



Delaware

Department of Education

Child Nutrition Programs Procurement Procedures and Code of Conduct Template

School Food Authorities (SFAs), Summer Food Service Program (SFSP), and Child and Adult Care Food Program (CACFP) Sponsors can use this template to identify their procurement plan for United States Department of Agriculture (USDA) School Nutrition Programs. School Nutrition Programs include the National School Lunch Program (NSLP), School Breakfast Program (SBP), Afterschool Snack Program (ASSP), and Fresh Fruit and Vegetable Program (FFVP).

This template can be used to guide SFAs or Sponsors in drafting procurement procedures that are SFA/Sponsor specific. Each SFA/Sponsor is responsible for ensuring that all procurement procedures comply with federal, State, and local procurement regulations.

PROCUREMENT PROCEDURES

A. General Procurement

1. The SFA's/Sponsor's procurement procedures maximize full and open competition, transparency in transactions, comparability, and documentation of all procurement activities.
2. If the SFA/Sponsor is purchasing an item or items with an annual cumulative total of less than \$10,000, they may conduct a **micro-purchase** (open market purchase). To the extent practicable, the SFA/Sponsor should distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the SFA/Sponsor considers the price to be reasonable as required by 2 CFR 200.67.
3. For purchases of material goods and non-professional services between \$10,000 and \$99,999 and professional services between \$10,000 and \$149,999, the SFA/Sponsor must conduct informal procurement at a minimum. The SFA/Sponsor must draft specifications for the goods or services being procured and solicit quotes from at least three (3) qualified vendors.
4. For purchases of \$100,000 or more for goods and non-professional services and \$150,000 or more for professional services, formal procurement procedures must be used as required by [2 CFR 200.318-.326](#).
5. Procurement procedures avoid acquisition of unnecessary or duplicative items. Consideration is given to consolidating or breaking out procurements to obtain a more economical purchase.
6. All necessary affirmative steps are taken by the SFA/Sponsor to ensure that small businesses, minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

B. Formal Procurement

When a formal procurement is required, the SFA/Sponsor must solicit through a Request for Proposal (RFP) or Invitation for Bid (IFB).

1. The SFA/Sponsor must perform a cost or price analysis in connection with every formal procurement, including contract modifications. As a starting point, the Sponsor should make independent price/cost estimates before soliciting for and receiving bids or proposals.
2. A solicitation of an IFB or RFP must be publicly advertised in order to publicize the intent of the SFA/Sponsor to purchase needed items. The advertisement for bids/proposals must run at least once over two consecutive weeks. The solicitation will include:
 - general description of goods/services being purchased;
 - contact information where potential vendors can get more information/bid packet;
 - date of pre-bid meeting (if applicable) and if attendance is a requirement for bid award;
 - deadline for submission of sealed bids or proposals; and
 - time and location of bid opening.
3. In an IFB or RFP, each vendor must be given an opportunity to bid on the same specifications.
4. The developer of written specifications or descriptions for procurements is **prohibited** from submitting bids or proposals for such products or services.
5. The IFB or RFP must clearly define the purchase conditions. The following list includes requirements, not exclusive, to be addressed in the procurement document:
 - contract period;
 - date, time, and location of IFB/RFP opening;
 - how vendor is to be informed of bid acceptance or rejection;
 - delivery schedule;

- requirements (terms and conditions) that bidder must fulfill in order for bid to be evaluated;
- benefits to which the SFA/Sponsor will be entitled if the contractor cannot or will not perform as required;
- statement assuring positive efforts will be made to involve minority and small business;
- SFA Only: A statement regarding the return of purchase incentives, discounts, rebates, and credits to the SFA’s nonprofit school food service account;
- contract provisions as required in [Appendix II to 2 CFR 200](#);
- SFA Only: Contract provisions as required in [7 CFR 210.21\(f\)](#) for all cost reimbursable contracts;
- SFA Only: Contract provisions as required in [7 CFR 210.16\(a\)\(1-10\)](#) and [7 CFR 250.53](#) for food service management company contracts;
- price adjustment clause (tied to a standard index, i.e., consumer price index, or other as stated in terms and conditions for pricing and price adjustments);
- method of evaluation and type of contract to be awarded (solicitations using an IFB are awarded to the lowest responsive and responsible bidder; solicitations using a RFP are awarded to the most advantageous bidder/offeror with price as the primary factor among factors considered);
- method of award announcement and effective date (if intent to award is required by state or local procurement requirements);
- method of shipment or delivery upon contract award;
- provision requiring contractor to maintain all required records for three years after final payment and all other pending matters (audits) are closed for all negotiated contracts
- description of process for enabling vendors to receive or pick up orders upon contract award;
- signed [Debarment/Suspension Certificate](#);
- SFA Only: “Buy American” as outlined in [7 CFR Part 210.21\(d\)](#) and [SP 24-2016](#); and
- specifications and estimated quantities of products and services prepared by the SFA/Sponsor and provided to potential contractors desiring to submit bids/proposals for the products or services requested.

