

**NC Department of Health and Human Services
Women's and Children's Health
Child and Adult Care Food Program
PROCUREMENT POLICY**

Procurement Policy

CACFP regulations (7CFR Part 226.22) contain the requirement for procurement of food, supplies, equipment and other goods and services. One of the primary purposes of the regulations is to assure that open and free competition exists to the maximum extent possible. The following guidelines will assist Institutions in meeting the regulatory requirements.

Institutions that obtain meals from food service management companies or commercial vendors should be aware of and adhere to the procurement provisions governing the CACFP. All procurements of \$100,000 or more must be formally advertised for a contract in accordance with the CACFP regulations. Local laws may also require institutions to advertise for a contract on procurements of **less** than \$100,000. Institutions should refer to local laws for their specific requirements. Nutrition Services requires institutions to meet the following requirements when formally advertising a contract.

1. Bids must be solicited from an adequate (three) number of known suppliers for a sufficient time prior to the date set for the opening of bids. This is called an Invitation to Bid (ITB). The invitation must also be publicly advertised (i.e. newspaper ad or Internet posting).
2. The ITB, including specifications and pertinent attachments must clearly define the items or services needed to allow the bidders to properly respond to the invitation.
3. All bids will be opened publicly at the time and place stated in the ITB.
4. A firm-fixed-price contract award will be made by written notice to the responsible bidder whose bid meets the requirements in the ITB and is the lowest bid. Where specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs must be considered in determining which bid is lowest. Payment discounts may only be used to determine the low bid when prior experience of the institution indicates that such discounts are generally taken.
5. Any or all bids may be rejected when there are sound, documented business reasons in the best interest of the program.

Procurement standards apply to any contract that equals \$100,000 or more, whether it is for meals, equipment, or other services. All institutions must maintain a code of conduct that prevents the exchange of anything of monetary value between the contractor and the institution that might influence the award or otherwise prohibit maximum open and free competition.

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Four Procurement Methods

1. Small Purchase Procedures (under \$100,000) "Comparison Shopping"
2. Competitive Sealed Bids (formal advertising)
3. Competitive Negotiation (factors in addition to price are considered)**
4. Noncompetitive Negotiation or Sole Source Procurement**

**** Require prior approval from the Nutrition Services Branch**

If the acquisition is over \$100,000, one of the methods in #s 2- 4 must be used. Institutions that contemplate using methods 3 or 4 are required to contact their Regional Special Nutrition Consultant prior to starting the procurement process.

The majority of purchases for goods over \$100,000 will be for vended meals. The Nutrition Services Branch has prepared a sample ITB (**CAC-17A**) document for use by Child and Adult Care Food Program (CACFP) Institutions when soliciting bids for meals from a vending organization whose contracting for those meals will total more than \$100,000 in the contract year. The ITB is a sample and its use is not mandatory. The sample ITB meets the regulatory requirements of 7CFR Part 226.21 and 226.22. If a sponsor chooses to use a different contracting document, compliance with 7CFR Part 226.21 and 226.22 is required and the substitute ITB document must be approved by the Nutrition Services Branch prior to its use.

Note: Meals may be purchased from a School Food Authority (SFA). The competitive bid process is not required when purchasing from a SFA.

Contracts for Food Service

The Nutrition Services Branch has developed a contract *Agreement to Furnish Food Service (CAC-17)*. The use of this agreement is required for all meals purchased from food service management companies or private vendors. Institutions who wish to use an alternate agreement must receive written prior approval from the Nutrition Services Branch.

The following procedures apply to all procurement greater than \$100,000:

- The ITB shall be publicly announced at least 14 calendar days prior to opening of the bids and the announcement shall include the time and place of the bid opening;
- The sponsor shall notify the Nutrition Services Branch at least 14 days prior to the opening of the bid of the time and place of the bid opening;
- The bids shall be opened in public;
- All bids totaling \$50,000 or more shall be submitted to the Nutrition Services Branch for approval before acceptance;
- All bids must be submitted to the Nutrition Services Branch for approval before accepting a bid which exceeds the lowest bid; and

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- The sponsor shall notify the Nutrition Services Branch of the reason for selection of the food service management company chosen.

Small Purchase Procedures

The best description for this is comparison shopping. Institutions should seek informal quotes on items being purchased. A minimum of 3 (three) quotes is recommended. The following procedures are recommended:

- Purchase of less than \$2,000- no quote required
- \$2,001- \$5,000- phone quote (keep the documentation)
- \$5,001-100,000- written quote (keep the documentation)

Competitive Bids

This method will be used for the majority of CACFP Food Service Agreements. It requires formal advertising, a public opening of all bids and a firm fixed price contract.

The CAC-17A should be used for competitive bids. The ITB is a sample and its use is not mandatory. The sample ITB meets the regulatory requirements of 7CFR Part 226.21 and 226.22. If a sponsor chooses to use a different contracting document, compliance with 7CFR Part 226.21 and 226.22 is required and the substitute ITB document must be approved by the Nutrition Services Branch prior to its use.

Competitive Negotiation

This method requires a proposal request from a number of sources and that the ITB be advertised. The CAC-17A should be used for competitive negotiation. The ITB is a sample and its use is not mandatory. The sample ITB meets the regulatory requirements of 7CFR Part 226.21 and 226.22. If a sponsor chooses to use a different contracting document, compliance with 7CFR Part 226.21 and 226.22 is required and the substitute ITB document must be approved by the Nutrition Services Branch prior to its use.

