Reply to attn of: MWCN: NT 2 December 30, 1998

Subject: FY 99 School Programs Memorandum #6

Executive Management Services, Inc.

State Directors

Child Nutrition Programs

Executive Management Services, Inc. (EMS) is a private, for-profit company that assists residential child care institutions (RCCIs) in developing and operating their school meal programs. EMS has been identified by some State agencies as a food service management company (FSMC) and by others as a consultant. EMS representatives have requested a review of the services they provide to RCCIs in order to determine if EMS should be classified as a FSMC or consultant.

7 CFR 210.2 defines a FSMC as “a commercial enterprise or nonprofit organization which is or may be contracted with by the school food authority to manage any aspect of the school food service.” A company that is acting on behalf of a school food authority (SFA) by actually being in charge of or directing any aspect of the food service is a FSMC. An individual or organization that performs specific, discrete services for a SFA that fall short of managing a part of the program would be a consultant. For example, an organization hired to analyze a meal service and develop menus under Assisted Nutrient Standard Menu Planning would not be managing any part of the actual meal service, and so would be a consultant. One that prepares menus, purchases food, prepares and serves meals is clearly FSMC. The test whether the company is actually *managing* some aspect of the food service as opposed to merely providing advice, guidance or technical assistance.

Representatives from EMS met with FNS on June 16, 1998. During that meeting, EMS representatives described the services that it provides to RCCIs. EMS does not prepare the food, but it plans menus, reviews production records and manages the enrollment, meal count and claim processes. Taken as whole, these services go beyond merely providing advice or technical assistance. Therefore, EMS is a FSMC and should be treated as such consistently.

SFA contracts with FSMCs are governed by the provisions of 7 CFR 210.16 and among other requirements , they must be competitively procured. Generally, EMS’ existing contracts with RCCIs were entered into before the RCCIs were participating in the National School Lunch Program (NSLP), and our understanding is that they were *not* competitively procured. However, many of these RCCIs need EMS, at least in the short term, in order to continue to participate in the NSLP because they do not yet have the expertise to operate a food service consistent with Program requirements. Therefore, in order to avoid the disruption of food service in the RCCIs, we will allow the RCCIs to continue to pay for EMS’ services from the nonprofit school food service account. However, at the earliest possible time, *no later than the beginning of school year 1999-2000*, the contracts will have to conform to all Federal requirements, including the requirement that they be competitively procured in order for RCCIs to continue to pay EMS’ services from the nonprofit school food service account. RCCIs that do not wish to conduct a procurement that meets Federal requirements can, subject to State procurement laws, pay for EMS’ services from other funds. RCCIs that need help conducting the procurement cannot both hire EMS to assist with the procurement (e.g., to prepare bid documents), *and* award the FSMC contract to EMS because it would be a conflict of interest.

If you have copies of contracts (including blank ones) with provisions that differ from the ones we describe in this memorandum, we would appreciate receiving a copy of each contract as well as any other comments you may have regarding this matter.

Please contact this office if you have questions or require further clarification on these issues.

Signed by Theresa E. Bowman

THERESA E. BOWMAN

Regional Director

Special Nutrition Programs