

# Guidance for the Formal Solicitation Process of a Food Service Management Company or Vended Meal Services Contract

## PLEASE READ THIS DOCUMENT THOROUGHLY

### ISBE Legal Disclaimer

ISBE does not review or judge the fairness, advisability, or efficiency of fiscal implications of the contract. ISBE is not a party to any contractual relationship between the SFA and Selected FSMC. ISBE is not obligated, liable or responsible for any action or inaction taken by the SFA or Selected FSMC based on this template contract and subsequent changes and/or amendments to this IFB or subsequent Awarded Contract.

Under their agreements with a State agency, school food authorities (SFAs) are responsible for operating the school nutrition programs in schools under their jurisdiction. These programs include the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program (SMP), Afterschool Snacks, Fresh Fruit and Vegetable Program (FFVP), Food Distribution Program (FDP), Seamless Summer Option (SSO), Summer Food Service Program (SFSP), and in some locations, the Child and Adult Care Food Program (CACFP). To assist in carrying out this responsibility, an SFA may contract with a food service management company (FSMC) to manage any aspect of the food service operation, or contract with a Vended meals company for pre-packaged individualized or bulk meals, or a food service management company (FSMC)-vended to assist with program oversight but prepare meals off-site at an FSMC owned/leased facility and deliver the meals pre-packaged individualized or in bulk.

When contracting with an FSMC or vended meals company, the SFA must use competitive procurement procedures, solicitations, and contract documents that include legally required language and requirements in compliance with Federal, State, and local procurement regulations. These required processes and documents are in place to protect the SFA and assist the SFA in awarding a contract that is in compliance with requirements, meets your needs and is financially responsible.

To assist SFAs with completing a competitive procurement for an FSMC or vended meals, the Illinois State Board of Education (ISBE) Nutrition Department has developed prototypes that the SFA is required to use. The ISBE developed prototypes ensure that all federally required contract provisions are included.

While the prototype ensures requirements of federal regulations and statutes are met, the document should not be considered all-inclusive. **The SFA should carefully read each contract item in the prototype to ensure both the SFA's needs, and local and state procurement requirements are being met and all blanks provided in the prototype have been accurately completed.** There are several required sections of the ISBE prototype that are not complete and must be completed by the SFA. It is recommended that the SFA work with their legal counsel to complete these required sections.

The SFA must conduct an analysis of the current food service operation to determine what contract type (FSMC, FSMC-Vended, or Vended) the SFA would like to solicit as well as to determine what procurement method best meets the SFAs goals and objectives.

Once the required procurement method is identified, SFAs must solicit for bids or proposals to ensure they receive the best possible product/service at the lowest possible price. The SFA must identify which procurement method meets its needs most effectively. The procurement methods for soliciting bids/proposals from an FSMC/Vended Meals Company are: Sealed Bids, i.e., an Invitation for Bids (IFB); Competitive Proposals i.e., a Request for Proposal (RFP). To learn and compare the procurement method options available please review our [RFP Vs. IFB – What's](#)

[Best for my SFA?](#)  summary guide.

**The foundation of all procurement, regardless of the method used, is that the procurement be conducted in a manner that provides maximum full and open competition.**

**If the SFA contracts the management of Program operations with an FSMC, the SFA remains responsible for the overall operation of the Programs. This responsibility requires that the SFA retain and maintain direct involvement in the operations and cannot delegate certain responsibilities to the FSMC. Therefore, contracting with an FSMC does not mean the SFA relinquishes control of the operations to the FSMC.**

The SFA must prepare all solicitation documents, evaluation, and scoring criteria for contract award and obtain State agency approval of the contract prior to contract execution. This includes having the State agency annually review the contract (including all supporting documentation) per 7 CFR 210.19(a)(5). These documents include, but are not limited to:

- the scope of work;
- specifications for products and/or services required in the solicitation;
- contract type to be awarded;
- terms and conditions;
- required contract provisions;
- technical requirements;
- evaluation and scoring criteria for determining the lowest, responsive and responsible bid/proposal for the invitation for bids (IFB) or for a request for proposals (RFP), the most advantageous bid/proposal to the Program with price as the primary consideration, and in compliance with all procurement regulations.

