POLICY ALERT

Date: July 30, 2008

Reference: # CACFP ADC 2008-19

To: Child and Adult Care Food Program-Adult Day Care (CACFP-ADC) Contractors

Subject: Limitations of Subcontractors

Effective Date: Immediately

Purpose

REPLACE CACFP ADC Handbook items:
- 3140, Program Management
- 4352.3, Unallowable Costs

In addition, it provides guidance regarding subcontracting for certain activities required in the administration/management of the CACFP.

Implementation

Immediately

Procedure

Replace Item 3140, Program Management, with the following:

As the organization contracting with Food and Nutrition Division (FND), the contractor must accept final administrative and financial responsibility for operating the CACFP. The contractor may not contract out the entire management of the program; however, the contractor may subcontract some program activities required in the administration/management of the CACFP. Should the contractor choose to retain the services of a subcontractor to perform one or more operating functions, the contractor is still required to retain final administrative and financial oversight of the work performed by the subcontractor. The contractor may subcontract any CACFP activities with the following exceptions: monitoring, corrective action, and preparation of application materials. It is important to note that, although the contractor may not subcontract out the responsibility for certain functions, it is acceptable to contract for services in support of that function. For example, the contractor must retain responsibility for the monitoring function; however, the contractor may contract for the performance of monitoring reviews.

These administrative and financial responsibilities are described in federal and state laws, regulations, and policies, and in the contractor’s approved application and FND Agreement. The contractor must not deviate from their approved application/management plan or budget without FND’s prior written approval.

continued

This Policy Remains in Effect Until Further Notice
Specific CACFP activities that may be subcontracted include, but are not limited, to:

- Bookkeeping;
- Auditing;
- Data processing;
- Service of a Nutritionist;
- Staff trainings; and
- Monitoring reviews.

In order to subcontract specific CACFP activities, the contractor must ensure that the:

- Services to be performed by the subcontractor are required in the administration/management of the CACFP;
- Services have been properly procured according to program procurement guidelines;
- Terms of the agreement are adequate for the services to be performed;
- Costs are reasonable in relation to the services to be performed; and
- Costs are not contingent on the contractor’s reimbursement of CACFP funds.

Written agreements must be established with a subcontractor if the activities to be performed by the subcontractor are directly related to the CACFP. The written agreement must:

- Identify the person(s) or party(ies) that will perform the subcontracted activities including any assumed names;
- Certify that the subcontractor, nor any of its staff, are included on the National Disqualified List;
- Identify the specific activities that the subcontractor will be performing (i.e., Scope of Work);
- State that the contractor (not the subcontractor) accepts “final administrative and financial responsibility for the operation of the CACFP”; and
- Stipulate the requirement of the subcontractor to protect confidential information.

It is encouraged (not required) that contractors evaluate the need for including any of the following recommended terms in the written agreement:

- Addresses including mailing and street addresses.
- Designate who will receive any formal notices and the acceptable manner for the delivery of such notice.
- Contract term (i.e., the duration of the contract).
- Contract renewal clause.
- Conditions for requesting and receiving approval for any price increases.
- Total cost not to exceed a definite amount.
- Specifications regarding the rate of progress of the work and the acceptable fulfillment of the service.
- Payment terms.
- Dispute resolution process.
- Contractor responsibilities.
**Procedure continued**

- Abandonment or Default (i.e., if the subcontractor defaults on the contract, the contractor reserves the right to cancel the contract).
- Termination including:
  - Termination for Convenience - The contractor reserves the right to terminate the contract at any time for convenience, in whole or in part, by providing thirty (30) calendar days advance written notice of intent to terminate.
  - Termination for Cause - The contractor reserves the right to terminate the contract for cause if the subcontractor fails to perform in full compliance with the contract requirements, through no fault of the contractor, by providing thirty (30) calendar days advance written notice of intent to terminate.

**Program Management Software:** FND does not approve or endorse software packages for use by contractors to manage their participation in the CACFP. Contractors may purchase program management software of their own selection. However, the contractor is responsible for ensuring that the software supports their participation in the CACFP according to program requirements.

Frequently, software provides alternate versions of the forms or reports that correspond to official TDA forms used in the CACFP. If a contractor discovers alternate versions and wishes to use them when submitting program information to FND, the contractor must first submit the documents for approval as alternate forms. Refer to Item 4440, Required Forms, for additional guidance.

**Replace Item 4352.3, Unallowable Costs, with the following:**

Unallowable costs include:

- Administrative costs not approved by FND.
- Bad debts.
- Compensating an individual, employee, or subcontractor based on the number of facilities recruited. This includes cash and non-cash compensation.
- Compensating an individual, employee, or subcontractor based on increased program participation, as measured by meals, children or facilities.
- Contingencies.
- Contributions and donations (For example, the funds an employer provides for an employee’s retirement fund is frequently referred to as a “contribution”).
- Costs (such as advertising, marketing, travel, telephone, wages, etc.) for recruiting facilities who are already participating in the program with another sponsor.
- Entertainment.
- Fines and penalties.
- Fundraising.
- Interest and certain other financial costs, such as insufficient funds/returned check charges and late payment fees.

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<td>• Legislative or lobbying expense.</td>
<td>• Political or partisan costs.</td>
<td>• Subcontracted services that do not meet CACFP requirements. (Refer to Item 3140, Program Management, in this Policy Alert for additional guidance.).</td>
<td>• Under recovery of costs under grant agreements (These are costs exceeding income in other federal programs, including all grant agreements regardless of funding source or program year. Also included are disallowed costs in the CACFP in the current or prior program years.).</td>
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<td><strong>Adverse Action</strong></td>
<td>Failure to comply with the requirements in this Policy Alert may result in placement in the serious deficiency process. Refer to Policy Alert CACFP-ADC 2003-6, <em>Serious Deficiency Process for Participating Contractors</em>, for detailed information.</td>
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<td><strong>Authority</strong></td>
<td>FNS Instruction 792-2 and 796-2</td>
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<td><strong>Contact</strong></td>
<td>If you have any questions please contact your Food and Nutrition Field Operations Office.</td>
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