

Procurement for the CACFP

Introduction

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

Procurement procedures must ensure maximum open and free competition. The selected procedures must ensure that the purchasing organization (participating institution) receives the best possible product or service at the lowest price.



This module establishes standards and guidelines for the procurement (purchase) of foods, supplies, equipment and other goods and services. These standards ensure goods, products, and/or services are obtained efficiently and economically along with being in compliance with applicable law. All procurements made with CACFP funds must comply with the procurement requirements in 7 CFR 226.22 of the CACFP federal regulations.

References

1. 7 CFR 226.22 Procurement Standards in CACFP regulations
2. 2 CFR 200.317 - .326 Procurement Standards contained in government regulations; <http://www.ecfr.gov>
3. Chapter II – 200-299 Office of Management and Budget Guidance
4. Part 200 – UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARD
5. Independent Child Care Centers, A CACFP Handbook, USDA FNS, May 2014
6. Contracting for Food Service (to download for reference)
7. Invitation for Bid Contract (to download for reference)
8. Food Service Contract – Contracts less than \$150,000 (to download for reference)
9. Agreement to Furnish Food Service (to download for reference)
10. Price Quotation Record (to download for reference)

Code of Conduct

All institutions must maintain a written Code of Conduct. This policy governs performance of the officers, employees, and agents of the Institution who are engaged in selecting, awarding, and administering procurements and contracts. Of these individuals, none may participate in selecting, awarding, or administering procurements and contracts if, to the best of their knowledge, a conflict of interest (real or apparent) exists. Such a conflict would arise when any of the following has a financial or other interest in the firm selected for an award:

- The employee, officer, board member, or agent
- Any member of his/her immediate family
- His/her partner



- Any organization, which employs any of the above or with which any of them have an arrangement concerning prospective employment

No member of the Board of Directors, officers, employees, or agents of the institution shall solicit or accept gratuities, favors, or anything of monetary value from current or potential vendors, consultants, or contractors. A violation of this provision by an officer shall result in disciplinary action pursuant to the corporate bylaws; a violation by an employee shall result in disciplinary action pursuant to the institution's personnel policies. A violation by an agent shall result in disciplinary action pursuant to the contract with the agency.

Methods of Procurement

When deciding on a method of procurement, an institution must calculate a summation total of goods, products, and/or services that can be purchased from one vendor during a calendar year. This can be called a procurement aggregate. This summation applies to all purchases where annual needs can be anticipated. This requirement does not apply to the purchase of fresh produce, meat or frozen goods, which are perishable, purchased more frequently, and priced according to market fluctuations.

Federal regulations allow five methods of procurement: 1) micro purchase procedures for aggregate purchases under \$3,500, 2) small purchase procedures for aggregate purchases under \$150,000 annually, 3) competitive sealed bids 4) competitive negotiation, and 5) noncompetitive negotiation for aggregate purchases of \$150,000 or more annually.

These five methods are detailed below. Regardless of which method is utilized, the purchasing organization should avoid all provisions that might restrict competition or result in the agency paying higher prices because only one or a limited number of vendors can supply the needed product or service. Institutions must also ensure that small businesses, minority-owned firms, and women's business enterprises have an opportunity to compete.

Micro Purchase Procedures [2 CFR 200.320]



When goods, products and/or services totals does not exceed \$3,500 for a calendar or Program year, these purchases may be awarded without soliciting competitive quotes if the institution considers the price reasonable. The institution can just gather three quotes from vendors/contracts that meet their needs. These purchases must be distributed among qualified suppliers not just an institutions favorite. These documented quotes must include, at a minimum, date, name of vendors contacted, description of item(s), price quotes, name of person providing quote, cash terms and delivery data (if applicable). (See Price Quotation Record documentation for resource).

Small Purchase Procedures [2 CFR 200.320]

When goods, products and/or services total less than \$150,000 in aggregate value for a calendar or Program year, the purchasing organization may utilize small purchase procurement methods. The purchasing organization must contact at least three known suppliers of the product or service and obtain competitive price quotes from them. This contact may be conducted via supplier



website/catalogs for prices, over the phone or in writing. Whether contact is made over the phone or in writing, all suppliers must receive the same information about the purchasing organization's requirements.

