



School Nutrition Programs Procurement Training

August 23, 2023



RIDE Rhode Island Department of Education

General Procurement Overview

Procurement Requirements

What does procurement mean?

Definition: “A multistep process for obtaining goods and services at the lowest possible price”

Who do procurement standards apply to?

All recipients of Federal funds

What if we don't meet the standards?

Goods or services that are purchased in a way that do not comply with Federal standards cannot be supported with Federal funds

Federal regulations establish standards and guidelines for the purchasing of foods, supplies, equipment and other goods and services. These standards are designed to safeguard the use of Federal funds.



Procurement Overview

Procurement standards and regulations ensure that the best food, supplies, equipment, and other goods and services are obtained efficiently and at the best prices. SFAs are responsible for ensuring the efficient use of taxpayer dollars to provide the participants in their schools with the best possible service.

Federal regulations require SFAs to:

- Have and use documented procurement procedures, consistent with State, local, and Federal laws and regulations for the acquisition of property or services under a Federal award
- Develop and maintain a written standard (or code) of conduct that covers conflicts of interest and governs the performance of employees engaged in the selection, award, and administration of contracts.
- Conduct procurement in a manner that promotes full and open competition and maintain records that are sufficient to detail the history of procurement.
- Develop and maintain written procurement procedures designed to avoid the acquisition of unnecessary or duplicative items.



Written Procurement Policies & Procedures

Procurement Procedures

Federal regulation requires the use of documented procurement procedures.

Why are procurement procedures important?

Ensure purchases made are compliant with federal, state, and local rules

Provide purchasing staff with a guide on proper procurement

Prevent unallowable transactions

“The non-Federal entity must have and use documented procurement procedures, consistent with state, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in [§§ 200.317](#) through [200.327](#).” 2 CFR 200.318(a)



Understanding Procurement Procedures

A procurement procedure is a written plan that contains specific information on the steps that will be taken when purchasing goods and services.

Effective Procurement Procedures Will:

Contain specific information on the process for each type of procurement transaction

Be updated as the SFAs procedures change

Be unique to each SFA to address individual processes/structures

Be documented

Be put into practice



Procurement Procedure Requirements

Specific procedures will vary by SFA but must, at a minimum, address certain required components.

Procurement Procedures Components	
Authorization Title Page: Include the date the procedures are effective, the name, title, and signature of the authorized representative, and the date it is signed.	Recommended
Duplication of Goods/Services: Describe the process used to ensure that there is no acquisition of unnecessary or duplicate goods or services.	Required 2 CFR 200.318(d)
Small and Minority Businesses, Women Business Enterprises, and Labor Surplus Area Firms: Describe the affirmative process to ensure that minority businesses, women business enterprises, and labor surplus area firms are used when possible.	Required 2 CFR 200.321
Maintenance of Records: Describe the process for ensuring that records are maintained to detail the history or procurement. Records should be maintained for the duration of the contract, including all extensions, plus three years, or longer if required for audits.	Required 2 CFR 200.318(i)

Procurement Procedure Requirements, Continued

Procurement Procedures Components	
<p>Contractor Oversight: Maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.</p>	<p>Required 2 CFR 200.318(b)</p>
<p>Responsible Contractors: Award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.</p>	<p>Required 2 CFR 200.318(h)</p>
<p>Contractual and Administrative Issues: The non-Federal entity, alone, must be responsible for the settlement of all contractual and administrative issues arising out of procurements (i.e., protests, disputes, claims, etc.)</p>	<p>Required 2 CFR 200.318(k)</p>

While contractor oversight is a requirement for all contracts supported with Federal funds, certain types of contracts, like FSMC contracts, will have additional, specific requirements related to oversight

Procurement Procedure Requirements, Continued

Procurement Procedures Components	
Competition: The document must describe the procurement practices so that free and open competition is implied if not specifically stated.	Required 2 CFR 200.319(a)
Methods of Procurement: The methods of procurement and their thresholds must be stated.	Required 2 CFR 200.320(a) – (b)
Buy American Provision: To ensure compliance with the Buy American provision for all food procurement, the SFA must ensure solicitations and contracts include the required Buy American certification language.	Required 7 CFR 210.21(d)
Contract Cost and Price: The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications.	Required 2 CFR 200.324

Code of Conduct

In addition to written procurement procedures, Federal regulation also requires that all SFAs maintain written standards of conduct, which we refer to as a code of conduct. This policy governs the action of any employee that is engaged in any part of the procurement process, including the selection, award, and administration of contracts.