SFAs receiving federal reimbursement must follow the required federal procurement procedures. To ensure regulatory compliance and continued funding, **all SFAs must submit the *solicitation* documents to ISBE for review prior to beginning the solicitation process.** If the documents submitted are deemed in compliance with federal regulations and statutes, the ISBE will provide written notification to the SFA authorizing the SFA to begin the solicitation process. Throughout the entire solicitation and contract process, the SFA should keep in mind the **solicitation and resulting contract must be the same document.**

Carefully review the SFA responsibilities when contracting for meals and/or services, three-step competitive solicitation process, pre-bid/proposal conference guidance and IFB/ RFP evaluation guidance outlined on the following pages. If you have questions regarding the solicitation and contract process, please contact our office at 217-782-2491 or 800-545-7892 (in Illinois), or via email at [nutritionprocurement@isbe.net](mailto:nutritionprocurement@isbe.net).

## SFA Responsibilities when Contracting for Meals and/or Services


For School Food Authorities (SFA) that contract with a Food Service Management Company (FSMC), Vendor, another SFA and/or any other type of contractor, the SFA **must** maintain responsibility for the overall operation of the Programs. The SFA **cannot** relinquish their control or responsibility for the administration of the meal programs to a contractor. It is important that the SFA understand that the agreement with the State Agency to administer the Child Nutrition Programs (CNP), is between the State Agency and the SFA, not the contractor. The contractor may work as an agent or perform certain portions of an SFAs tasks but there are some limitations and the SFA is ultimately responsible for adhering to all applicable federal and state rules and regulations. Per [USDA Guidance](#), the SFA must remain responsible for:

- **Preparation of Solicitation and Contract Documents**  
The SFA must prepare all solicitation documents, evaluation, and scoring criteria for contract award and obtain State Agency approval of the contract prior to contract execution, if applicable. Contractors that develop or draft specifications, requirements, statements of work, or invitation for bids or requests for proposals must be excluded from competing for such contracts, as per 2 CFR 200.319(a).
- **State Agency Monitoring (Administrative, Resource Management & Procurement Reviews)**  
SFAs must be the responsible party in resolving findings resulting from program reviews and audits. The SFA must be involved in the review process and are responsible for the submission of any required corrective actions. The SFA is held responsible for any areas of noncompliance and subsequent fiscal action found during an Administrative Review (AR). However, since State Agencies agreement is with the SFA, the SFA may recoup funds from the contractor for related program violations.
- **Control the Quality, Extent and Nature of Food Service**  
The SFA must retain control of the quality, extent, and general nature of the food service and the prices to be charged to the children for meals. This includes retaining control of the nonprofit school food service account and overall financial responsibility for the Programs operated; establishing all prices for all meals served under the nonprofit school food service account (e.g., pricing for reimbursable meals and non-program foods and meals, i.e., a la carte food services, adult meals, and other food service Programs operated, as applicable); developing the 21-day cycle menu in accordance with the meal pattern requirements for all Programs operated; conveying menu adjustment requirements to the FSMC; and monitoring implementation of those adjustments. Additionally, any refunds, rebates, discounts, and credits received from processors must be paid to the SFA for return to the nonprofit food service account.  
  
***Nonprofit school food service account*** (7 CFR 210.2) means the restricted account in which all of the revenue from all food service operations conducted by the school food authority principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service. This account shall include, as appropriate, non-Federal funds used to support paid lunches as provided in [7 CFR 210.14\(e\)](#), and proceeds from nonprogram foods as provided in [7 CFR 210.14\(f\)](#).
- **Signature Authority**  
The SFA must retain signature authority on the agreement between the SFA and the State agency to participate in the Programs operated, including the SFA's free and reduced-price policy statement and the Claim for Reimbursement.
- **FSMC Performance Monitoring**  
When the SFA contracts with a Food Service Management Company (FSMC), the SFA must conduct

performance management of the FSMC contract through periodic on-site monitoring of the contracted requirements, as per 7 CFR 210.8(a)(1), 7 CFR 210.16(a)(3), and 7 CFR 250.54(c).

