



Child and Adult Care Food Program PROCUREMENT STANDARDS

The provisions of these procurement standards are a combination of the provisions contained in U.S. Department of Agriculture, Food and Nutrition Service regulation, 7 CFR Part 226 Child and Adult Care Food Program, 7 CFR 3019 Uniform Administrative Requirement for Non-Profit Organizations, 7 CFR 3019 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, OMB Circular A-122 Allowability of Costs for Non-Profit Organizations, and FNS Instruction 796-2 Revision 3 Allowable Cost Rules. More restrictive standards may apply per state law or organization procurement policies and procedures.

These standards are a mandatory requirement and apply to all items purchased by institutions for food, supplies, equipment, and other goods and services. This document applies to all officers, employees, and agents acting on behalf of the institution. If a conflict arises between these procedures and those established by a government body, those procedures that bear legal superiority will take precedence.

I. Procurement Procedures

Proprietary institutions who estimate a purchase will be \$10,000 or more in aggregate must formally procure for this purchase per 7 CFR 226.22(h).

Private nonprofit institutions who estimate a purchase will be \$100,000 or more in aggregate must formally procure for this purchase as described in 7 CFR 3019.

Public agency institutions must use a formal procurement process for purchases equal to or greater than \$100,000. Procurement standards for public agencies can be found at 7 CFR 3016. A person or entity that develops or drafts specifications, requirements, statements of work, invitations for bid, requests for proposals, contract terms and conditions or documents specifically for use by an institution in conducting procurement shall be excluded from competing for such procurements per (7 CFR Part 3016.36(b)). Pursuant to Sec. 3016.36(b)(12), institutions must have protest procedures in place to handle and resolve disputes relating to their procurements and must in all instances disclose information regarding a protest to their State agency.

In all of the above cases, if there are regulations or institution policies and procedures establishing a small purchase threshold less than the one indicated, then a formal procurement process is needed for purchases equal to or greater than the regulation or institution policy threshold.

An institution may not sign a contract with a party that has been debarred or suspended (i.e. is ineligible) per 7 CFR 3017. Non-Federal entities are prohibited from contracting with or making subawards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions included procurement contracts for goods or services equal to or in excess of \$25,000. When a non-federal entity enters into a covered transaction with an entity at a lower tier, the non-federal entity must verify that the entity is not suspended or debarred or otherwise excluded. This verification may be accomplished by checking the Excluded Parties List System (EPLS) maintained by the General Services Administration (GSA) at www.epls.gov, collecting a certification from the entity, or adding a clause or condition to the covered transaction with that entity. Institutions should keep documentation of this verification.

There are two types of procurement procedures depending on the total costs:

A. Purchases OVER \$10,000 for proprietary institutions and \$100,000 for all other institutions are considered a large purchase and must include one or more of the following methods of procurements: Invitation for Bid (IFB) or Request for Proposal (RFP) or sole source. Descriptions of each procedure are provided below (see also General Provisions):

1. Invitation for Bid (IFB)

This procedure will be used when an adequate and realistic product or service description is available. It will not be used unless there are two more responsible suppliers willing and able to compete effectively for the business and there is every intention of selecting the successful bidder principally on the basis of price. No awards will be made under this procedure unless at least two bids have been received.

Formal advertised, sealed bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid conforms to the terms and conditions of the IFB.

a. Institutions must meet the following requirements when formally advertising an invitation for bid:

- (1) Institutions must advertise and publicly announce the proposed contract at least 14 calendar days before the opening of bids. The announcement must include the time and place of the bid opening and information about obtaining a copy of the complete specification for the institution's proposed purchase.
- (2) At least two weeks before the bid opening date, bids will be solicited from an adequate number of known suppliers. These shall include suppliers listed in the local telephone book, purchasing directors, or names of suppliers on solicitation lists to include minority, small, and women's business enterprises. In addition, the invitation to bid will be posted in a public place or otherwise advertised.
- (3) A complete, adequate, and realistic specification or purchase description will be part of the IFB. Menus will be part of any solicitation for a food service management company.
 - (a) Only nonfood items necessary for the food service (such as straws, napkins, or packaging) can be included in the IFB.
 - (b) The IFB must be so clear and accurate that all prospective bidders will have an equal chance of award of the contract.
 - (c) The IFB may not provide for loans or other monetary benefits, terms, or conditions to be made to institutions by commercial vendors.
- (4) Factors such as price, quality, ability to perform, character, deadlines, prior experience, etc., as well as discounts, transportation costs, and life cycle costs will be considered in determining which bid is low only if so specified in the IFB.
- (5) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

- (6) A written notice of award shall be made to that responsible bidder, whose bid, conforming to the IFB, is lowest.
- (7) All bids shall be opened publicly at the time and place stated in the IFB.
- (8) If the institution is not accepting the lowest bid, a justification for awarding the contract to a higher bidder must be provided.

2. Request for Proposal (RFP)

This procedure, also called competitive negotiation, will be used when it is impossible to prepare a realistic specification or the award cannot be made principally on the basis of price. In competitive negotiation, a request for proposal will be publicized and a number of suitable sources will be requested to submit proposals. Negotiations will be conducted with two or more of the firms submitting offers. This method may be used only if conditions are not appropriate for the use of formal advertising (IFB's).

a. Procedures are as follows:

- (1) Requests for proposal shall outline the procedures and evaluation factors that will be used to identify and select responsible offerors for negotiation as well as the criteria that will be used to make the final selection for contract award.
- (2) Award will be made to the responsible offeror whose proposal will be most advantageous to the sponsor with price and other factors considered. Unsuccessful offerors will be notified immediately when a contractor is selected.