“The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.” 2 CFR 200.318(c)(1)

Why is a Code of Conduct important?

Protects employees from engaging in unethical and unallowable behavior

Provides for disciplinary actions to be applied for violations

Protects SFA’s reputation and taxpayer dollars



Code of Conduct Requirements

There are two main components of a written code of conduct that are required for all agencies.

Conflicts of Interest

- Must define real or apparent conflicts
- Must include disciplinary actions for violations

Gifts, Favors, and Gratuities

- Must include a prohibition for accepting any gifts, gratuities, favors or anything of monetary value
- Must define nominal value if standard is used
- Must define how conflicted of interest are avoided for parent companies or subsidiaries

If applicable



The Procurement Process

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The Procurement Process

For the procurement process to work effectively, all potential vendors must be provided with the same opportunity to bid on the requested goods and/or services.

Guiding Principles:

Competition produces the best products at the best price

Vendors must be both responsive AND responsible

When all vendors are on equal footing, the best vendor will prevail

Responsibility relates to the bidder's ability to satisfactorily perform the work (financial responsibility, skill, ability, etc.). **Responsiveness** relates to submitting a bid that conforms to all material requirements of the solicitation



The Procurement Process, Continued

All procurement transactions for the acquisition of property or services must be conducted in a manner providing full and open competition.

Situations that Restrict Competition

Organizational conflicts of interest

Placing unreasonable requirements on vendors

Requiring unnecessary experience or excessive bonding

Noncompetitive pricing practices between firms or affiliates

Noncompetitive contracts to consultants on retainer contracts

Specifying brand name products without allowing for substitutes

Any arbitrary action



Procurement Definitions

One of the first steps of the procurement process is to develop specifications or, in other words, determine what product or service that you are seeking to purchase

Specifications: “...a clear and accurate description of the technical requirements for the material, product, or service to be procured...The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.” 2 CFR 200.319(d)(1)

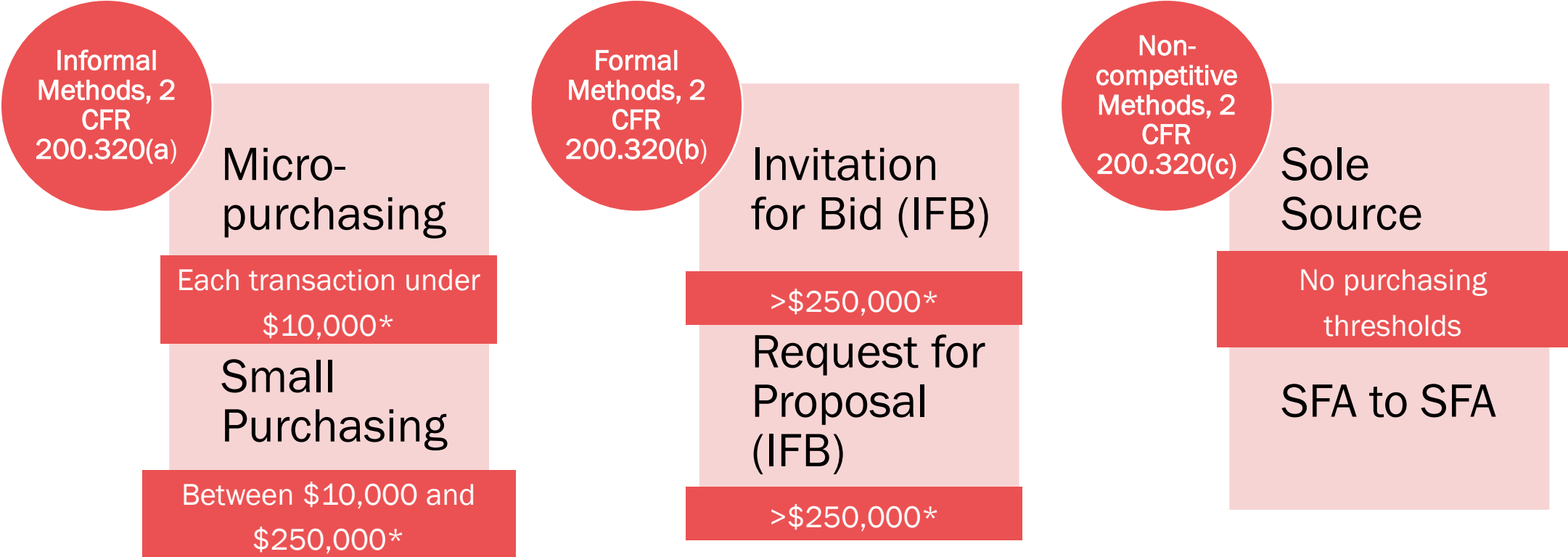
Questions to consider when developing specifications:	Examples
What product do you want to purchase?	Milk
What specific kind/size of product are you looking for?	8oz cartons of unflavored 1% milk
How much do you anticipate purchasing?	500 cartons per week
How often do you need it delivered?	Twice per week