Records of Solicitation

Whether written or phone contact is made, the purchasing organization must document all procurement information for small purchases. At a minimum, documentation must include the date, names of vendors contacted, description of items(s), price quotes, and names of persons providing the quotes, cash terms and any delivery data. Whenever only one quote is received, documentation must include written justification for the purchase.

Competitive Sealed Bid Procedures [2 CFR 200.320]

Purchasing organizations must utilize competitive sealed bids (which is the most restrictive threshold) when procurements are expected to total \$150,000 or more in aggregate value and a) the product or service can be completely described in the agency's bid specification, and b) the award of a contract can be made primarily based on price alone.

Purchasing organization must take the following steps to conduct a competitive sealed bid:

- Preparation of Bid Specifications: The purchasing organization must prepare an Invitation for Bid (IFB) that provides uniform information regarding the organization's specific contracting requirement (the product or service to be procured) to all prospective bidders.

The purchasing organization must describe the requirement as clearly and completely as possible in the IFB; however such descriptions must not include information that could serve in any way to restrict competition. Information that could be considered restrictive of competition might include the specification of brand name products or the inclusion of nonessential product characteristics. Furthermore, the purchasing organization must inform all bidders of any amendments or changes to the IFB.

In addition to providing information on the requirements, the IFB must also state clearly where and when bids must be submitted. The IFB must at a minimum allow 14 days between the public advertisement of an IFB and the deadline for submission of bids.

- Publicizing the Procurement: The purchasing organization must send the IFB to known suppliers of the same product or service. Due to the difficulty of sending the IFB to all suppliers of certain products or services, purchasing organizations may rotate through a list of suppliers on a predetermined basis, and add other names whenever a supplier requests to be included on the bidders' list.

In addition to mailing IFBs, the purchasing organization must formally advertise the proposed procurement to other potential vendors. The easiest way to formally advertise procurement is to place legal notices in local newspapers of general circulation throughout the State of Montana.

A formal advertisement need not include more detail than 1) name, address and phone number of the Institution, 2) how to obtain the IFB, 3) a brief general description of the contracting

requirement, 4) the deadline for receipt of bids, and 5) the date, time and place of the public bid opening.

- **Bid Opening & Contract Award:** The purchasing organization must keep any bids received prior to the final deadline for bid submission in a secure place. Bids received after the deadline must be returned unopened to the bidders. All bids received must be date and time stamped and made part of public record.

After the bid deadline, the purchasing organization must open the bids and read them aloud publicly. The official responsible for the opening of bids should state, "The lowest bid appears to be.... We will award a contract to the lowest responsive and responsible bidder." The purchasing organization must not announce a contract award until it has had sufficient time to examine the low bid for responsiveness to the IFB and determine whether the low bidder is a responsible firm.

For a bid to be considered responsive, it must offer a product that does not substantially differ from the requirement of the IFB. All terms of the IFB, including price, expected quantities, delivery schedule and quality, are minimum requirements, and any attempt to modify these minimum requirements (i.e., for a bidder to offer twice a week delivery rather than daily delivery required in the IFB) would make the bid non-responsive. Furthermore, any attempt to make the bid price conditional or contingent upon other factors would make the bid non-responsive unless contingent bids have been authorized in the IFB.

In a competitive bid situation, the purchasing organization must award the contract to the low bidder unless the bidder is found to be non-responsive or not responsible (7 CFR 226.22(i)(2)). The purchasing organization must clearly document such a finding, since a low bidder may file a suit if not awarded the contract. The purchasing organization may reject bids when there are sound, documented reasons in the best interest of the CACFP.

Competitive Negotiation

The purchasing organization may utilize competitive negotiation when procurements are expected to total \$150,000 or more, and 1) are of such a complex and technical nature (e.g., consulting, research, and development, etc.) that they cannot be fully described in bid specifications, and b) the award of the contract must be based on factors other than price alone. Evaluation factors other than price must only be used when they are clearly described in the purchasing organization's bid specification also referred to as a Request for Proposal (RFP) in the process of competitive negotiation.

