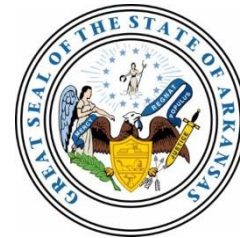




Division of Child Care and Early Childhood Education



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MEMORANDUM

TO: ALL PARTICIPANTS IN HEALTH AND NUTRITION FOOD PROGRAMS
FROM: DCCECE / HNU
DATE: FEBRUARY 11, 2020
SUBJECT: PROCUREMENT OF PROFESSIONAL AND / OR CONSULTANT SERVICES

The following is an important notice regarding all participants in Health and Nutrition food programs. This includes the Child and Adult Care Food Program (CACFP), the Summer Food Service Program (SFSP, and the National School Lunch Program (NSLP). This has been approved by USDA, Department of Human Services Legal Team, and the Health and Nutrition Unit.

Professional and/or Consultants are defined as persons who are members of a particular profession or possess a special skill and who are not officers or employees of the non-Federal entity. The particular qualifications of the Professional and/or Consultant must be clearly identified in the contract.

Services are defined as Professional and/or Consultant Services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance, such as studies, analyses, evaluations, liaison with Government officials, or other forms of representation.

a. Procurement of Professional and /or Consultant Services:

- i. Noncompetitive contracts to consultants that are on retainer contracts are considered, according to 2 CFR 200.319(a) 4, to be restrictive to competition.
- ii. Therefore, all consultant contracts must document the following:
 - Δ Be open for competitive procurement.
 - Δ Specify the nature and scope of the service to be rendered in relation to the service required.
 - Δ Demonstrate the adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, termination provisions).
 - Δ Describe the necessity of contracting for the service, considering the contractor's capability in the particular area.
 - Δ Describe whether the service can be performed more economically by employment rather than by contracting.

- Δ Include the qualifications of the individual or concern rendering the service and the customary fee charged.
 - Δ Have specific performance standards that must be met.
 - Δ Include remedies if performance is not met, including, but not limited to, financial recoupment and termination of the contract.
 - Δ Provide annual reports on how the consultant has assisted the institution in improving the program.
- b. **Allowable Costs: Professional and/or Consultant Services:** In determining the allowability of costs (including retainer fees) in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the contracting officer shall consider the following factors, among others:
 - i. The nature and scope of the service rendered in relation to the service required.
 - ii. The necessity of contracting for the service, considering the contractor's capability in the particular area.
 - iii. Retainer fees, to be allowable, must be supported by evidence that -
 - Δ The services covered by the retainer agreement are necessary and customary;
 - Δ The level of past services justifies the amount of the retainer fees (if no services were rendered, fees are not automatically unallowable);
 - Δ The retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, when factors such as cost, and level of expertise are considered; and
 - Δ The actual services performed are documented
- c. **Unallowable Costs: Professional and/or Consultant Services:** The necessity of contracting for the service, considering the contractor's capability in the particular area.
 - i. Any other services obtained, performed, or otherwise resulting in violation of any statute or regulation prohibiting improper business practices or conflicts of interest.
 - ii. Services performed which are not consistent with the purpose and scope of the services contracted for or otherwise agreed to.
- d. **Billing for Professional and/or Consultant Services:**
 - Δ Fees for services rendered are allowable only when supported by evidence of the nature and scope of the service furnished
 - Δ Details of all agreements (e.g., work requirements, rate of compensation, and nature and amount of other expenses, if any) with the individuals or organizations providing the services and details of actual services performed;
 - Δ Invoices or billings submitted by consultants, including sufficient detail as to the time expended and nature of the actual services provided; and

Δ Consultants' work products and related documents, such as trip reports indicating persons visited and subjects discussed, minutes of meetings, and collateral memoranda and reports.

e. Request for Approval of Professional and/or Consulting Services:

- i. If a sponsor wishes to obtain Professional and/or Consulting Services, (professional/consulting services would include accountants, attorneys, contractors, consultants, to provide services that cannot be provided by the sponsor) the sponsor must obtain specific and prior written approval from DCCECE-HNU. The sponsor must include a request for these services in their application budget for each food service program of which they are applying. The request must contain all supporting documentation.
- ii. If the sponsor wishes to obtain Professional and/or Consulting Services after their food service application is already approved, the sponsor must update their budget and obtain specific prior written approval from DCCECE-HNU. Sponsors must send a written request to the Application Program Manager with all supporting documentation, including but not limited to, professional services contract and the sponsor's revised budget.
- iii. Requests for Professional and/or Consulting Services will be approved only if they meet the requirement stated above.
- iv. DCCECE-HNU will provide specific written approval and/or a denial within fifteen (*15*) *business days* of its receipt of the written request.
- v. Approval of Professional and/or Consulting Services will be effective on the date DCCECE-HNU sends the sponsor written notice of approval. Any Professional and/or Consulting Services provided to the sponsor prior to the effective date are considered unallowable costs and are not eligible for reimbursement.
- vi. Approval of Professional and/or Consulting Services does not in any way indicate a final decision on whether specific costs are allowable or unallowable and all cost must meet allowable requirements according to USDA regulation and instructions.

Additional Resources:

- 7 CFR 226.22 Procurement Standards
- 7 CFR 225.17 Procurement Standards
- 7 CFR 200.319-326
- 7 CFR 200.459 Professional Service Costs.
- 48 CFR 31.205-33 - Professional and Consultant Service Costs.
- FNS 796-2 Rev 4
- FNS 796-4 Rev 4

Please keep this memo on file for quick and easy reference. A copy is also available on the resource library under HNP Mass Alerts. If you have any questions regarding this memo, please contact your Program Coordinator at: 501-682-8869.