3. Sole Source

This is noncompetitive negotiation in procurements through solicitation of a proposal from only one source. Noncompetitive negotiation may be used only when award of the contract is not feasible under the IFB or RFP procedures.

a. Noncompetitive negotiations are limited to the following:

- (1) The item is available only from a single source.
- (2) An emergency requirement exists.
- (3) Competition is determined to be inadequate.
- (4) OSPI authorizes noncompetitive negotiation.

- B. Purchases UNDER \$10,000 for a proprietary institution or under \$100,000 for all other institutions, for an aggregate amount, is termed a small purchase. An aggregate amount is the sum total of materials or services which can logically be purchased from one vendor during one fiscal year. Institutions must have documented evidence of open and free competition at the best price. Price or rate quotations must be obtained from an adequate number of qualified sources. Small purchases shall be documented. At a minimum, documentation shall include the date, vendors contacted, item description, prices quoted, and any delivery data. Whenever only one quotation is received, documentation must include written justification for the purchase. The following procedure must be observed:

Small Purchase Procedures

1. If under \$10,000 for a proprietary institution or if under \$100,000 for all other institutions, price comparisons may be used.

2. If over \$10,000 for proprietary institutions, or over \$100,000 for all other institutions, the IFB or RFP procedures must be used. Institution policy and procedure requiring an IFB or RFP at a threshold lower than \$10,000 for proprietary institutions or \$100,000 for all other institutions is permissible and encouraged.

II. General Provisions—for IFB, RFP, Sole Source

Award Approval

Contracts that meet the following criteria must be approved by OSPI. The procurement is proposed as a sole source procurement and will be awarded without competition.

III. Code of Conduct

This code of conduct shall govern the performance of all officers, employees, and agents engaged in the award and administration of contracts supported by federal funds.

- A. It shall be a breach of ethical standards for any employee, officer, or agent to participate directly or indirectly in the selection, award, or administration of a contract supported by federal funds when the employee knows that:
 1. The employee, officer, agent, or any member of his immediate family has a financial or other interest pertaining to the procurement.
 2. A business or organization in which the officer, employee, agent, or any member of his immediate family has a financial or other interest pertaining to the procurement.
 3. Any other person, business, or organization which the employee, officer, agent, or any member of his immediate family is negotiating with or has an arrangement concerning prospective employment is involved in the procurement.
- B. All officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements.
- C. In the event of violations of this code, officers, employees, or agents are subject to the following penalties or disciplinary action:
 1. Reprimand.
 2. Suspension.
 3. Termination of employment.

IV. Responsibilities

These standards shall not relieve the sponsor(s) of any contractual responsibilities under their contracts. The institution is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of the program. These include but are not limited to:

- A. Contractual responsibilities/administrative issues:
 1. Source evaluation.
 2. Protests of award.
 3. Disputes.
 4. Claims.

B. Other responsibilities are as follows:

1. All proposed procurement actions shall be reviewed to avoid purchases of unnecessary or duplicative items.
2. Procurement procedures shall not restrict or eliminate competition. Examples of restrictive practices include, but are not limited to:
 - a. Placing unreasonable requirements on potential bidders' firms in order for them to qualify for the contract award.
 - b. Noncompetitive practices between bidders.
 - c. Organizational conflicts of interest.
 - d. Unnecessary experience and bonding requirements.
3. Technical requirements for the material, product, or service to be procured shall be clearly and accurately described. The description will not contain features that unduly restrict competition.
4. Contracts shall be awarded only to responsible contractors that possess the potential to perform successfully under the terms and conditions of the proposed procurement. Consideration will be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
5. The cost plus a percentage of cost method of contracting is prohibited.

V. Procurement Records

The following records shall be retained for each procurement:

- A. Records sufficient to detail the significant history of a procurement shall be maintained for three years from the end of the federal fiscal year to which these records pertain.
- B. These records shall include, but are not necessarily limited to:
 1. Information pertinent to the rationale for the method of procurement.
 2. Selection of contract type.
 3. Contractor selection or rejection.
 4. The basis for the cost or price.

C. Recommended documentation:

1. The advertisement or public notice used to publicize the procurement or an affidavit of publication.
2. The solicitation letter forwarded to prospective vendors along with any replies received from prospective vendors.
3. The IFB or RFP.
4. The proposed contract (completed by the vendor in response to IFB or RFP).
5. Any other information necessary to explain or justify the particular procurement method(s) utilized, cost benefits determination, etc.

CERTIFICATION STATEMENT

I have read and understand my responsibilities as listed on these procurement standards. Our organization will adopt these procurement standards for all purchases using USDA funds. Our organization understands that more restrictive procurements may be required by state law or adopted by our organization.

Signature of Designated Official or Owner(s)

Date

RETURN ADDRESS:

Child Nutrition Services
Office of Superintendent of Public Instruction
PO BOX 47200
OLYMPIA WA 98504-7200

F628QL04