- On-Site Review Form: [Assessment Of School Meal Counting and Claiming Procedures](#) 
- [SFA-FSMC Contract Monitoring Form](#) 

SFA performance monitoring of the FSMC should encompass determining whether the food service operation is in conformance with the SFA-FSMC agreement to operate the Program in accordance with Program regulations. Contract language should also confirm the SFA's responsibility to implement internal controls as required under 7 CFR 210.8(a) and to ensure resolution of Program review and audit findings. Monitoring also includes:

- Ensuring all contract provisions are being fulfilled, such as local health and sanitation requirements.
  - Keeping records for menus, standardized recipes, production records, reimbursable meals served for all Programs operated, non-program revenues and expenses, and paid lunch equity calculations, if included.
  - Invoicing has all required supporting documentation submitted to the SFA.
  - Ensuring monthly invoice contains applicable USDA Food Credits.
  - Monthly monitoring of USDA Foods allocated and received to ensure USDA foods are being maximized in daily menus and on track for a utilized goal and credit to the district of 100% by the end of the contract year.
  - Monitoring functions may vary depending on the SFA-FSMC contract requirements.
- **Professional Standards and SFA Required Staffing**  
The SFA must have a SFA appointed Food Service Director, even if they contract their food service and/or operations, the SFA must have a staff member employed directly by the SFA that is deemed the SFA Food Service Director. This SFA Food Service Director must complete the USDA annual training requirements for a Director and must ensure that training requirements are completed and tracked for all other food service staff, including contracted staff. For more information on the required training hours and topics visit the [USDA Professional Standards Guidance](#) .

The SFA must have a sufficient number of knowledgeable staff to:

- Develop, conduct and evaluate the competitive procurement process.
  - Negotiate with the contract representatives.
  - Conduct performance management of the contract through on-site monitoring of the contracted requirements.
  - Use and ensure crediting of USDA Foods to the nonprofit food service account.
  - Coordinate with the contractor on behalf of the SFA in all aspects of Program and local education agency (LEA) operations, review Claims for Reimbursement.
  - Control the food service operations.
  - Perform the responsibilities that must be retained by the SFA.
- **Free and Reduced-Price Meal Process**  
The SFA must maintain responsibility for the implementation of free and reduced-price policy in accordance with 7 CFR 245. Such responsibilities include conducting hearings related to such determinations and verification of applications for free and reduced-price meals. An employee of the contractor may act as an agent for the SFA/LEA and perform, on behalf of the SFA, various aspects of the application, certification, and verification process of eligibility for school meal programs, if a provision for this service is included in the scope of the original solicitation. The company's employee must comply with

all requirements for these processes, including limited disclosure of individual eligibility information. However, the SFA is ultimately responsible for ensuring that all requirements are met and that the household eligibility determinations are accurate. The information related to household eligibility remains the property of the SFA and cannot be used by the contractor for any reasons other than determination of eligibility.

- **USDA Foods**

The SFA must retain title to all USDA Foods and ensure that all USDA Foods received by the SFA are made available to the contractor, including processed USDA Foods and that the value of the USDA Foods in processed end products accrue only to the benefit of the SFA's nonprofit school food service and are fully utilized therein. This provision also applies to any refunds, rebates, discounts, and credits received from processors. The SFA must ensure that the contractor has credited it for the value of all USDA Foods received for use in the meal service in the school year. The SFA must ensure compliance with 7 CFR 250.50 – 250.54.

- **Health Certification**

The SFA must ensure the contractor maintains applicable health certification(s) and assures that all State and local regulations are being met by a contractor in preparing or serving meals at an SFA facility.

- **Establishment of an Advisory Board**

The SFA must establish and maintain an advisory board composed of parents, teachers, and students to assist in menu planning.

## RESOURCE

- [School Food Authority Responsibilities When Contracting for Meals and/or Services](#) 

## Three Step Competitive Solicitation Submission Process

The following procurement and three-step competitive solicitation submission process must be implemented to ensure compliance with federal regulations and statutes. These requirements apply to all FSMCs contracts, of any value, and vended meal contracts in value excess of \$250,000. The SFA should also seek the advice of their legal counsel regarding local and state regulations and policies. An SFA failing to follow and complete the following required process may be prohibited from utilizing nonprofit food service account funds to pay for the meal services contract.

