

**Community Nutrition Programs
Child and Adult Care Food Program (CACFP)**

[FDCH Sponsor Guidance Memorandums Web Link](#)

Applies To: Family Day Care Home Sponsoring Organizations in the CACFP

Revision Date: July 2015

Resources: *USDA's Guide to Procuring Local Foods for Child Nutrition Programs and
USDA's Fact Sheet on Farm to Preschool*

Addendums: *Addendum G1 - Summary of Required Procurement Practices*

Sponsors must adhere to Federal and State required procurement procedures that ensure maximum open and free competition and to receive the best possible product or service at the lowest price. These required procurement procedures apply to food, supplies, services (i.e., food service management companies, data processing services, technical services, and others), and consultants (technical, managerial, and others) used in the Sponsor's CACFP operation.

A. Written Code of Conduct Requirements

State agencies (the Department of Public Instruction (DPI)) and Sponsors participating in the CACFP must have a written code of conduct that governs CACFP procurement activities in accordance with Federal regulations.

1. Sponsors:

The Sponsor's written code of conduct must govern employees delegated with CACFP procurement responsibilities in the following manner:

- a. Prohibit these employees from soliciting gifts, travel packages, and other incentives from prospective contractors;
- b. Prohibit these employees from participating in the selection, award, and administration of any contract with entities or individuals having financial interest that or who are in some way connected to them;
- c. Include a set of standards that establish acceptable parameters for these employees to adhere to when their CACFP procurement activities may involve insubstantial financial interest on behalf of and/or unsolicited gifts of nominal value from a contractor; and
- d. Establish disciplinary procedures when this code of conduct is violated by these employees.

2. DPI:

DPI must monitor Sponsors for compliance with Federal, State, and local regulations on procurement by reviewing the Sponsor's written code of conduct and investigating any reported (real or apparent) conflicts of interest by employees involved in the Sponsor's CACFP procurement activities. If DPI determines that the Sponsor's written code of conduct is missing or is missing the required components (1a-1d above), or code violations have occurred, DPI must issue the appropriate finding(s) and require corrective action.

B. Definition of a Procurement Aggregate

A procurement aggregate is the sum total of goods or services which can logically be purchased from one vendor during the Program or calendar year. The requirement to aggregate goods on a yearly basis applies to all services where annual needs can be anticipated.

1. Purchases of Fresh produce, Meat, and Frozen Goods

The requirement to aggregate goods typically does not apply to the purchase of fresh produce, meat, or frozen goods which, due to their perishability and/or rapid market fluctuations, are purchased more frequently.

2. \$150,000 Threshold

When purchases aggregate (*add up*) to more than \$150,000, more formal competitive methods such as sealed bidding or competitive negotiation must be employed. This also could apply to a perishable item if purchases made on a weekly, monthly, or bimonthly basis aggregate to more than \$150,000 for that period.

3. How to Aggregate Goods

- *An example of aggregating goods:*

A Sponsor that is able to project from past usage that it will require \$20,000 worth of canned corn, \$30,500 worth of canned peas, and \$90,000 worth of canned beans during a year could aggregate these purchases into a single canned vegetable procurement. In addition to its need for \$140,500 worth of canned vegetables, if the Sponsor also requires \$10,000 worth of canned juices and \$4,000 worth of canned fruits, then the Sponsor should aggregate all its canned goods into one \$154,500 requirement.

- This example of aggregation would not restrict the Sponsor to select one vendor to provide all canned goods. Instead, the Sponsor could stipulate in its bid specifications that more than one vendor could be selected. **Aggregation would, however, require the Sponsor to conduct one formal procurement instead of many informal procurements.**
- Small Sponsors with limited storage space can require a regular delivery schedule from vendors. Generally, the increased costs of delivery would be more than offset by the savings of quantity purchasing.
- **An unnecessary division of a procurement aggregate is a violation of the intent of Federal procurement regulation and may result in the disallowance of claims for reimbursement.**
 - An exception in this regulation exists for aggregate purchases that are divided for the purpose of encouraging the participation of small, minority, or other disadvantaged businesses.

C. Methods of Procurement

Federal regulations allow four methods of procurement; **small purchase procedures, competitive sealed bids, competitive negotiation and noncompetitive negotiation.** This section provides more detailed information on these four allowed methods of procurement and more specific guidance on when each method is appropriate.