6. The following criteria will be used in awarding contracts as a result of bids/proposals. Price must be the highest weighted criteria. Examples of other possible criteria include quality, service, delivery, and availability.

Price

7. In awarding a RFP, a set of award criteria in the form of a weighted evaluation sheet will be provided to each bidder in the initial bid document materials. Price alone is not the sole basis for award, but remains the primary consideration among all factors when awarding a contract. In the case of a tie, when the highest scored evaluations have the same score, price should be the tie-breaker (the highest scored proposal with the lowest price should be selected).

Following evaluation and negotiations, a firm fixed price or cost reimbursable contract is awarded.

- The contracts will be awarded to the responsible bidder/proposer whose bid or proposal is responsive to the invitation and is most advantageous to the SFA/Sponsor, price as the primary and other factors considered. Any and all bids or proposals may be rejected in accordance with the law.
- A SFA/Sponsor representative is required to sign on the bid tabulation of competitive sealed bids or the evaluation criterion score sheet of competitive proposals signifying a review and approval of the selections.
- Any time an accepted item is not available, the SFA/Sponsor will select the acceptable alternate. The contractor must inform the SFA/Sponsor if a product is not available. For SFA's only: In the event a nondomestic agricultural product is to be provided to the SFA, the contractor must obtain, in advance, written approval for the product. The vendor must comply with the Buy American Provision.
- Full documentation regarding the reason an accepted item was unavailable, and the procedure used in determining acceptable alternates, will be available for audit and review.
- The SFA/Sponsor is responsible for maintaining all procurement documentation.

C. Small Purchase Procedures

If the annual amount of purchases for items is less than \$100,000 for goods and non-professional services or less than \$150,000 for professional services, the following small purchase procedures including quotes can be used. (The SFA/Sponsor can always conduct formal procurement even when goods or services are below the formal procurement threshold).

1. Quotes from an adequate number of qualified sources (at least 3) are required.
2. Written specifications will be prepared and provided to potential vendors.
3. Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. A minimum of three vendors must be contacted.
4. The price quotes will receive appropriate confidentiality before award.
5. Quotes will be awarded to the most responsive and responsible vendor with price being the primary consideration.
6. The SFA/Sponsor will be responsible for documentation of records to show selection of vendor, reasons for selection, names of all vendors contacted, price quotes from each vendor, and written specifications. If the SFA/Sponsor awards to a vendor that is not the lowest price quote, a written explanation must be documented as to why.
7. Bids will be awarded on the following criteria. Price must be the highest weighted criteria. Examples of other possible criteria include quality, service, delivery, and availability.

Price

8. The SFA/Sponsor is required to sign all quote tabulations, signifying a review and approval of the selections.

D. Additional SFA/Sponsor Responsibilities:

The SFA/Sponsor shall agree to retain all books, records, and other documents relative to the award of the contract for three (3) years after final payment. If there are audit findings that have not been resolved, the records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit. Specifically, the SFA/Sponsor shall maintain, at a minimum, the following documents:

- a copy of the original solicitation;
- the selection of contract type (fixed/cost-reimbursable);
- pre-bid meeting attendance logs (if applicable);
- the basis for vendor selection;
- the basis for award cost or price;
- the terms and conditions of the contract; and
- billing and payment records.

E. Competitive Bid Protest Procedures

Consistent with regulations established in 48 CFR 33.103, Protests to the agency, the Program operator will take the following actions:

1. Upon receipt of a protest before award, a contract may not be awarded, pending agency resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.
2. If award is withheld pending agency resolution of the protest, the contracting officer will inform the offerors whose offers might become eligible for award of the contract. If appropriate, the offerors should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award pursuant to paragraph (f)(1) of this section.
3. Upon receipt of a protest within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with 15.505 or 15.506, whichever is later, the contracting officer shall immediately suspend performance, pending resolution of the protest within the agency, including any review by an independent higher level official, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

4. Pursuing an agency protest does not extend the time for obtaining a stay at GAO. Agencies may include, as part of the agency protest process, a voluntary suspension period when agency protests are denied and the protester subsequently files at GAO.

(g) Agencies shall make their best efforts to resolve agency protests within 35 days after the protest is filed. To the extent permitted by law and regulation, the parties may exchange relevant information.

(h) Agency protest decisions shall be well-reasoned, and explain the agency position. The protest decision shall be provided to the protester using a method that provides evidence of receipt.

F. Code of Conduct

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal, State, or local award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the SFA/Sponsor may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, the SFA/Sponsor may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the SFA/Sponsor. Based on the severity of the infraction, the penalties could include a written reprimand to their personnel file, a suspension with or without pay, or termination.

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

1. **mail:**
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or
2. **fax:**
(833) 256-1665 or (202) 690-7442; or
3. **email:**
Program.Intake@usda.gov

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