Procurement Methods

Procurement Methods

It is up to each SFA to identify the best and most economical procurement method for procuring goods and services in accordance with applicable state, federal, and local laws and regulations.



*There may be some instances where local laws, regulations, or policies are more restrictive. The thresholds on this slide reflect current Federal standards only.

Micro-Purchasing

Micro-purchasing refers to the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold.

What is the Federal micro-purchase threshold?

The total purchase prices (for each transaction) must be under \$10,000

What does it mean to spread purchases equitably?

To the extent practicable, SFAs should purchase from multiple vendors

How do you know if a price is 'reasonable'?

"Reasonable" generally refers to the price a prudent person would pay for the same product

"To the extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers...Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable." 2 CFR 200.320(a)(1)



Micro-Purchasing Example

ABC School purchases food and supply items to support the SFA on a weekly basis.

For the month of December, the purchases were as follows:

Week 1	\$500 in food and paper goods from XYZ Food Mart
Week 2	\$100 in paper goods from Dollar Store and \$500 in food from 123 Grocery
Week 3	\$1,000 in food and paper goods from XYZ Food Mart
Week 4	\$800 in food from Superstore

The SFA must maintain individual, itemized receipts to demonstrate the history of procurement – no quotes or price shopping required

Is ABC School meeting micro-purchasing guidelines?

- ✓ All purchases are below \$10,000
- ✓ Purchases are spread equitably among qualified vendors
- ✓ Purchase prices are considered 'reasonable' (to be validated upon review of receipts)



Small Purchasing

Small purchasing refers to the acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the Simplified Acquisition Threshold.

What is the Federal Simplified Acquisition Threshold?

Aggregate price not to exceed \$250,000

What is an adequate number of sources?

To the extent practicable, SFAs should purchase from multiple vendors

“If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources...” 2 CFR 200.320(a)(2)

Develop Specifications



Comparison Shop



Document quotes and/or price comparisons at least annually



Small Purchasing Example

ABC School only spends about \$500 per week on food purchases but does not have the staff resources to spread the purchases equitably among qualified sources and would rather shop at only one store on a regular basis.

After comparing the projected purchases for the center's most used items, ABC School has determined that Mary's Company provides the best pricing overall. A dated comparison chart along with the ads or other methods used to determine pricing is on file, along with the purchase receipts.

The SFA must maintain a copy of the price comparison, any quotes received, and individual, itemized purchase receipts to document the history of procurement

Is ABC School meeting small purchasing guidelines?