### 1. **Step 1: Submission**

- a. Once the SFA has a complete solicitation, all *solicitation* documents must be submitted to [ISBE Nutrition procurement](#) staff for review to determine federal regulatory compliance **prior to beginning the solicitation process**.
- b. Submitted documents to include:
  - [Step 1 Submission Form](#)
  - The completed Invitation for Bid (IFB) or Request for Proposal (RFP) in PDF format
  - All completed Exhibits in PDF format
- c. Allow a minimum 30 calendar days for ISBE to complete the initial document review and additional time for the contract to be finalized to ensure compliance and the SFA to receive written notification that the SFA may proceed with the solicitation.
- d. Once written notification approving the SFA to proceed with the solicitation has been received, the SFA **must** publicly advertise in a newspaper of general circulation and **must** directly solicit to **all** vendors listed on the [List of Known FSMC-Vended Meals Companies' in the SNP](#).
- e. Throughout the solicitation process, **all addenda/amendments, including all questions and answers, must be submitted to ISBE for review** and the SFA must receive notice the document(s) is/are in compliance **prior** to distributing addenda/amendments to all prospective offerors that received the original solicitation.

Addenda/amendments should not be issued within a minimum of seven (7) working days of the time and date set for the bid opening/ proposal due date. Otherwise, the time and date set for the bid opening/proposal due date may be delayed to allow issuing an addendum/amendment.

- f. All bids/proposals received must be evaluated solely by SFA employees based on the criteria established in the solicitation using the [Bid \(IFB\)](#) or [Proposal \(RFP\) Criteria Analysis Sheet](#). Until such time as a contract is awarded, no offeror, prospective or otherwise, may be provided access to any supporting documents received by the SFA.

### 2. **Step 2: Pre-contract award**

- a. Once all bids/proposals have been evaluated, the SFA must submit the following documents to [ISBE Nutrition procurement](#) staff for review and to provide written approval to the SFA to award the contract. ***The contract cannot be awarded "pending ISBE's compliance notification"***.
  - [Pre-Contract Award Summary Sheet](#)
  - Public Notice of Solicitation- Newspaper advertisement with date of publication.
  - [Solicitation Tracking Log](#)

- [Statement of No Bid/ No Proposal](#) from contractors opting not to bid/submit a proposal.
- [Addenda/addendum/amendments/Q&A\(s\)](#) issued with ISBE approval to release email.
- [Meeting sign in sheet\(s\)](#), such as pre-bid/proposal meeting and public open meeting
- **IFB ONLY:**
  - Section 21 (Vended Meals) or 22 (FSMC), Bid Summary Sheet, for **each** bid received
  - Completed [IFB Criteria Analysis Sheet](#) summarizing all bids received
- **RFP ONLY:**
  - Mutually agreed upon exceptions and deviations to RFP an FSMC is requesting to be added to the awarded contract, if applicable, along with ISBE approval to accept email.
  - Completed [RFP Evaluation and Scoring Sheet](#) summarizing all proposals received
  - Section 21, Proposed Rates and/or Fees, of the RFP for **each** proposal received
  - Section 22, Independent Price Determination Certificate, of the RFP for **each** proposal received


b. Allow a minimum 30 calendar days for ISBE to review the documents and for the SFA to receive written notification that the SFA may proceed with the contract award.

c. After receiving notification from ISBE stating that the SFA may proceed with the contract award.

- **The solicitation and resulting contract (including all addenda) must be the same document(s) previously determined in compliance by ISBE.**
- The contract must be awarded only to responsive and responsible offerors who possess the ability to perform successfully under the terms and conditions within the solicitation.

### 3. Step 3: Post-contract award

a. Upon completion of the contract award, the SFA must submit copies of the following documents to [ISBE Nutrition procurement](#) staff:

- [Post-Contract Award Summary Sheet](#) 
- **IFB ONLY:**
  - Section 21 (Vended Meals) or 22 (FSMC), Bid Summary form
- **RFP ONLY:**
  - Section 21, Proposed Rates and/or Fees
  - Section 22, Independent Price Determination Certificate
  - Section 23, Proposal Agreement
- **Contract Certifications (for both IFB and RFP)**
  - *Bid-Rigging Certification*
  - *Certificate of Independent Determination*
  - If the contract is \$25,000 or more -*Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions*
  - If the contract is over \$100,000 -*Certificate Regarding Lobbying*
  - If the contract is over \$100,000 and any funds other than Federal appropriated funds have been used for lobbying -*Disclosure of Lobbying Activities*



## Pre-Bid/Proposal Conference Guidance

School food authorities may be required by local procurement policies or may choose to conduct a pre-bid/proposal conference, also referred to as a pre-bid/proposal meeting. If this is the first procurement for meal services by the school food authority, conducting a pre-bid/proposal conference may be very beneficial to both the SFA and the prospective offerors. Following is general guidance that should be considered when planning a pre-bid/proposal conference.

