

Ohio Department of Education, Office for Child Nutrition
SUMMARY OF FEDERAL PROCUREMENT STANDARDS

All state and local entities or agencies receiving funds for a program or activity must follow federal procurement standards as prescribed in 7 CFR Part 3016 and 7 CFR Part 3019 unless state or local laws are more restrictive and consistent with federal regulations. Schools receiving federal funds for USDA, Child Nutrition Programs such as the National School Lunch, School Breakfast and Special Milk Programs must follow the regulations prescribed in 7 CFR Parts 3016 and 3019. The following is a summary of the pertinent sections of the regulations cited above.

Definition of Procurement

Procurement is the process of acquiring goods or services by purchase, barter, exchange or lease. For purposes of this summary, the word “purchase” is synonymous with procurement.

Products and Services Covered

Every procurement of food, supplies, including management company services, must be accomplished in a way that the school can document that everything possible and practical is done to maximize open and free competition and to get the lowest price for the desired product or service. All vendors with the potential for supplying a desired product or service must have an equal opportunity to be aware of the school’s needs and submit price quotations or formal bids or proposals. Procedures used to assure the lowest price for the best product or service are different depending on whether the aggregate value of the purchase is less than \$100,000 or \$100,000 and over.

Purpose and Objectives of Procurement Standards

The purpose of the federal regulations is to maximize open and free competition in all purchases made.

The objective of federal regulations on purchases include:

- A. Secure the best quality product or service at the lowest price for the school’s planned needs.
- B. Encourage competition between as many potential suppliers of food service products as possible.
- C. Clearly define the school district’s responsibilities and rights, remedies or recourses under a contract for purchase of products and services.
- D. Enable the school to show and document wise and prudent use of public funds.
- E. Make the food service manager’s job more productive.

Food Service Purchasing Plan

A school district's complete food service purchasing plan includes the following steps:

- A. Identify the needs for food and nonfood products and services.
- B. Equitably communicate to and request offers from all potential suppliers for the needed products and services.
- C. Evaluate products and services offered by suppliers.
- D. Manage the contractual process.

Identification of Needs For and Supplies of Food and Services

The food and service needs of schools are dependent on the food items to be served and the labor and equipment resources available. Generally, the higher the quality and the more refined or serving-ready the food purchased is the higher the cost. On the other hand, schools need to assess whether the utilization of school labor and equipment to prepare food from the raw state is less costly and/or more desirable than purchasing prepared, ready to heat and serve food. The system to evaluate this buy/make decision and plan menus which minimize food cost and maintain participation is a good management practice and essential to cost control.

Federal purchasing procedures also require schools to have a system in place to review all purchases to avoid purchasing food items which are unneeded or duplicating food already in inventory. This requirement can most easily be fulfilled if the person who plans the meals also reviews inventories from each building and writes food and supply orders according to menu and inventory needs.

After the product and service needs of the school have been identified, suppliers can be identified which have the potential for providing the products and services needed. Since vendors often change marketing strategy, product lines and depth and geographic areas served; the food-purchasing agent needs to identify and consider all potential sources. Section 3016.60(c) prohibits the use of statutorily or administratively imposed in-state or local geographical preferences. Small and minority owned businesses must be given special consideration. Schools must be able to document that affirmative steps are taken to:

- A. include qualified small, minority owned businesses and women's business enterprises on bidders' lists;
- B. send notices of the school's intent to purchase to small, minority owned businesses and women's business enterprises when they are potential sources;
- C. divide total requirements and establish unique delivery schedules where economically feasible to encourage and permit small, minority owned businesses and women's business enterprises to serve as a supplier for the school; and
- D. use the services and assistance of the Small Business Administration, the Office of Minority

Business Enterprise of the Department of Commerce and the Community Services Administration, whenever feasible.

All the resources used to control costs by identifying product and service needs and potential suppliers are wasted if someone in the food service operation has a conflict of interest with one or more vendors. Consequently, a school must have a code of conduct that covers all food service and related personnel. The code or standard of conduct should prohibit school employees from soliciting or accepting gratuities, favors, or anything of monetary value from suppliers or potential suppliers. The code of conduct should also prescribe appropriate sanctions, penalties, or other disciplinary actions for violations by school personnel and/or suppliers.

Communication of Needs To and Requests for Offers from Potential Suppliers

Federal regulations allow four methods of purchasing; small purchase procedures, competitive sealed bids, competitive negotiation and noncompetitive negotiation. Regardless of which method is used, the school should avoid all provisions that might restrict competition or result in the school paying higher prices because only one or a limited number of vendors can supply the needed product or service.