Regardless of which method is utilized, Sponsors should avoid all provisions that might restrict competition or result in the agency paying higher prices because only one or a limited number of vendors can supply the needed product or service.

- “Negotiation” used in the following text is a generic term that refers to the mutual discussion and arrangement of the terms of a transaction or agreement for the purpose of arriving at a common understanding of contract essentials (e.g., technical requirements, schedule, prices, and terms). The applicability of negotiation to the various methods of procurement will be discussed below.

1. Small Purchase Methods

Small purchase methods may be utilized when goods or services are under \$150,000 in aggregate value. Small purchase methods are not appropriate when a purchasing agency divides a unified contract requirement into smaller purchases in order to bring each individual purchase under \$150,000.

a. Proper Protocol:

The purchasing agency should contact at least three (3) known suppliers of the product or service and obtain competitive price quotations from them. Unlike sealed bidding, where bid prices must be considered firm and final, negotiation of prices and terms with one or more of the suppliers contacted is permitted. All suppliers must receive the same information about the purchasing agency’s requirements.

b. Documentation of Procurement Method:

Whether written or telephone contact is made for obtaining competitive price quotations, all information and prices discussed should be documented in the purchasing agency’s files.

2. Competitive Sealed Bids

Procurement should be handled by competitive sealed bids when:

- The procurement value is expected to be \$150,000 or more;
- The product or service can be completely described in the agency’s bid specifications; and
- The award of a contract can be made primarily on the basis of price alone. The steps to be taken in conducting a competitive sealed bid are described below

a. Preparation of Bid Specifications

The Invitation for Bid (IFB) communicates uniform information regarding your agency’s specific contracting requirement (the product or service to be procured) to all prospective bidders. The IFB template developed by DPI should be used unless written permission is obtained to use a different IFB. All prospective bidders must be informed of any amendments or changes to the IFB.

- **Product/Service Description:**

The product or service to be procured must be described as clearly and completely as possible in the IFB. However, procurement descriptions should not include information that could serve to restrict competition. Information that could restrict competition may include the specification of brand name products or the inclusion of nonessential product characteristics.

- **IFB Submission Information:**

The IFB must clearly state where and when bids must be submitted.

- **The IFB must, at a minimum, allow 14 days between the public advertisement of an IFB and the deadline for submission of bids.**

b. Publicizing the Procurement

After the IFB has been prepared, it is then sent to suppliers of the product or service to be procured. Since it is difficult to send IFBs to all suppliers of certain products or services, it is acceptable to rotate through a list of suppliers on a predetermined basis and to include any new supplier who requests to be added to the bidder list.

- **Formal Advertisement of the IFB:**

In addition to mailing IFBs, a contracting agency must formally advertise the proposed procurement to other potential vendors by publishing a legal notice in area newspapers and/or in newspapers of general circulation in the State. The costs of mailing IFBs and placing newspaper advertisements are allowable and may be charged to the CACFP.

A formal advertisement must include:

- i. The name, address, and telephone number of the contracting agency;
- ii. Information on how to obtain the IFB;
- iii. A brief and general description of the contracting requirement;
- iv. The deadline for receipt of bids; and
- v. The date, time, and place of the public bid opening.

c. Bid Opening and Contract Award

Any bids received prior to the final deadline for bid submission must be kept unopened in a secure place. Bids received after the deadline should be returned unopened to the bidders.

After the bids are publicly opened and read aloud, the official responsibility for the opening of bids should state, "The lowest bid appears to be.... we will award a contract to the lowest responsive and responsible bidder." A contract award should not be announced until the contracting agency has had time to examine the low bid for responsiveness to the IFB and to ascertain that the low bidder is a responsible firm.

- **Responsive Bids:** For a bid to be considered "responsive", it should offer a product that does not substantively deviate from the requirements of the IFB.

All terms of the IFB, including price, expected quantities, delivery schedule, and quality must be considered as minimum requirements for being responsive, and any attempt to modify these minimum requirements (i.e. for a bidder to offer twice a week delivery rather than the daily delivery required in the IFB) would make the bid nonresponsive. Furthermore, any attempt to make the bid price conditional or contingent upon other factors would make the bid nonresponsive unless contingent bids had been authorized in the IFB.

- **Contract Award:** In a competitive bid situation, the low bidder must be awarded the contract unless the bidder is found to be nonresponsive or not responsible. Such a finding must be well documented since a low bidder may bring suit if not awarded the contract.