### Attendance

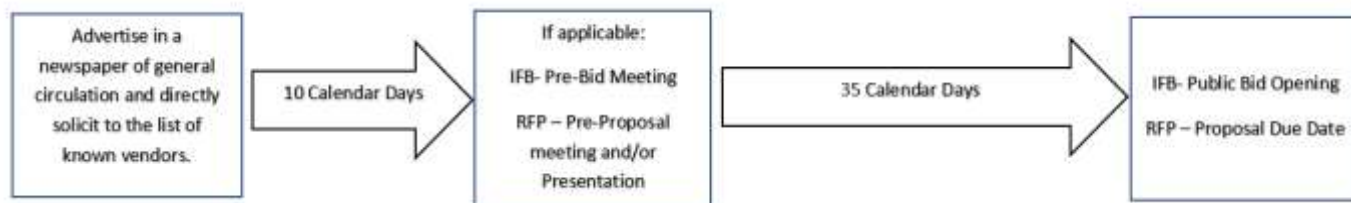
Attendance requirements for the conference is set by the SFA. The USDA guidance states that attendance at the meeting by prospective offerors is strongly recommended but generally should not be required for submittal of a bid/proposal.

### Scheduling

It is required that the conference be scheduled at least 10 calendar days after the public advertisement and distribution of the solicitation packets to provide sufficient notice to all prospective offerors.

Announcement of the pre-bid/proposal conference must be included in both the solicitation packet and the public advertisement.

In addition, the conference should be scheduled at least 35 calendar days prior to the public bid opening date/proposal due date to allow the SFA sufficient time to issue written addenda/amendments that may result from the conference and for offerors to subsequently prepare their bids/proposal. Hence, a minimum 45 calendar day solicitation period.



### Purpose

- Provide information and clarification regarding contract specifications that will assist in the preparation of bids/proposals
- Answer questions (take detailed notes; then provide answers in writing- see *Addenda/Amendments/Questions and Answers* below)
- Conduct a facility tour
- Discover ambiguities, errors, or omissions in the solicitation that may later be corrected through written addenda or amendments to the solicitation
- The conference should NOT be held as a substitute for formally amending a deficient or ambiguous specification or to disseminate performance requirements in addition to those contained in the solicitation.

### Addenda/Amendments/Questions and Answers

It should be stated at the opening of the pre-bid/proposal conference that information provided should not be considered official until provided in writing to all prospective offerors that have received the solicitation. Oral explanations or instructions given before the award of the contract shall not be binding. Any information given to a prospective offeror shall be furnished to all prospective offerors that received the original solicitation as an



addendum or amendment to the solicitation.

**Documentation**

Document the meeting, provide a sign-in sheet for all in attendance, and include a summary of all information shared, questions asked, and answers provided. The information should be sent as a written addendum to the original solicitation. If more than one addendum is required, each addendum should be numbered, and a copy of each addendum should be signed and returned with the bid/proposal as additional supporting documentation of receipt of all requirements for consideration as a responsible and responsive offer.

## IFB and RFP- Openings and Evaluation Guidance

Bids/Proposals must be directly solicited to all contractors on the ISBE [List of Known FSMC-Vended Meals Companies in the SNP](#), and must be publicly advertised in a newspaper of general circulation. In all cases, sufficient time must be provided in order to respond prior to the date set for opening the bids/proposal due date.

### IFB:

Under the sealed bidding method, when bids are received each one must be time-stamped and dated upon receipt. If received in advance of the bid opening, the bids are often deposited in a secure box, safe, or file until the designated opening time. Unsealed bids or bids received after the designated time and date of bid opening are not accepted.

The sealed bid opening will occur at the time and place stated in the IFB, and the bids must be opened publicly.

The purpose of a bid opening is to ensure that bid prices/responses are not altered after being opened. Once the bids are opened, the name of each bidder and bid price must be recorded. The contract must be awarded to the responsible FSMC whose bid, conforming to all the material terms and conditions, is the lowest price unless there are sound documented business reasons to reject a bid in the best interest of the program.