- ✓ All purchases are below \$250,000
- ✓ Although individual purchases are below the micro-purchase threshold, purchases are spread equitably among qualified vendors
- ✓ A price comparison of 3 vendors was conducted
- ✓ Procurement activities were documented



Small Purchasing Log

Supplier Name:		Supplier A: Bob's Company			Supplier B: Mary's Company			Supplier C: Pat's Company			
<u>Items to be Purchased:</u>		Quantity estimated to be purchased	Unit Price	Extended Price (Quantity x Unit Price)	*BS (✓)	Unit Price	Extended Price (Quantity x Unit Price)	*BS (✓)	Unit Price	Extended Price (Quantity x Unit Price)	*BS (✓)
<ul style="list-style-type: none"> Product specifications Delivery Frequency: <u>one time delivery</u> Bid will be honored for: <u>two weeks</u> (sponsor will state time period) 											
1.	Applesauce 6/10 cans	30	15.75	472.50	<input type="checkbox"/>	16.50	495.00	<input type="checkbox"/>	15.00	450.00	<input type="checkbox"/>
2.	Pineapple 6/10 cans	10	16.25	162.50	<input type="checkbox"/>	17.50	175.00	<input type="checkbox"/>	18.00	180.00	<input type="checkbox"/>
3.	Cranberry Sauce 6/10 cans	5	25.25	126.25	<input type="checkbox"/>	21.75	108.75	<input type="checkbox"/>	23.50	117.50	<input type="checkbox"/>
4.	Peaches, Freestone, (Halves) 6/10 cans	30	22.25	667.50	<input type="checkbox"/>	21.50	645.00	<input type="checkbox"/>	22.75	682.50	<input type="checkbox"/>
Total:				\$1433.25			\$1423.75			\$1430.00	
*Bidder Selected (BS)				<input type="checkbox"/>			<input checked="" type="checkbox"/>			<input type="checkbox"/>	
<p>*Bidder Selected (BS); sponsor can award all items to one bidder (lowest total price) or award purchase on a line item basis (lowest line item price). Sponsors need to tell the bidders which option they will use for awarding the purchase when they are asking for pricing. The sponsor can state that either option may be used to award the purchase.</p>											
Method of contact: Phone, Fax, Email or In Person		Fax			Phone			In Person			
Name of person providing bid:		Bob			Mary			Pat			
Date contacted:		May 11, 2016; Faxed in bid - Bid sheets attached.			May 12, 2016; Price given per phone. Confirmed in writing and attached.			May 16, 2016; Visited store and obtained prices. Price sheet attached.			
Additional Notes:		Bob said their fresh fruit and vegetables are more competitively priced than canned goods.			Best overall pricing; Mary stated that they will have a clearance special going on in June.			Pat said that their delivery costs have gone up recently but that in July they will have a new distributor and pricing.			
Signature of person completing this form: <i>Sam Anderson</i>									Date: <i>May 20, 2016</i>		



Formal Purchasing

For any purchase over the federal simplified acquisition threshold of \$250,000, a formal method of procurement must be used. Formal procurements can be conducted using either an Invitation for Bid (IFB) or Request for Proposal (RFP).

Invitation for Bid (IFB)

“A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.”

2 CFR 200.320(b)(1)

Request for Proposal (RFP)

“A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids.” 2 CFR 200.320(b)(2)



Formal Purchasing Process

As with small purchasing, the specific steps used in this process may vary by SFA, but in general, will include the following:

Ensure contract includes all required provisions

1. Conduct a cost/price analysis per 2 CFR 200.324

2. Develop a solicitation tool (either IFB or RFP)

3. Publicly announce/advertise the solicitation

4. Evaluate the offers using the criteria outlined in the solicitation

5. Award the contract to the lowest cost responsive, responsible bidder

6. Manage the contract to ensure the SFA receives everything stipulated in the contract



Formal Purchasing, Required Contract Provisions

Required Contract Provisions, per 2 CFR 200 Appendix II	When is it required?
Administrative, contractual, or legal remedies	All contracts
Termination for cause and for convenience	Contracts exceeding \$10,000
Equal Employment Opportunity	Contracts that meet the definition of “federally assisted construction contract”
Davis Bacon Act	Prime construction contracts in excess of \$2,000
Contract Work Hours and Safety Standards Act	Contracts in excess of \$100,000 that involve the employment of mechanics or laborers
Rights to Inventions Made Under a Contract or Agreement	Contracts for the performance of experimental, developmental, or research work
Clean Air Act	Contracts in excess of \$150,00
Debarment and Suspension	All contracts
Byrd Anti-Lobbying Amendment	Contracts in excess of \$100,000

These represent the minimum standards for all Federal awards. Additional, program-specific contract standards may apply.



