE FINAL PROCUREMENT RULE

1. The United States Department of Agriculture published a final rule entitled Procurement Requirements for the National School Lunch, School Breakfast and Special Milk Programs, on October 31st, 2007.
2. The rule was prompted in part by audits released by the Office of Inspector General which identified that food service management companies improperly received purchase discounts and/or USDA-donated commodities which were intended to accrue to the school food authority's (SFA's) nonprofit school food service account.
3. The final procurement rule establishes guidance that:
  - a. Limits an SFA's use of nonprofit school food service account funds to costs resulting

- from proper procurements and contracts;
  - b. Requires that allowable costs paid from the nonprofit school food service account be net of all discounts, rebates, and applicable credits;
  - c. Requires State agencies to review and approve SFA procurements of food service management companies' (FSMC) services in advance of contract execution.
4. Statutes of this rule are intended to promote full and open competition in SFA procurements of goods and services, and provide a means for identifying and correcting problems in contracts before they are signed.

**C. PROCUREMENT PROCEDURE CHANGES**

1. Any contractor to an SFA 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.
  - a. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor under the contract.
2. SFAs must obtain prior written approval from the Ohio Department of Education (ODE), Office for Safety, Health, and Nutrition (OSHN) of invitations for bids and requests for proposals for food service management companies before their issuance.
3. Further, the ODE OSHN must review and approve the contract terms to ensure contract language requiring compliance with net cost requirements is contained within the contracts.
  - a. The SFA must incorporate all State agency-required changes into the contract or amendment before executing the contract.

**D. PROCUREMENT FEES**

1. For contracts developed after November 30th, 2007, effective date of the final rule, discounts, rebates, and applicable credits must be returned to the SFA's nonprofit school food service account.
2. Any fee (including a procurement fee) that is directly tied to the amount of discounts, rebates, and applicable credits to be returned to the SFA is an unallowable nonprofit school foodservice account cost.
  - a. A fee structured in this manner is clearly intended to return some or all of the discounts, rebates, and applicable credits to the company with whom the SFA has contracted for services rather than to ensure that they accrue to the nonprofit school food service account.
3. SFAs may develop solicitations in a way that allows for management and/or administrative fees that include fees for procurement services.
  - a. The procurement fee could be a separate fee or part of another contract fee, as long as the fee remains fixed.
4. For contracts that pre-date executed prior to November 30th, 2007, procurement fees are allowable, even if they are tied directly to the amount of discounts, rebates, and applicable credits to be returned to an SFA, as long as the procurement fees were properly documented in the solicitation documentation.

**E. IMPLEMENTATION PROCEDURE FOR FINAL PROCUREMENT RULE**

1. The final rule went into effect on November 30th, 2007.
2. The final regulation applies to all new solicitations issued on or after this date. However, implementation is being phased in for existing contracts. For solicitations

issued prior to November 30, 2007:

- a. Contracts with a term of 12 months or fewer remaining are exempt
  - b. Contracts that have annual renewal provisions may delay implementation until expiration of the current contract plus one 12-month renewal period, with State agency approval;
  - c. Contracts that have a term of more than 12 months may delay implementation up to 24 months when the solicitation for the contract was issued prior to the effective date of this regulation, with State agency approval.
3. For FSMC contracts, SFAs must send invitation for bid or request for proposal documentation to ODE for approval at least one month in advance of anticipated bid publication. SFAs must send negotiated contract terms to ODE OSHN for approval prior to contract execution.

Please keep this memo on file for reference. A copy of this memo is available for downloading from the ODE website at [www.ode.state.oh.us](http://www.ode.state.oh.us) . If you have any questions regarding this memo, please contact your NSLP regional consultant.

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File Attachment