Since SFAs must often receive approval of all contracts by the State Agency (refer to ISBE Three Step Competitive Solicitation Submission Process above), the SFA may refrain from making a formal award until they written approval to proceed with award. The successful bidder should be notified of the SFA's intent to recommend acceptance of the bid, but the bidder must be clearly informed of the need for board approval and the timeframe for receipt of bid protests. Once the timeframe for bid protests has past, or been settled, and board approval is obtained, a written notice of the award should be made to the successful bidder. Again, the SFA must follow the ISBE Three Step Competitive Solicitation Submission Process and must ensure the State agency reviews and approves the FSMC contract before it is executed. The SFA should contact their legal counsel or comply with State Procurement Codes and Regulations regarding the intent to award and protest period, to identify their responsibilities regarding notification to unsuccessful bidders. At a minimum, unsuccessful bidders should be notified promptly. A copy of the signed contract should also be sent to the State Agency.

### RFP:

In the case of competitive proposals, a technical proposal is solicited that explains how the prospective contractor will meet the objectives of the solicitation and a cost element that identifies the costs to accomplish the technical proposal. When conducting a Request for Proposal (RFP), the School Food Authority (SFA) will need to determine the objectives and goals they want to accomplish through this solicitation and final contract. The objectives and goals will need to be clearly defined by the SFA and the SFA will need to determine what information and/or documentation they will require in order to conduct a consistent evaluation of each proposal. The evaluation will be utilized to determine the proposers ability to meet the objectives and goals of the solicitation and will be used to evaluate the costs associated with each proposal.

RFPs must be thoroughly reviewed and subjected to an impartial evaluation. While price alone is not the sole basis for award, price remains the **primary consideration** when awarding a contract under the competitive proposal

method. An evaluation and scoring plan must be developed solely by the SFA and must be included in the solicitation prior to the receipt of any proposals. Among the items that would be included in that plan are:

- Information on Evaluation Team/Scoring Committee—the size of the evaluation team/scoring committee, the expertise needed on that team, and the names of the team members. It is recommended that a lead is assigned and that is the evaluation team/scoring committee expert/lead on procurement that is employed by the SFA. The lead would also train the evaluation team on the objectives/goals, scoring criteria, documentation/information and the scoring forms/rubrix/process.
- Scoring System—the scoring system that will be used to evaluate the proposals. This would include, but not limited to, the standards to be applied, how each individual team member will evaluate/score each criterion, what (if any) documentation and/or information is required to determine the score for each criterion, the relative ranking and weight of each standard, and how the score will be calculated i.e., the sum of the individual team scores or an average of the total team score. Again, price remains the primary consideration when awarding a contract under the competitive proposal method.
- Ancillary Materials—development of scoring sheets, composite scoring forms, and any other forms or letters that may be needed. The scoring sheets should contain the evaluation criteria, standards to be applied, scoring columns and room for comments.

The individuals who will be evaluating the proposals should have sufficient knowledge of the goals of the SFA, experience in school food service, financial management experience (of food service, if possible), and experience in evaluating proposals.

Proposals must not be opened or reviewed until after the due date established in the RFP. The person responsible for receiving the proposals must safeguard them in order to prevent unauthorized disclosures. It is recommended that all solicitations remain open for a minimum of 45- 60 days to allow vendors sufficient time to respond and to promote fair and open competition.

On the date established for opening and evaluating the proposals, each member of the evaluation team should score each proposal independently. If the RFP allows alternative proposals, care must be taken to ensure these address the basic guidelines established in the RFP. Proposals should not be compared to one another. Proposals that fail to address all requirements are unresponsive and cannot receive further consideration. Therefore, the team members should be instructed to use a pass-or-fail basis for eliminating unresponsive proposals, and then use the pre-established scoring system for evaluating the responsive proposals.

If oral presentations are a component of the RFP, great care must be taken to ensure the presentation is scored only for its content. Presentations must be ranked against measurable standards. The team members should be instructed to evaluate the substance of the presentation. Offerors must not be allowed to alter or amend their proposals through the presentation process.

**Proposals must be evaluated using the weighted criteria stated in the RFP.** A determination must be made by the SFA as to whether the proposal is responsive to the requirements of the solicitation and whether or not they are responsible and capable of furnishing the goods and services solicited. Contractor integrity, compliance with public policy, record of past performance and financial and technical resources are valid factors in determining contractor responsibility. **SFAs must not change or by-pass the published evaluation and scoring criteria in order to circumvent full and open competition.** It is recommended that the SFA work with their legal to create a Conflict of Interest and a Confidentiality Statement and require all members of the evaluation team/scoring committee.