In a competitive negotiation, the purchasing organization requests the potential contractor to describe in detail how the objective can best be met. Therefore, in addition to a cost proposal, the potential contractor's response to an RFP must also include a technical proposal. The technical proposal describes the methods the potential contractor will use to complete the project described in the RFP and the underlying costs associated with those methods.



The RFP will identify all significant evaluation factors, including price or cost where required, and their relative importance. Furthermore, the purchasing organization will provide a mechanism for technical evaluation of the proposals received to determine which responsible bidders will be contacted for the purpose of further written and oral discussions and selection for contract award.

The process of actually conducting a competitive negotiation is similar to conducting a competitive sealed bid. The purchasing organization prepares an RFP, which states as clearly as possible the purchasing organization's requirements and objectives. The purchasing organization formally advertises the procurement and sends the RFP to known suppliers of the product or service. The deadline for receipt of proposals must be at least 30 days after publication of the RFP, depending on the complexity of the procurement. After evaluation and negotiation, the purchasing organization awards a contract to the contractor whose overall proposal, price and technical factors are considered most advantageous to the purchasing organization.

Non-Competitive Negotiation

The non-competitive negotiation method of procurement is appropriate only when a) a public emergency, such as a natural disaster, prevents the time required to publicize the procurement, b) only one source of the product or service exists, or c) after competitive solicitation, only one bid or proposal is received. In any event, even if non-competitive negotiation seems justified for one of the above reasons, the center or sponsoring organization must obtain written approval from MT CACFP or FNS prior to awarding the contract.

To obtain MT CACFP approval of non-competitive procurements, the center or sponsoring organization must submit documentation of its attempt to solicit competition in an appropriate manner. The center or sponsoring organization must submit the documentation records prior to the date the contract is to begin in sufficient time for the MT CACFP to review the request.

Such documentation must include the following:

- A copy of the public advertisement
- A copy of the IFB or RFP
- Copies of all letters received from prospective bidders or respondents, including letters indicating a prospective bidders' lack of interest in competing for the contract
- A copy of the bidders' list
- A copy of the criteria used to evaluate bids
- Copies of all bids submitted
- The mathematical weighing formula used to select the bidder when factors other than price were used in the selection process
- The names of the individuals evaluating the bids
- The justification for selection if other than just price
- Any other materials, which would serve to justify the Institution's use of noncompetitive procurement

APPROVED



Procurement Documentation

An institution must develop and have on file written procurement procedures [7 CFR 226.22(e)] for how the institution will:

- Purchase products, goods, and/or services
- Advertise (if needed) the products, goods and/or services it plans to purchase
- Select and evaluate various bids or proposals submitted by potential vendors/contractors
- Evaluate potential vendors/contractors (e.g., the criteria that will be used for evaluation, such as integrity, compliance with public policy, past performance, and financial and technical resources)

Institutions must maintain documentation on file for every procurement transaction made with CACFP funds. This documentation would include, but is not limited to:

- Copies of the documentation of the prices submitted by potential vendors/contractors
- Names of vendors/contractors who submitted price quotations that were compared
- Identifying which vendor/contractor was chosen
- Stating why that vendor was chosen

The image shows a detailed procurement form with various sections and tables. It includes fields for item description, quantity, price, and vendor information. The form is organized into several distinct areas, likely representing different stages or components of the procurement process.

Request for quote (RFQ) documents need not be complex but must provide sufficient information to permit an eligible vendor to respond. At a minimum, include:

- A description of the products, goods, and/or services needed, including quantity
- The date by which the products, goods and/or services must be provided
- Request for written price(s) or quote(s) including the time period during which the prices/quotes are valid
- If prices/quotes are obtained orally, by phone or in person, they must maintain written documentation identifying the pertinent details of the transaction including:
 - The name of the person soliciting the information
 - The name of the vendor/contractor solicited and the vendor/contractor representative providing the price/quote
 - The date the information was provided
 - The products, good, and/or services to be purchased, including quantities upon the price /quote was provided
 - All terms or conditions imposed by either party
 - The time period during which the price/quote will be honored by the vendor/contractor

Institutions must maintain documentation of the entire procurement process on file for three years plus the current fiscal year. During administrative reviews or audits, MT CACFP will review procurement documentation for purchases made with program funds.

