




DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

MEMORANDUM

To: School Food Authorities

From: 
Elizabeth Leach
Nutrition Programs Manager

Date: June 11, 2019

Re: Using the Informal Procurement Method, or “Small Purchase” to Procure the Delivery of Prepared Meals

State Agency Memo
NSLP #1-19

This memo provides an overview and consolidation of information relating to how a School Food Authority (SFA) could utilize the informal procurement method, or “small purchase” procedures to procure the delivery of prepared meals. This memo is not exhaustive of all procurement regulations and requirements, nor is it a substitute for a documented procurement policy. As a recipient of federal funds, the SFA is required to be knowledgeable of federal procurement requirements. This memorandum merely provides information regarding use of the small purchase method for the procurement of prepared meals.

The Office of the State Superintendent of Education (OSSE) recommends SFAs considering use of the small purchase method for the procurement of prepared meals read this guidance in its entirety. OSSE neither promotes nor condones this practice, but rather has included items for consideration and recommendations when making this decision.

Considerations for Selecting Methods of Procurement

SFAs looking to secure a contract for prepared meals may use either formal or informal methods of procurement. SFAs should assess all aspects of the meal service program they are looking to procure before selecting a procurement method.

Formal procurement methods, such as procurement by sealed bids or procurement by competitive proposals, require a proposal process including a public notice which ensures that all potential vendors are provided with the same information at the same time, and allows all

potential vendors to bid. These methods require the contract to be awarded based on the criteria set forth in the solicitation and allows for up to four optional renewal years.

Informal procurement methods like the small purchase do not require a public notice. Contracts can be awarded once an adequate number of quotes has been received. This process allows for targeted outreach.

Procurement by Small Purchase

Under the Administrative Requirements, Cost Principles, and Audit Requirements (2 CFR Part 200), small purchase procedures are those that are “relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold.” (2 CFR 200.320). Per Memo Code FM-03-2018, the simplified acquisition threshold is \$250,000. Consequently, an SFA may procure the delivery of prepared meals for school food service using the small purchase method when the total cost of the products and services provided does not exceed \$250,000.

While there is no defined small purchase procurement process, it is distinguished from a more formal procurement method in that an SFA is not required to, for example, (1) issue a request for proposal or invitation for bids; (2) publicly publish a solicitation; or (3) use a sealed bid process; meaning that price quotes can be opened at any time.

An SFA is required to document how it conducts small purchase procurement in its written procurement procedures (2 CFR 200.318(a)). These written procurement procedures must include written standards of conduct covering conflicts of interest, including organizational conflicts, and governing the actions of its employees engaged in the selection, award, and administration of contracts (2 CFR 200.318(b)). Like any procurement, small purchase procedures must be conducted in a manner providing full and open competition. Situations which may restrict competition:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and excessive bonding;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest;
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- Any arbitrary action in the procurement process (2 CFR 200.319(a)).

Small Purchase Method Recommendations

If an SFA chooses to use the small purchase method, OSSE recommends following the five steps in the small purchase procurement process.

1. **Develop Specifications**

Prior to seeking quotes from vendors, develop the requirements of the intended agreement, including delivery and packing conditions, and all required provisions from 2 CFR Part 200, applicable child nutrition regulations, and USDA guidance. Examples of specifications to

include are below, but are not exhaustive and SFAs should develop additional specifications that speak to the exact needs of their meal program(s).

- All applicable provisions from Appendix II to 2 CFR Part 200 should be included in the bid document. These are included below in the “Federally Required Provisions” section.
- All applicable content from 2 CFR Part 200’s Procurement Standards (200.318 to 200.326).
- Menu and meal pattern requirements from USDA regulations and the District of Columbia Healthy Schools Act of 2010, as amended (D.C. Code 38-821.01 et seq).
- Meal acceptability provisions and surveys of students during the terms of the contract.
- Quality control and food safety provisions, such as inspecting or testing a sample of meals, and requiring the potential vendor to submit a health inspection for any commercial facilities used to prepare meals off-site.
- Delivery schedule and location of deliveries.
- Terms for the use and ordering of USDA Foods for the meal program(s) and the requirements that the SFA receive all credits for USDA Foods used.
- Terms ensuring the contractor is held responsible if meals are deemed non-compliant during an Administrative Review and/or if meals delivered on any given day do not meet the specifications.
- Options for renewal years and how many renewal years are available. OSSE recommends limiting that the number of renewal options to one to two years to ensure full and open competition requirements are met.

Evaluation factors may be used and should be written in a clear, concise manner that shows how bidders are being evaluated and what constitutes a responsive and responsible bid. Price must be the primary factor in the evaluation.

- A request for meal samples to be provided to the SFA as part of the evaluation factors may be included. SFAs may set a standard for the quality of the food when creating evaluation factors. All potential vendors must be allowed to provide meal samples if utilized as part of the evaluation.

2. **Identify Sources**

Contact potential vendors in a variety of ways and collect at least two qualified quotes. Any outreach to and quote from a potential vendor must be documented.

3. **Evaluate Responses**

Ensure that responders are responsible and responsive in accordance with all aspects of the specifications. Document each bid even if it was offered in a face-to-face meeting. Primary consideration must be the quoted price, but an SFA must also consider at least (1) contractor integrity; (2) compliance with public policy; (3) record of past performance; and (4) financial and technical resources (2 CFR 200.318(h)).

4. **Award the Contract**

Award the contract to a responsive and responsible bidder that has provided a quotation at fair market value.

5. **Manage the Contract**

Maintain oversight to ensure that the vendor performs in accordance with the terms, conditions, and specifications of the contract or purchase order (2 CFR 200.318(b)).

Record Keeping Requirements

SFAs are required to retain all documentation related to Child Nutrition Programs for three years plus the current year from the last year the contract is in place. The documentation must be sufficient to detail the history of the procurement, including but not necessarily limited to:

- Rationale for the method of procurement (2 CFR 200.318(i)).
- Selection of contract type (2 CFR 200.318(i)).
- Name of the individual soliciting the information.
- Name of the vendors solicited.
- Date the information was provided.
- Products or services to be purchased, including quantities.
- The duration of the price or rate quotation.
- Factors other than price that were discussed such as delivery schedules.
- Contractor selection or rejection, and the basis for the contract price (2 CFR 200.318(i)).

In addition, OSSE recommends retaining the following:

- Copies of solicitation documents.
- Copies of any letters, emails, etc., relating to the procurement.
- Copies of price or rate quotations received.
- Evaluation.
- Notification of the contract award.
- Any other documents (invoices, canceled checks, etc.) relating to the purchase.

Federally Required Provisions

All contracts, including small purchases, shall contain the following provisions as applicable.

From Appendix II to 2 CFR Part 200:

- A. Contracts for more than the simplified acquisition threshold, which is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions) and in accordance with 41 U.S.C. 1908 but is periodically adjusted for inflation, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-

3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. 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.
- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3

CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Additional Provisions:

1. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)—All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.
2. Buy American Provision (See SP38-2017 for more information)