I. Small Purchase Procedures

A. Small purchase procedures can be used when the

1. desired product or service can be finitely defined;
2. anticipated total purchase value of products or services from a supplier for the planned operations period, such as a school year, is less than \$100,000, and
3. selection of the supplier to which a contract is to be awarded can be made primarily on price.

B. Small purchase procedures require the school food authority to accomplish the following activities:

1. Price quotations must be secured for each purchase from all potential vendors which have the capability of supplying the product or service needed. The greater the number of quotations, the surer a school district can be that the best price is received. A minimum of three quotations should be secured. Quotations may be secured verbally or in writing, but the procedures used must include the following.
 - a. Adequate description of or product specifications for the proposed purchase to assure all quotations are provided by vendors for the same quality of product or service.
 - b. The amount of the proposed purchase such as a number of cases and dollar value.
 - c. The period of time over which the vendor is expected to hold to the price quoted--such as a month, three months, etc.
 - d. Written records showing the description of the products for which quotations were

requested from potential suppliers, the names of suppliers providing quotations, the prices quoted, the date on which the quotation was secured and the reason for selecting the vendor from which the purchase was made.

2. If only one quotation is received, the written record should indicate why more quotations were not available.
3. If the purchase is made from a supplier who did not provide the lowest price, the written record should indicate why.

II. **Competitive Sealed Bid Procedures**

A. Competitive sealed bid procedures must be used when the

1. desired product or service can be easily and finitely defined;
2. anticipated total purchase value of products or services from a single supplier for the planned operations period, such as a school year, is \$100,000 or more; and
3. selection of the supplier to which a contract is to be awarded can be made primarily on price.

Section 3016.60 (b) excludes any person that develops or drafts specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions or other documents for use by a grantee or subgrantee in conducting a procurement from competing for contract awards resulting from that procurement regardless of the procurement method used.

B. Competitive sealed bid procedures require the school food authority to accomplish the following activities.

1. Develop an Invitation for Bid (**IFB**) which includes the following:
 - a. Adequate description or product specifications for the proposed purchase to assure all responses to the **IFB** are provided for the same quality product or service. The phrase “equivalent to” may be used before a brand name of the desired product to define the performance, standard, or other requirements.
 - b. The amount of the proposed purchase such as number of cases and dollar value.
 - c. The period of time during which the bidder must provide the product at the bid price. Escalator clauses may be utilized to encourage suppliers to bid on food items where the price of food products to distributors vary frequently during the year. Indices which the school will honor as proof of producer price changes should be specified in the **IFB**.
 - d. A date, time, and place for opening the bids received.

- e. A statement to the effect that the school reserves the right to refuse any and all bids if such refusal is in the best interests of the school.
2. Advertise the school's intent to purchase, at least once, in a newspaper with circulation in the geographic area where potential bidders can be reached. The advertisement should carry, at the minimum, a description of the products or services to be purchased and the place where potential suppliers can secure a copy of the **IFB**.
3. Post the announcement of intent to purchase in a prominent location within the school district.
4. Mail the **IFB** to all known potential suppliers.
5. Advertise and post the intent to purchase within a reasonable length of time before the scheduled bid opening. A reasonable length of time is generally 14 days to 4 weeks unless the planned purchase requires more time. If the deadline for submission of bids is different than the bid opening, a minimum of 14 days must elapse between the date of advertisement and the due date.
6. Publicly open and read bids aloud on a date and at a time and place convenient for bidders and others to attend.
7. Award a contract to the responsive and responsible bidder submitting the lowest price.

III. **Competitive Negotiation Procedures**

- A. Competitive negotiation procedures must be used when the
 1. desired product or service cannot be easily or finitely defined;
 2. anticipated total purchase value of products or services from a single supplier for the planned operations period, such as a school year, is \$100,000 or more; and
 3. selection of the supplier to which a contract is to be awarded must be made on the price and other factors such as the qualifications of the offerors submitting the proposals.

Because most food and nonfood supplies for food services can be purchased by specifications, schools will probably seldom use the competitive negotiation procedures except with food service management companies and for equipment repair services.

- B. Competitive negotiation procedures require the school food authority to accomplish the following activities.
 1. Develop a Request for Proposal (RFP) which includes the following:

- a. description of the product or service for which the school is requesting proposals and of the criteria or standards, including price or cost where applicable, which will be used to evaluate proposals received;
 - b. the period of time for which the school desires to contract for the product or service;
 - c. a date, time, and place for proposal submission; and
 - d. a date, time, and place where proposals will be opened and the timespan during which school administrators will evaluate and discuss with offerors the proposals received.
2. Advertise the school's intent to accept proposals, at least once, in a newspaper with circulation in the geographic area where potential offerors can be reached. The advertisement should carry, as a minimum, a brief description of the products or services for which proposals are requested and the place where copies of the RFP can be secured.
 3. Post the intent to accept proposals in a prominent location within the school district.
 4. Mail the RFP to all known potential offerors.
 5. Advertise and post the intent to accept proposals a minimum of 14 days before the date on which proposals are to be opened and discussed. More time between the announcement of intent and proposal opening may be desirable and should be allowed to secure as many proposals as possible. If the date by which proposals must be submitted is different than the opening date, at least 14 days must elapse between the announcement of intent and the due date.
 6. Publicly open and read aloud the names of offerors for all proposals received.
 7. Award a contract to the responsible and responsive offeror whose proposal is most advantageous to the school food authority.