Geographical Preference

Geographic preference may be used by institutions to procure locally grown or raised unprocessed foods. The institution making the purchase has the discretion to determine the local area to which the geographic preference option will be applied [7 CFR 226.22(n)(1)]. Local area is not defined by the USDA.

There are many ways in which institutions can incorporate local foods into their meal programs including distributors, farmers' markets, Community Supported Agriculture (CSA), and food hubs. Institutions are not required but are encouraged to purchase in a way that promotes open and fair competition.

Acceptable documentation for items purchased from the entities stated above can be handwritten receipts as long as the receipt includes the date of purchase, name of vendor/farmer, item description, item cost, number of items, and total cost.

Vended Meals

Institutions may contract with vendors to purchase meals and snacks. The decision to purchase meals from a vendor will depend on a variety of factors including each institution's availability of food service equipment, space, personnel, and budget. Meals may be purchased either in bulk or as pre-plated, individual meals. The contract may be for food preparation, only, or for preparation and delivery.

Meals not prepared by the institution either on-site or from a central kitchen are considered meals from an outside source.

A vendor may be:

- A private Non-Profit organization
- A Local Education Agency (LEA), or any other public entity
- A catering company
- A Food Service Management Company (FSMC) acting as a food vendor only

Institutions must follow procurement procedures for competitive procurement to obtain CACFP meals.

Vended Meal Agreement

In this agreement, the vendor/contractor does not directly manage any aspect of actually serving the food. Instead, the vendor/contractor provides only pre-packaged, pre-plated meals or food only.

When meal food costs will be under \$150,000 during the fiscal year and the institution is providing the staff for serving meals, a Vended Meal Agreement is used. The institution must document contact with at least three vendors/contractors and obtain competitive price quotes.

Signing a Vended Meal Agreement with a vendor does not relieve the institution of its CACFP responsibilities of managing, monitoring, filing reimbursement claims, and



record keeping, including compliance with meal patterns, portion sizes, and maintaining the quality of the food service.

The institution will retain all documentation in their files for review. Agreements developed under this option do not have renewal years available; they are negotiated each year.

Food Service Management Company Agreement

The Food Service Management Company (FSMC) provides services for institutions such as serving, producing, and supplying prepared foods. A Food Service Management Company (FSMC) is considered a vendor in CACFP Federal Regulations.

In general, FSMC services will require a competitive procurement and resulting agreement as the yearly cost is over \$150,000.

Institutions would use a Request for Proposal (RFP) format to procure a FSMC. The RFP format allows the institution to award the Agreement based on a combination of lowest price and how well the proposals meet the evaluation criteria established by the institution. The institution will need to submit a draft copy of the RFP to MT CACFP for review before soliciting vendor proposals.

Although a school is not defined as a food service management company, it still performs the same functions. The competitive bid process is not required if the institution purchases meals from a School Food Authority (SFA).

Institutions that contract with a FSMC must complete all of the necessary CACFP documentation and recordkeeping. This documentation must be available upon any administrative reviews or audits.

Administrative Requirements

Program regulations require the Institution to have a valid contract in place if it chooses to contract with a food service management company or a SFA, for the meals provided to CACFP participants.

Regulations also require the institution to submit the contract to the MT CACFP prior to the effective date of the food service management company contract.

MT CACFP requires all institutions to use the standard template food service management company contract, which contains the elements required by CACFP regulations. Additional requirements may be added to the contract as an addendum.

The standard CACFP contract also includes site information that must be completed for each site to receive meals. A copy of the standard contract can be downloaded from the state website.

If there are no material changes to the original procurement specifications and language was included in the original bid-allowing contract renewals, FSMC may be extended on a yearly basis for up to four years, for a total contract of five years.

Procurement Requirements for Food Service Management Companies

For contracts under \$150,000 annually, the institution must follow the small purchase procedures described in the *"small purchase procedures"* section. For contracts of \$150,000 or more annually, the institution must conduct the procedures as outlined in the *"competitive sealed bids"*, *"competitive negotiation"* or *"non-competitive negotiation"* section.