→ If only one bid is received after competitive solicitation, approval must be obtained from the DPI prior to awarding the contract.

3. Competitive Negotiation

Competitive negotiation is appropriate when procurements are expected to be over \$150,000 but:

- Are of such a complex and technical nature (i.e. consulting, research and development, etc.) that they cannot be fully described in bid specifications; and
- The award of the contract must be based on factors other than price alone.
→ **Important Point:** Evaluation factors other than price can only be used when clearly identified in the agency's bid specifications; in the case of competitive negotiation, this is called a Request for Proposal (RFP).

a. The Request for Proposal (RFP):

In a competitive negotiation, a contracting agency requests the respondent to detail how the objective can best be attained. Therefore, in addition to a cost proposal, a respondent to an RFP also submits a technical proposal that describes the methods the respondent will employ in carrying out the project described in the RFP. It also relates these methods back to their underlying costs, as described in the respondent's cost proposal.

b. Contract Award:

Unlike competitive sealed bidding, a contracting agency may negotiate price and methodology with respondents to the RFP after receiving their proposal. After negotiating with one or more of the respondents, the agency would then award a contract.

c. The Competitive Negotiation Process:

The steps in the process of actually conducting a competitive negotiation are:

- i. The RFP is prepared which states the contracting agency's requirements and objectives;
- ii. The procurement is formally advertised and the RFPs are sent to known suppliers of the product or service. Two to six weeks after publication of the RFP (depending on the complexity of the procurement), a deadline for receipt of proposals is set; and
- iii. After two to six weeks of evaluation and negotiation, a contract is awarded to that respondent whose overall cost and technical proposal is most advantageous to the contracting agency.

4. Noncompetitive Negotiation

This method of procurement is appropriate only when:

- A public emergency such as a natural disaster prevents or delays publicizing a procurement;
- Only one source of the product or service exists; or
- After competitive solicitation, only one bid or proposal is received.

Funding Approval for Noncompetitive Procurements:

To obtain approval of funding for noncompetitive procurements, A Sponsor must submit documentation of its attempts to solicit competition in an appropriate manner. Such documentation would include:

- A copy of the public advertisement;
- A copy of the IFB or Request for Proposal;
- Copies of all letters received from prospective bidders or respondents, including letters indicating a prospective bidders lack of interest in competing for the contract; and
- Any other materials which would serve to justify the Sponsor's use of noncompetitive procurement.

→ **All contracts over \$150,000 using noncompetitive negotiation must have the approval of the DPI prior to awarding the contract.**

Refer to *Addendum G1 - Summary of Required Procurement Practices* (that is part of this guidance memorandum) for a summary of the allowed procurement methods and required procedures for each, as specified above.

D. Purchasing Local Foods

Sponsors participating in the CACFP may encourage family day care home providers to purchase local foods or grow their own food within gardens for enhancing the meal service experience and nutrition education activities for their enrolled children. Providers are not required to follow federal procurement regulations, as outlined in this guidance memorandum for Sponsors. When purchasing local foods, they should purchase them in a manner that promotes open and fair competition.

- CACFP funds may be used to cover for expenses relating to growing food, such as for seeds, fertilizer, labor, plot rental etc.; allowable expenses relating to growing food are detailed in *FNS Instruction 796-2, Revision 4, Financial Management of the CACFP*. (Refer to guidance memorandum F to access this FNS Instruction.)

Local Foods:

Providers may purchase local foods directly from farmers, farmer's markets, farmer's markets, food hubs, and Community Supported Agricultures (CSAs). They may also use local foods donated from local gardens or farms within their meals prepared for their enrolled children.

- **Locally purchased meat, poultry, eggs, and dairy products:** family day care home providers must only use these items for meals prepared for their enrolled children if they have been properly inspected and/or pasteurized, as stated within the Department of Children and Families (DCF) child care licensing and certification rules for family home providers.
- **Home canned goods:** Providers must never use home canned goods within meals prepared for their enrolled children, regardless whether the home canned goods are the Provider's own or from anyone else including farmers or farmer's markets.

Refer to *USDA's Guide to Procuring Local Foods for Child Nutrition Programs* for more information located at the web link: [USDA's Guide to Procuring Local Foods for Child Nutrition Programs](#).

The *USDA's Farm to Preschool Fact Sheet* also provides information and tips for participating facilities to expand their efforts for purchasing their food locally.

Web Link: [USDA's Farm to Preschool Fact Sheet](#)