The contract is awarded to the best offeror, based on a submitted proposal and any subsequent negotiations. Use this method when competitive bidding is not appropriate, such as when a selection cannot be made on the basis of a quote or bid cost alone. Instead the award is made to the offeror whose technical and cost factors combine to offer the most advantage to the CACFP.

- Proposals must be submitted from an adequate number of qualified sources (minimum of three);
- Proposal must be advertised;
- Proposal shall identify all significant evaluation factors;
- Institutions must provide mechanism to evaluate the proposals received; and
- Award may be made to the offeror whose proposal will be the most advantageous to the CACFP.

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Noncompetitive Procurement

This may be used to secure a proposal from only one source, after solicitation of a number of sources indicates there are no additional sources. The following apply to this method of procurement:

- The item is available only from a single source; or
- A public emergency will not allow for the time needed for the competitive bid process; or
- USDA, FNS authorizes noncompetitive procurement, **this must first be approved by the Nutrition Services Branch**; or
- After solicitation of a number of sources (minimum of three), competition is determined to be inadequate.

Frequency

Institutions must bid competitively every three years. Contracts (Agreements) may not exceed one year in duration. After the first year, contracts may contain two one-year renewal options. Renewals must be documented each year as part of the CACFP renewal process.

DHHS Guidelines

The following guidelines and principles are from the DHHS Manual for Non Profit Agencies. A complete copy is available from (<http://www.dhhs.state.nc.us/control/nonp/nonpman.htm>).

Institutions must be alert to conflict of interest situations. Institutions may be able to procure goods through noncompetitive negotiations under certain circumstances, but they should consult with Nutrition Services before any negotiations take place.

In an effort to ensure that goods and services are obtained in an efficient, effective manner and in accordance with Federal requirements, the sponsor owner/the board of directors should establish policies and procedures that govern and control procurement activities for the organization.

A code of conduct should specify that no employee, officer, or agent is to participate in the selection, award, or administration of a contract if there is the possibility of either a real or a perceived conflict of interest. In addition, employees, officers, or agents are not to solicit nor accept gratuities, favors, or anything of monetary value from parties to the contract. Specific disciplinary actions to be followed when violations occur should be included in the code of conduct.

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All procurement and contract activities should be conducted in a manner that provides, to the maximum extent possible, free and open competition among all parties. The sponsor must be continually alert to organizational conflicts of interest as well as actions or practices on the part of contractors and other parties that might restrict or eliminate competition. In order to ensure objective performance as well as eliminate unfair competitive advantages, contractors who develop or draft specifications, requests for proposals, etc. should be excluded from competing for the contract or award.

Procurement procedures should be developed in a manner that enables the sponsor to avoid the purchase of unnecessary and/or unreasonable items. For example, a process should be in place which ensures that a proper analysis and study of lease versus purchase alternatives is made whenever applicable. The solicitation process for securing either goods or services should also provide to prospective vendors complete and adequate information in order to avoid unnecessary delays or misunderstandings on the part of suppliers and/or contractors.

An effort should be made to ensure that small businesses, minority-owned firms, as well as business enterprises owned and operated by women are given every opportunity throughout the procurement process to participate on an equitable basis with larger suppliers and contractors.

Procurement files should document that a cost or price analysis was made with regards to every procurement. The price analysis process may include formal quotations, market prices, or other similar data while the cost analysis is concerned with a review and evaluation of cost elements to determine reasonableness, allocability, and allowability.

A contract monitoring process should be developed which ensures that contractors perform in accordance with terms, conditions, and specifications set forth in the contractual agreement. Also, provisions must be included to ensure timely and proper follow-up on all purchase and performance agreements.

Procurement policies and procedures of Institutions are required to include a requirement that formal competitive bidding practices are to be used when contracting for goods and services with a value equal to or greater than \$100,000. The Institution's governing board are strongly encouraged to develop competitive bid practices, when practicable, on smaller procurements.

Additional Federal Requirements for Procurement (7CFR Part 226.22(l))

(l) In addition to provisions defining a sound and complete procurement contract, institutions shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal Law or FNS:

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(1) Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;

(2) All contracts in excess of \$100,000 shall contain suitable provisions for termination by the institution including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor;

(3) All contracts awarded in excess of \$100,000 by institutions and their contractors shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR part 60);

(4) Where applicable, all contracts awarded by institutions in excess of \$2,500 which involve the employment of mechanics or laborers shall include a provision for compliance with section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 330) as supplemented by Department of Labor regulations (29 CFR part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence;

(5) The contract shall include notice of USDA requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of USDA requirements and regulations pertaining to copyrights and rights in data.

These requirements are in Sec. 3015.175 of the USDA Uniform Federal Assistance Regulations 7 CFR part 3015. All negotiated contracts (except

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those awarded by small purchases procedures) awarded by institutions shall include a provision to the effect that the institution, FNS, the Comptroller General of the United States or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. Institutions shall require contractors to maintain all required records for three years after institutions make final payment and all other pending matters are closed;

(6) Contracts and subcontracts of amounts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1837(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), which prohibit the use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to FNS and to the U.S. EPA Assistant Administrator for Enforcement (EN-329); and

(7) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy efficiency conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

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