Conclusion

Procurement methods to be used for a given purchase(s) are determined by examining the manner in which products, goods, and/or services have been purchased in the past. Institutions must examine past procurement patterns, vendor/contractors used, and total dollar amounts spent during a single fiscal year. The type of purchase and the total expended will determine the required procurement method to use.

These standards and guidelines do not relieve the Institution of any contractual responsibilities. The Institution is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative disputes related to procurements. Institutions may establish their own procurement procedures, which reflect applicable State or local laws and regulation if these procedures conform to the standards in [7 CFR 226.22].

Federal regulations for procurement are designed to help institutions make fair and ethical purchases with Federal funds. Federal regulations allow for federal funds to be used to purchase products, goods, and/or services at the highest quality for the best price. All institutions that accept public funds, such as the CACFP, must have purchasing procedures. The State agency will give technical assistance to institutions to write purchasing procedures that meet federal requirements, and to assist in ensuring that those procedures are followed.

Activity Three

1. Calculate your institution's total of goods, products, and/or services that your institution are purchased from one vendor during a calendar year. Keep in mind that the total does not apply to the purchase of fresh produce, meat, or frozen goods which are perishable, purchased more frequently and priced according to market fluctuation.
 - a. What is this total? \$ _____/calendar year.

2. Now that you have stated your total dollar amount that your institution purchases from one vendor during a calendar year.
 - a. Identify the procurement method that your institution will be using?
 - b. Complete the required documentation (identified in module content) needed to support your institution's identified procurement method? Download the appropriate document and complete. (NOTE: If your institution has current procurement documentation; please upload)

Documents available to download:

- Contracting for Food Service (great resource with lots of information)
- Invitation for Bid (contracts of \$150,000 or greater)
- Food Service Contract (contracts less than \$150,000)
- Agreement to Furnish Food Service (vendor through a public or private school participating in National School Lunch or School Breakfast Programs)
- Price Quotation Record

Quiz Three

1. Procurement means:
 - a. Process of obtaining goods, products, and/or services in accordance with rules and regulations.
 - b. Process of obtaining signatures, agendas, and/or training schedules in accordance with rules and regulations.
 - c. Process of obtaining grant application, funding, and necessary support in accordance with rules and regulations.
 - d. Process of obtaining employment verification, background checks, and necessary immunizations in accordance with rules and regulations.

2. Which is not a method of procurement?
 - a. Micro Purchase Procedure
 - b. Small Purchase Procedure
 - c. Silent Auction Purchase Procedure
 - d. Competitive Sealed Bid Procedure

3. All methods of procurement transactions made with CACFP funds require some form of documentation. True or False

4. When goods, products, and/or services totals do not exceed \$3,500 for a calendar or Program year, these purchases are called...
 - a. Small purchases
 - b. Micro purchases
 - c. Individual purchases
 - d. Program purchases

5. When goods, products, and/or services total less than \$150,000 in a year, these purchases are called...
 - a. Program purchases
 - b. Small purchases
 - c. Individual purchases
 - d. Micro purchases

6. Which is not a record of solicitation in regards to documenting procurement information?
 - a. Phone contact
 - b. Email
 - c. Website/catalog
 - d. Information from a family member

7. When procurements are expected to total \$150,000 or more in a year, the purchasing organization must utilize what procedure?
 - a. A phone log document procedure

- b. A tracking log document procedure
 - c. A lawyer must be onsite for this procedure
 - d. A competitive sealed bid procedure
8. Can institutions participating in the CACFP contract with vendors to purchase meals and snacks?
- a. Yes
 - b. No
9. When entering into a Vended Meal Agreement, does the institution need to document contact with vendors/contractors to obtain competitive price quotes?
- a. Yes, at least three vendors/contractors
 - b. No, documentation is not needed for a vended meal agreement
 - c. Yes, but the institution does not have to retain documentation in their files
 - d. No, a vended meal agreement relieves the institution of all CACFP responsibilities
10. Federal regulations for procurement are designed to help institutions make_____?
- a. Easy purchases at the lowest price
 - b. Fair and ethical purchases at the highest quality for the best price
 - c. Local purchases at the fair market rate
 - d. Competitive purchases locally