IV. **Noncompetitive Negotiation Procedures**

- A. Noncompetitive negotiation procedures can only be used when
 1. the needed product or service is available only from a single source,
 2. the situation creating a need for a product or service is an emergency and the delay caused by the use of competitive procedures would not be in the public interest,
 3. no bids, proposals or quotations are received by the school after announcing an intent to purchase,
 4. the product or service is to be supplied by a school,

5. the needed service is of a professional nature such as legal counsel and certified public accounting services.

Food service management company services must be secured through competitive negotiation procedures.

B. Noncompetitive negotiations require the following:

1. Submission of the request for approval to the Ohio Department of Education, Office for Child Nutrition. The request should identify the desired product, outline what efforts have been made to purchase the product through competitive procedures and state the reason(s) why the request for noncompetitive negotiation approval is being made.

Evaluation of Products and Services Offered by Suppliers in Response to Request(s)

Good school/vendor relations depend on responsible bidders submitting offers which are responsive to the schools requests and the school's fair and objective evaluation of those offers. The key words are "responsible" and "responsive" bidders. A responsible bidder is one whose reputation, past performance, and business and financial capabilities are such that the school can reasonably expect satisfactory performance under a contract. A responsive bidder is one whose bid substantially conforms to the product specifications and terms in the Invitation for Bid.

If the school's product(s) specifications and terms in the **IFB** clearly delineate the product or service desired and the conditions under which the vendor must perform, the evaluation of responsiveness should be easily accomplished. The responsibility of a bidder may not be as easily ascertained if offers are received from vendors with which the school or neighboring schools have not had experience. However, a determination that the bidder is not responsive and/or responsible should be made only on the basis of current documentable evidence. To make such determination without evidence makes the school food authority more vulnerable to legal action.

If the vendor submitting the lowest price in response to the **IFB** or RFP is declared not responsible or responsive to **IFB** and the school food authority desires to award the contract to another bidder with a higher price or the planned purchase is to be made using noncompetitive negotiation procedures, the school food authority should submit a request to the Ohio Department of Education, Office for Child Nutrition for approval before the contract is awarded. The following information must be submitted:

- a. A copy of the Invitation for Bid or Request for Proposal or a description of the desired product or service in the case of noncompetitive negotiation.
- b. A copy of the newspaper clipping or the advertisement including the name(s) of the newspaper(s) and date(s) that the advertisement appeared.
- c. A copy of any bids and/or responses received in response to the **IFB** or RFP including letters indicating a supplier(s) refusal to submit a bid or proposal.

- d. A list of the vendors to whom the **IFB** or RFP was mailed.
- e. A statement indicating the date, time, and place where bids or proposals were opened.
- f. A copy of the proposed contract to be used with the supplier(s).
- g. Explanation of the reasons why the contract should be awarded to the selected contractor.

Bids or proposals received which cite cost-plus-a-percentage-of-cost or cost-plus-a-percentage-of-income cannot be honored by the school. Vendor cost plus a fixed price for services provided is an allowable bid process and can be honored at the school's discretion.

Management of Contractual Process

After all responses to an **IFB** or RFP have been evaluated and, if needed, Ohio Department of Education approval has been secured, the school food authority should award a contract to the selected supplier(s) in accordance with local administrative procedures

The school food authority must have a standard procedure for receiving deliveries which assures that the supplier is complying with all terms and conditions of the contract and that all irregularities are reported to the person responsible for purchasing who can pursue appropriate remedies with the supplier. This process will also enable the school food authority to keep stock overages at a minimum which often result from reordering food and supplies which have been back ordered by the supplier because of temporary out-of-stock conditions.

Invoices for payment should be matched to packing slips and purchase orders to assure payments are made only for products properly ordered and received.

Experience has shown that effective use of a well designed procurement system has increased the cost efficiency of school food service. This summary of federal regulations and brief descriptions of some procedures should be adapted to the unique needs of each school food authority. If there are any questions or concerns, please contact the Ohio Department of Education, Office for Child Nutrition at 877-644-6338.