



General Procurement



**ISBE Nutrition Division
SNP Back to School Conference
July 23-24, 2019**



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Procurement

Procurement means the process of obtaining goods and/or services in accordance with applicable rules and regulations.



Rules and Regulations

Local

- School Food Authority sets more restrictive purchasing thresholds per board policy.

State

- 105 ILCS 5/10-20.21: The Illinois Public School Code states that all purchases, except perishable foods and beverages in excess of \$25,000 (or lower as required by district board policy), must be competitively bid and awarded to the lowest responsible bidder. The \$25,000 level refers to aggregate purchases on an annual basis.
- Request for Proposals (RFP) not allowed.

Federal

- 2 CFR 200: Uniform Administrative requirements, Cost Principles and Audit Requirements for Federal Awards.
- 7 CFR Part 210: National School Lunch Program



NUTRITION AND WELLNESS
Contracts/Procurement for School-
Based Child Nutrition Programs

Contract Information

NUTRITION & WELLNESS CONTRACT INFORMATION

This page is designed to provide school food authorities (SFAs) with information regarding the proper procedures to be used in the procurement of contracts for foods and goods (not meal services contracts) in the School-Based Child Nutrition Programs. Numerous references and resources are also provided.

THE CODE OF FEDERAL REGULATIONS (CFR)

- [2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#)
- [7 CFR Part 210 National School Lunch Program](#)

For further information, refer to the following questions and answers.

- [Q&A: Purchasing Goods and Services Using Cooperative Agreements, Agents, and Third Party Services](#)
- [USDA Clarification on Group Purchasing Organizations](#)
- [USDA Memo: Market Basket Analysis When Procuring Program Goods and Modifying Contracted-For Product Lists](#)

General Procurement Requirements



Competitive Sealed Bid Requirements



Competitive Sealed Bid Procedures



Informal Bid Procedures



Geographic Preferences



Buy American



Contract Certification Forms



Bid Protests





General Procurement Federal Guidelines

- All Procurement transactions must be conducted in a manner that provides maximum open and free competition.
- Procurement procedures must ensure they do not foster noncompetitive practices between firms, do not create organizational conflicts of interest, and do not restrict or eliminate competition.
- Procurement must not place unreasonable requirements on firms, require unnecessary experience, or establish unrealistic bonding requirements.
- The cost plus a percentage of cost method must not be used.



Principles of Good Procurement

- Free and Open Competition
- Fairness and Integrity
- Responsive and Responsible



Procurement Requirements

- Procurement Policy
- Code of Conduct



Procurement Policy

2 CFR 200.318 (a)

- The school district must have its own documented procurement procedures that conform to all federal, state and local laws.
- The school district must have oversight procedures and documentation.
- The school district must have written standards of conduct covering conflicts of interest that prohibit officers, employees and agents from soliciting or accepting gratuities, favors or anything of monetary value from contractors or parties of subcontracts.
- The procedures must avoid acquisition of unnecessary or duplicate items.
- The school district must award contracts only to responsible contractors.
- The school district must maintain records sufficient to detail the history of the procurement.



Code of Conduct

2 CFR 200.318 (c)(1)

- The school district must have written standards of conduct covering conflicts of interest that prohibit officers, employees and agents from soliciting or accepting gratuities, favors or anything of monetary value from contractors or parties of subcontracts.
- Procedures must provide for disciplinary actions for violations by officers, employees, or agents.
- SFA/LEA must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications.
- SFA/LEA must take steps to assure that small, minority and women's businesses enterprises and labor surplus firms are used when possible.



Procurement Methods

Informal

- Micro-Purchases
- Small Purchases

Formal

- Competitive Sealed Bids/ Invitation for Bid (IFB)



Informal: Micro-Purchase Procurement

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$ 10,000.

- Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable. (2 CFR 200.320)
- Must distribute micro-purchases equitably among qualified suppliers
- Simple purchase



Informal: Small Purchase Procurement

Small purchases procedures, also known as informal procurement, are those relatively simple and informal procurement methods for securing services, supplies, or property that may be used when the anticipated acquisition will fall below the small purchase threshold.

- The Federal small purchase threshold is \$ 250,000.
- State of Illinois small purchase threshold in \$ 25,000 or \$ 250,000.
- In applying the small purchase threshold, the school food authority must adhere to the most restrictive, lowest limit set.
- If the small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources of 3 or more.



Informal Purchase Procedures

Purchases do not exceed \$ 250,000 (or \$ 25,000) as described above, informal bid procedures may be used. The following steps should be part of the informal bid process:

- Develop a written purchase description of the services/items being solicited;
- Solicit quotes/bids from three or more potential vendors based on the purchase description; document vendor names along with the date and method of contact - be sure to maintain free and open competition;
- Record all quotes/bids received and any notification received from vendors declining to bid;
- Evaluate the quotes for conformance to the purchase description;
- Award the purchase/contract (record the justification for the award); and
- Maintain all documents on file for potential audit purposes.