Formal Purchasing – Invitation for Bid (IFB)

Invitations for Bid (IFBs) are most appropriate for contracts resulting in a fixed price and may include contracts such as vended/catered meals requiring a price per meal for delivery only.

Requirements for IFBs:

- Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids
- Bids must define the items or services for the bidder to properly respond
- All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly
- A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder
- Any or all bids may be rejected if there is a sound documented reason



Formal Purchasing – Request for Proposal (RFP)

Requests for Proposal (RFPs) are most appropriate for procurements where the SFA has an idea of what they want but is comfortable in leaving some of the details of the “how” up to a vendor.

Requirements for RFPs:

- Must be publicized
- Identify all evaluation factors and their relative importance
- Solicited from an adequate number of qualified offerors
- Any response to RFPs must be considered to the maximum extent practical
- SFAs must have a written method for conducting technical evaluations
- Contracts must be awarded to the responsive, responsible offeror whose proposal is most advantageous, with price and other factors considered

When procuring architectural/engineering professional services, SFAs may use competitive proposal procedures for qualifications-based procurement. An offeror's qualifications are evaluated, and the most qualified offeror is selected. In this method, price is not used as a selection factor.



Formal Purchasing Comparison

Invitation for Bid (IFB)	Request for Proposal (RFP)
Procurement by sealed bids	Procurement by competitive proposals
Lowest priced responsive, responsible bidder	Must have established evaluation criteria (score card)
Price is the ONLY factor	Cost must still be the primary factor (highest weighted on the score card)
Bids are publicly opened and awarded	Proposals are received, evaluated, then awarded
Must have more than one qualified source willing and able to compete	Contract is awarded to the most advantageous, responsive, and responsible provider (based on submitted proposals)



Formal Purchasing, Additional Considerations

Piggybacking

Must ensure they have all original procurement documentation, and the original solicitation must state that additional parties can be added

Market Basket

Language in the solicitation must state that responses are evaluated based on the representative list of goods

Procurement Agents

If an agent was used, the SFA must procure the services of that agent. The SFA is still the responsible party for ensuring compliance

Value Added Clause

If this language is used, the SFA must include criteria for how value-added services or goods will be evaluated

Purchasing Cooperative

Requirements vary for non-CNP vs. CNP entities conducting the procurement

Unallowable Costs

The contract, renewals, and/or any amendments must prohibit unallowable costs



Non-Competitive Procurement

There are a few instances where Non-Competitive Procurement can be used, however, non-competitive procurement is usually an exception to the rules. An SFA in one of these situations, must reach out to RIDE's Child Nutrition Programs office for guidance and will need their approval PRIOR to making a purchase

Circumstances when non-competitive procurement can be used:

- The aggregate dollar amount doesn't exceed the micro-purchase threshold
- The item is available only from a single source
- Emergency procurement
- After solicitation of a number of sources, competition is inadequate
- Contracting with an SFA



Additional Considerations

Additional Considerations

In addition to choosing an appropriate procurement method, SFAs must keep some additional requirements in mind when conducting procurements that will be supported with Federal funds.

“The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus firms are used when possible.” 2 CFR 200.321

Affirmative Steps Must Include:

Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;

Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;

Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises;

Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises;

Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above



Documenting Procurement Activities

In order to demonstrate compliance with Federal procurement requirements, an SFA must maintain sufficient records to detail the history of procurement.

Procurement records will include, but are not limited to:

Rationale for the method of procurement used

Selection of the contract type

Contractor selection or rejection

Basis for the contract price

Documentation may vary based on the method of procurement used.



Post Award Contract Monitoring

All awarded contracts/procurements must continue to be monitored after the award.

FSMC Contract monitoring has very specific, required elements that must be monitored and documented. This process is covered in a separate training.

