



POLICY STATEMENT

Prototype Language for Return of Discounts, Rebates and Credits to School Food Authorities

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INTRODUCTION

This memorandum provides prototype contract language for use by School Food Authorities (SFAs) in developing Food Service Management Company (FSMC) bid solicitations and contracts to address the return of purchase incentives to SFAs as dictated by the United States Department of Agriculture (USDA) final procurement rule published on October 31, 2007.

STATEMENT OF POLICY

A. Overview of the Final Procurement Rule

1. The final procurement rule, published by the USDA on October 31, 2007, has three main provisions associated with it. These provisions are:
 - a. Limits a School Food Authority's (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 (SAs) to review and approve SFA bids, procurements and contracts for food service management company services in advance of publication and contract execution.

B. Prototype Language in FSMC Bid Solicitations and Contracts

1. To address the proper return of purchase incentives to SFAs, USDA has published prototype contract language for inclusion in FSMC contracts.
2. SFAs may utilize the following prototype language in bid solicitation and contract development:
 - a. "The _____ School District shall ensure that _____ (Company/Food Service Management Company) fully discloses all discounts, rebates, allowances, and incentives received by the Company from its suppliers. If the Company receives a discount, rebate, allowance, or incentive from any supplier, the Company must

disclose and return to the _____ School District the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the _____ School District. All discounts, rebates, allowances, and incentives must be returned to the

_____ School District during a mutually agreed upon timeframe that is beneficial to the School District.”

3. SFAs may also opt to use the language found in 7 CFR Part 210.21(f)(i):
 - 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 or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA.”

C. Legal Considerations for SFAs

1. It is important that SFAs consult with their own legal counsel regarding the use of any particular contract language, to ensure that all Federal, State and local requirements are met.
2. In addition to ensuring that SFA contracts contain appropriate language requiring the return of discounts, rebates, and applicable credits to the SFA, it is critical that SFAs monitor contract compliance on an ongoing basis and strictly enforce all contract provisions, including those related to the return of discounts, rebates, and applicable credits.
3. The Ohio Department of Education, Office for Safety, Health, and Nutrition will complete random evaluations of contracts and SFA practices to ensure that the contract provisions are being enforced by SFAs and applicable incentives are actually recovered.

Please keep this memo on file for reference. A copy of the memo is available for downloading from the Ohio Department of Education (ODE) website at: <http://www.ode.state.oh.us/> . If you have any questions regarding this memo, please contact your ODE School Meal Programs Regional Consultant.