Annual Levels for Formal Purchase Procedures

Federal regulations require SFAs receiving federal assistance to competitively purchase food, supplies, equipment and services. When the aggregate amount to be purchased is in excess of \$250,000, a formal procurement process must be conducted.

NOTE: For public schools only, the Illinois School Code states that all purchases, except perishable food and beverages in excess of \$25,000 (or a lower amount as required by district board policy), must be competitively bid and awarded to the lowest responsible bidder. The \$25,000 level refers to aggregate purchases on an annual basis.

The chart below details when formal competitive bidding must be conducted.

Types of Items	Annual Amount of Purchases
Milk or fresh dairy products	In excess of \$250,000
Fresh bread	In excess of \$250,000
Fresh produce	In excess of \$250,000
General groceries	In excess of \$250,000
Vended meals	In excess of \$250,000
Supplies	In excess of \$25,000
Equipment	In excess of \$25,000



Formal: Competitive Sealed Bid Procurement

When the value of the purchase is expected to exceed the simplified acquisition threshold, SFA's must use the following method:

- Competitive Sealed Bidding (2 CFR 200.320 (c) are bids that are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. Also known as Invitation for Bid (IFB).



Competitive Sealed Bid Components

- Sealed Bids must be directly solicited to at least five (5) known suppliers
- Providing suppliers sufficient response time prior to the date set for public opening of the bids, for all organizations,
- The invitation for bid must be publically advertised for at least 10 days before the bid date.
- The invitation for bid, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond
- All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly
- A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder
- Any or all bids may be rejected if there is a sound documented reason.



Competitive Sealed Bid Contracts

- Competitive Sealed Bid (IFB) results in a Fixed Price Contract only.
- Fixed Price Contract:
 - Provides a stated price per meal that is a fixed rate.
 - Provides the maximum incentive for the contractor to control costs and perform effectively.
 - Imposes the least administrative burden on the contracting parties.
 - Price is fixed for the duration of the contract
 - Economic price adjustments authorization and procedures, if any, must be included in the solicitation:
 - Must be tied to a standard index such as the Consumer Price Index, and
 - The frequency of adjustment included
 - Contract duration may be less than one year depending on market conditions.
 - Does **NOT** allow for additional “bill backs” or additional billing outside of the fixed price meal rate.



Terms, Conditions and Provisions

- Apply to all procurement transactions (formal and informal).



Additional Provision: Buy American 7 CFR 210.21(d)

The Buy American Provision safeguards the health and well-being of our Nation's children and supports the U.S. economy, American farmers, and small and local agricultural businesses.

School food authorities (SFAs) in the continental U.S. must purchase domestic agricultural commodities and food products.

- A "Domestic Commodity or Product" is defined as an agricultural commodity or product that is produced or processed in the U.S. using substantial agricultural commodities that are produced in the U.S.

Exceptions to the Buy American provision: Two situations which may warrant a waiver to permit purchases of foreign food products are:

1. The product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; or
2. Competitive bids reveal the costs of a U.S. product are significantly higher than the foreign product.

****REMEMBER: Document exceptions and keep records!****



Additional Provision: Geographic Preference 7 CFR 210.21(g)

- Prohibited in Federal procurements except where applicable Federal Laws expressly permit their use.
- National School Lunch Act: apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products.



Additional Provision: Competition 2 CFR Part 200.319

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.



Additional Provision: Competition 2 CFR Part 200.319

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.



Additional Provision: Appendix II 2 CFR Part 200

- Federal Provisions that apply: formerly from 7 CFR Part 3016.36(i).
 - Administrative, contractual, or legal remedies
 - Termination clause
 - Equal Employment Opportunity Executive Order 11245
 - Copeland Anti-Kickback”
 - Davis-Bacon
 - Contract Work Hours and Safety Standards
 - Reporting
 - Awarding agency requirements and regulations (this includes allowable cost provisions in 7 CFR Part 210.21 (Buy American, allowable cost provisions in cost-reimbursable contracts
 - Look at the books – Comptroller General of the United States, et.al.
 - Clean Air and Water Act
 - Debarment and Suspension
 - Lobbying
 - 2 CFR Part 200.322 – Procurement of recovered materials
 - For a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act Equal Employment Opportunity Executive Order 11245



Other Terms and Conditions

- Common terms that may be used:
 - Vendor invoicing requirements
 - LEA payment frequency and method – every two weeks, 2/month, 30 days, etc.
- Delivery requirements, if any, and frequency
- Installation
 - Equipment (provide the utility requirements in the specifications)
- SFA specific



SFA Responsibilities

- 2 CFR Part 200.318(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.



Questions?