Contract Monitoring

- ✓ SFAs should monitor all contracts on a regular basis
- ✓ FSMC contracts should be monitored on a regular basis, but are required to be formally monitored at least annually
- ✓ The SFA must ensure they are good stewards of the Federal funds that they receive





Food Service Management Companies (FSMCs) vs. Vended Meals

Vended Meal Contracts

A vended meals contract is required for those SFAs who choose to have meals provided, with or without milk, by an outside school or other vendor rather than preparing meals in house.

Allowable Services

- Delivering meals
- Cleaning Equipment
- Receiving, storing, and using USDA foods
- Preparing Menus
- Completing menu production worksheets

Unallowable Services

- Accessing eligibility information
- Collecting meal payments
- Conducting meal counts
- Providing Program oversight
- Collecting Claim Data
- Being an SFA employee

SFAs seeking one or more of these services must procure a Food Service Management Company (FSMC)



Informal Procurement for Vended Meals

When the cost of vended meals services is expected to be less than the applicable threshold, an informal procurement process may be used and would follow the steps of the small purchase method.

1. Develop a written solicitation

2. Solicit quotes/bids

3. Document all quotes/bids received

4. Evaluate the quotes

5. Award the purchase/contract

6. Submit an executed copy of the contract to RIDE

SFAs should utilize RIDE's
informal vended meals
prototype contract



SFA to SFA Vended Meals Agreements

SFAs may choose to obtain meals from another SFA. This relationship is referred to as an SFA-to-SFA Agreement.

Requirements & Characteristics

- SFA obtains meals from another SFA
- Recipient SFA is exempt from competitive procurement
- SFA to SFA Agreement is required
- Agreements are for 1 year but may be renewed indefinitely

Even if the vending SFA has a contract with an FSMC, this Agreement is between two SFAs only and must be signed by SFA officials, using the RIDE provided template.



Procurement Comparison

Contracting with a School Food Authority (SFA)	Contracting with a Food Service Management Company (FSMC) or Vended Meals Company
Competitive bid process is not required	Can be procured informally (small purchase method) for any contract valued at less than the most restrictive simplified acquisition threshold (local, state, or Federal)
n/a	Must be procured formally for any contract valued over Federal threshold of \$250,000, or a more restrictive local or state threshold, if applicable
n/a	Regardless of procurement method, price is the primary factor for contract awards
SFAs should still develop written specifications to inform both parties of the expectations	SFA must develop clear specifications to ensure that all vendors are responding appropriately based on the same information
Parties enter into a written agreement, which can be renewed annually without restriction	Parties enter into a written agreement, which can be renewed for up to four (4) additional years after the initial contract award before the competitive procurement process must be conducted again
RIDE-provided template must be used for initial contract and all renewals	RIDE-provided template must be used for initial contract and all renewals

Contract Amendments

When the terms or conditions on which an initial Agreement was based on change, a contract amendment is needed in order to capture these changes.

The annual contract renewal process provides a template for the most common year-over-year changes but mid-year amendments and/or additional changes to those outlined in the prototype renewal document may be necessary based on your individual circumstances.

Changes that require an amendment:

- New schools are added after the initial agreement
- Changes in enrollment
- Changes in student/adult meal price
- Meal equivalency rate change

All contracts & renewals must be approved by RIDE PRIOR to being executed.



Contract Rebidding

Neither party may make or impose material changes to an existing contract during the contract year or as part of the annual contract renewal process. If it is determined that material or substantive changes are necessary, the SFA must conduct a new procurement and re-bid the contract or may choose to self-operate its food service.

When is a re-bid required?

- The contract is expiring
- A material change to the existing contract is made

An SFA may choose to re-bid a contract at any time

What constitutes a material change?

- Change in the scope
- Major shift in staff responsibilities for SFA/FSMC staff
- Revision to the fixed-price contract pricing structure and/or terms for price increases

These are examples. SFAs must set their own criteria for material changes.



Consequences of Noncompliance

Funds from the non-profit school lunch account cannot be used to pay for any costs incurred from an improper procurement

Contracting with an FSMC without RIDE approval

Using a Vended Meals Contract for FSMC services

Allowing a vendor to develop bid documents

Each of these scenarios would be considered noncompliant and would require the contract to be rebid and any costs incurred to be funded from alternate sources.



Thank You

