The United States Department of Agriculture (USDA) has issued the following clarification in response to questions related to fee increases in FSMC contracts, typically as related to renewals of the contracts for any of the four possible one year extensions.

First, a contract with a FSMC can only provide for "fixed fees". This includes either a fixed price contract or a cost plus fixed fee. Fee increases are not allowable unless provided for in the request for proposal (RFP) or invitation for bid (IFB) and included in the contract. Since full and open competition must be maintained in all procurement actions, any information regarding potential fee increases must be available to all potential bidders at the outset of the procurement action through the RFP or IFB.

In the RFP or IFB, the school food authority (SFA) must identify all requirements which the offeror/bidder must fulfill and must also identify all evaluation factors, including their relative importance, to be used in evaluating bids or proposals.

In addition, the SFA should make an independent cost or price analysis before receiving bids or proposals and use the analysis to determine the reasonableness of a proposed contract price. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicators, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. Since fees are such a basic part of price or costs, they, along with any provisions for increase must be evaluated by the SFA.

Whatever type of contract cost system is used, the SFA must have sufficient information upon which to project the total anticipated cost of the contract. Since fee adjustments may not be permitted unless provided for in the IFB or RFP and incorporated into the contract, any change in fees or basis for fee increases not reflected in the original RFP or IFB would constitute a substantive change to the contract which would require that the contract be rebid.

Any fee increases must be based on changes from the first, or base year. Some possible indicators, or indices for increases, are the Consumer Price Index (CPI) Food Away from Home, the Price Index of Food Used in Schools and Institutions, and the CPI for All Urban Consumers.

Whatever index is used, if any fee increases are to be allowed the SFA must include:
the individual CPI index, such as one of those listed above, or other specific index or indicator, in the RFP or IFB, or solicit competitive proposals for any fee increases from bidders in which either a specific CPI index or other specific basis for fee increases is proposed.

- in their weighted evaluation factors, as well as in the SFA's price or cost analysis, provision for evaluation and analysis of price and cost based on these fee increases.

- in the contract the specific CPI or other index to be used for fee increases on renewal of the contract.

Some of the provisions and procedures which do not meet the above requirements are:

- negotiating or instituting fee increases on renewal of the contract with no basis in the RFP or IFB.
- using RFP/IFB or contract language to the effect that the parties will negotiate any fee increases on renewal of the contract.
- using RFP/IFB or contract language to the effect that the parties will negotiate fee increases on renewal, and if negotiation fails, a CPI index will be used as a default index.
- using RFP/IFB or contract language which only provides a general, non-specific index such as stating that the CPI index will be used and does not indicate which CPI index, such as one of the three listed above.

Contact your area program office if you have any questions.