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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

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October 7, 2011

John Ormsby
Director, Health Services
U.S. Foods
9399 West Higgins Road, Suite 500
Rosemont, IL 60018-4992

Dear Mr. Ormsby:

On October 5, 2011, the Subcommittee on Contracting Oversight held a hearing entitled, "Food Service Management Contracts: Are Contractors Overcharging the Government?" The hearing was a response to growing concern that food service management contractors are withholding rebates and discounts that they may be required to pass through to the government. Direct examples of this fraudulent activity have been seen in contracts under the National School Lunch Program and prime vendor subsistence contracts.

At the hearing, I raised concerns regarding the complexity and lack of transparency in food service contracts. In response, John Carroll, Assistant Attorney in the New York Office of Attorney General, agreed, calling the practice of off-invoice rebates and other issues with rebate withholding "inherently opaque."

In order to better understand how U.S. Foods and its subsidiary, Joseph Webb Foods, obtains, accounts for, and passes through rebates, I am writing to request information regarding U.S. Foods's and Joseph Webb Foods' food service management contracts with the federal government. Accordingly, I am requesting that you provide a list of all food service management contracts between fiscal years 2007 and 2011. Please submit your response using the spreadsheet provided with the following information for each contract:

- (1) The federal agency that awarded the contract;
- (2) The contract number;
- (3) The date of contract award;
- (4) Dates of performance;
- (5) The contract ceiling;
- (6) The amount of funds obligated;

- (7) The amount that has been invoiced and disbursed or received;
- (8) The names of any subcontractors and the amount that has been invoiced and disbursed or received by the subcontractors;
- (9) The names of any vendors, distributors, and manufacturers associated with the contract;
- (10) The total amount of any rebates received on the contract in total from fiscal year 2007 through fiscal year 2011, including the total amount received from any subcontractor, vendor distributor, or manufacturer;¹
- (11) The total amount of rebates received on the contract for the appropriate fiscal year, including the total amount received in the fiscal year from any subcontractor, vendor distributor, or manufacturer;
- (12) The amount of any rebates passed through, refunded or reimbursed to the federal government; and
- (13) The amount of any rebates passed through, refunded or reimbursed to the federal government or school food authority client in the appropriate fiscal year.

To assist the Subcommittee in understanding U.S. Foodservice's and Joseph Webb Foods' policies and accounting practices regarding rebates, please provide the following documents and information related to your federal food service management contracts:

- (1) Documents, charts, graphs sufficient to identify your current corporate structure, naming all subsidiaries, and affiliates and all partially or fully held companies and all parent companies including holding companies;

¹ For the purposes of this request, "rebates" means money or other thing of value paid to you by a vendor, manufacturer, producer, or distributor, either directly or indirectly based on the purchase of products or services. Rebates include, but are not limited to cash or cash equivalents, credits, concessions, marketing incentives, manufacturer's incentives, vendor consideration, allowances, early payment allowances, marketing allowances, volume allowances, volume discounts, volume discount allowances (VDAs), discounts, off-invoice rebates or payments, "coupon clipping" receipts, stocking fees, approved or preferred supplier allowances or payments, volume purchase agreement fees, commissions, contingent commissions, communication fees, award fees, request for proposal (RFP) fees, consulting fees, preferred customer fees, preferred customer bonuses, securities, loan forgiveness, professional enhancement fund (PEF) payments, placement service agreement (PSA) payments, compensation for alleged services rendered, market service agreement payments, production incentive bonus agreement payments, administrative service agreement payments, additional compensation schedule payments, overrides, placement service revenue payments, or any other transfer of consideration, in whatever form and however denominated.

- (2) Documents sufficient to identify all of the DUNS numbers used by your company under which you have received food service management contracts;
- (3) Documents, charts, graphs sufficient to identify any in-house food distributors;
- (4) Charts, graphs, maps, or other documents sufficient to describe your marketing and distribution regions, including the identity of your primary distributors within each such region;
- (5) Documents sufficient to identify whether your company has ever been certified as a small business, women-owned small business or service-disabled veteran owned small business, and the dates of those certifications;
- (6) Documents, charts, graphs, and tables sufficient to state, per annum, your gross rebate revenue;
- (7) All documents concerning the way in which you track and record all rebates;
- (8) All documents and communications concerning employee training relating to rebates;
- (9) All documents concerning negotiations concerning rebates;
- (10) All documents and communications concerning your rebate policies;
- (11) All documents and communications concerning pricing or rebate agreements between you and any vendor concerning rebates.
- (12) All board of director related documents and communications concerning rebates.
- (13) Documents sufficient to identify every federal government client with whose account you received rebates.
- (14) Documents sufficient to show your tax treatment of rebates.
- (15) Documents concerning accounting manuals concerning rebates.
- (16) All documents concerning requests or demands for rebates from federal government agencies.
- (17) Documents relating to your food product sourcing, in particular what criteria are considered when originally choosing vendors, distributors, and manufacturers.

We request that you provide this information as soon as possible, but in no case later than **Friday, November 4, 2011**. If you determine that you will be unable to make a complete production by this date, please contact Subcommittee staff to discuss possible modifications to this schedule.

Mr. John Ormsby
October 7, 2011
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The jurisdiction of the Subcommittee on Contracting Oversight is set forth in Senate Rule XXV clause 1(k); Senate Resolution 445 section 101 (108th Congress); and Senate Resolution 73 (111th Congress). An attachment to this letter provides additional information on how to respond to the Subcommittee's request.

Please contact Sarah Garcia with the Subcommittee staff at (202) 224-1014 with any questions. Please send any official correspondence related to this request to Kelsey_Stroud@hsgac.senate.gov.

Sincerely,



Senator Claire McCaskill
Chairman
Subcommittee on Contracting Oversight

cc: Rob Portman
Ranking Member
Subcommittee on Contracting Oversight

Enclosures (2)