



## GENERAL PROCUREMENT IN CHILD NUTRITION PROGRAMS



Welcome to the General Procurement in Child Nutrition Programs hosted by the New York State Education Department Office of Child Nutrition.

Presenting today will be \_\_\_\_\_ Amy Losee with Eric Maryzak and Meghan Lanzetta will be answering questions.

The next slide will review the topics we will be presenting on today.

*If you have any questions during the presentation, please type them into the question box. We will review them at the end.*

*Following today's presentation, you will receive an email containing the slides for today's webinar. If you do not receive them, please email [CNTraining@nysed.gov](mailto:CNTraining@nysed.gov)*

*Additionally, a copy of the webinar will be posted to the CN website within a few weeks.*

As always, if you have any questions, never hesitate to reach out to your Child Nutrition Program Representative or email [CN@nysed.gov](mailto:CN@nysed.gov).

## Today's Agenda

- Procurement principles and regulations
- Procurement procedures
- Competition
- Procurement Methods
  - Informal Methods
  - Formal Methods
- Solicitations
- Contracts
- Cooperative Buying Groups/Group Buying Services
- Record Retention Requirement

In today's presentation we will review basic procurement principles and procedures.

Please note that we will conduct a separate webinar next week to cover conducting local procurements to obtain unprocessed products including applying a geographic preference and utilizing bidding exemptions in general municipal law as well as changes to the General Municipal law language that was passed with the FY23 NYS Budget.

# Procurement

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- Multi-step process for obtaining goods, products, and/or services at the best possible price
  - Required to ensure federal dollars are properly spent
  - Comply with federal, state, and local requirements



Procurement is an important part of operating the Child Nutrition Programs, because federal dollars are being used to purchase goods and services. All purchases made with federal dollars must be properly procured. Therefore, SFAs need to understand and comply with local, state, and federal procurement guidelines to make sure the federal dollars are spent wisely.

In large part, the procurement rules were put in place to correct discrepancies in the process such as nepotism, improper awards, kickbacks, incentives, and other improper practices when purchasing goods and services.

Obtaining the best price should be considered in all purchases when using the nonprofit food service account.

Any entity conducting procurement on behalf of an SFA must follow the same procurement requirements as the SFA.

# Principles of Good Procurement

Free and open competition

Fairness and integrity

Responsive and responsible vendor



There are three binding principles of good procurement: free and open competition, fairness and integrity, and responsive and responsible vendors.

These are the principles schools should think about in every step of the procurement process from setting procurement policies to monitoring their procurements.



# What should I include in my procurement plan?

- Definitions
- Basic Organizational Concepts
- Procurement Method Selection
- Conflict of Interest / Code of Conduct policy
- Buy American
- Minority/Women-Owned Businesses



Courtesy of Huntington UFSD

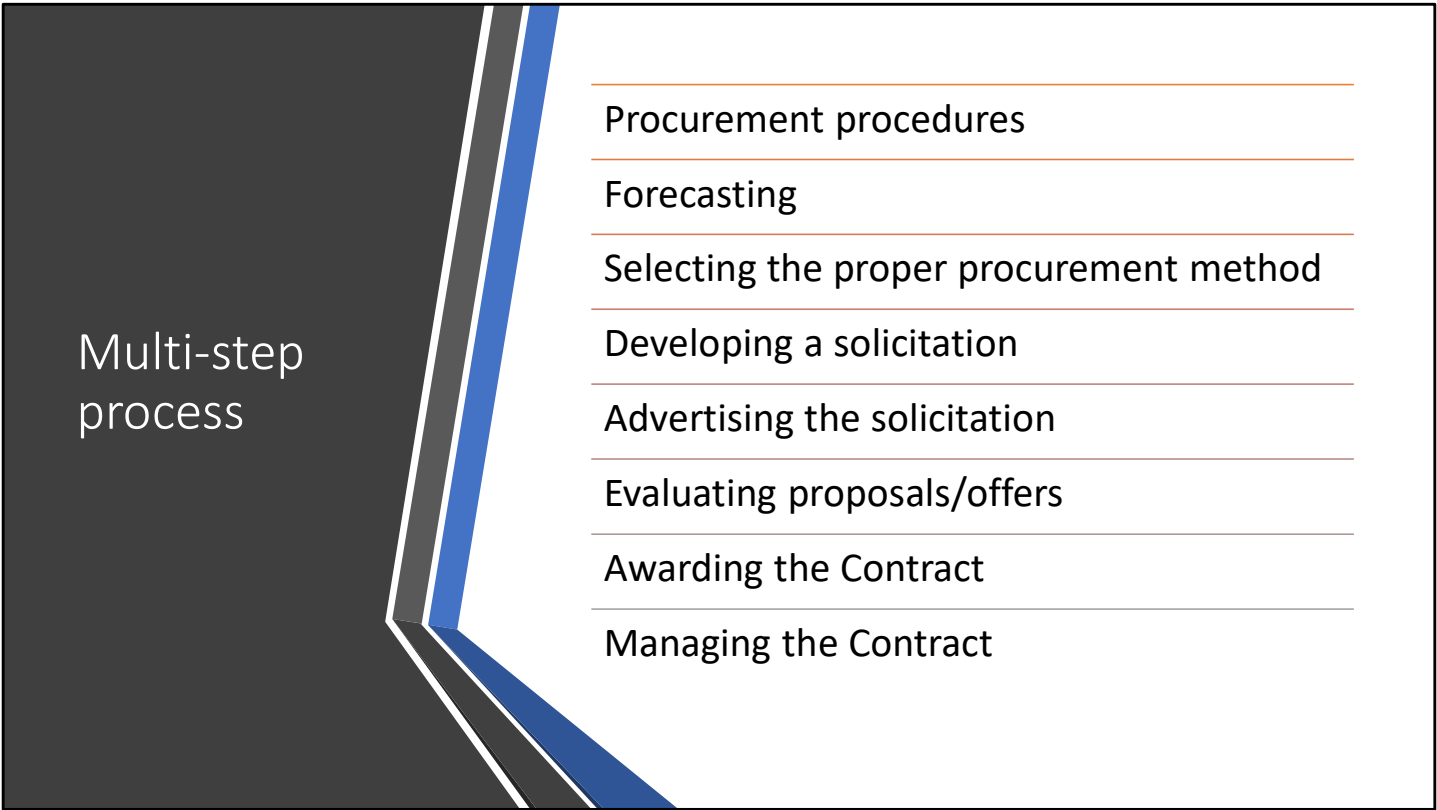
The procurement plan should clarify terms used in the policy which may need further explanation (such as responsive and responsible bidder).

It should also include basic organizational concepts, such as which people in the organization are responsible for ordering and who approves purchases. A best practice is to establish different financial levels for procurement.

How the SFA will determine which method of procurement will be used must also be in the procurement policy.

The procurement plan should include a conflict of interest and code of conduct policy for everyone involved in the procurement process. It documents the steps to take if there is a conflict of interest and the consequences if there is a violation of the policy.

The procurement plan should establish when solicitation must include the buy American provision. The Buy American provision is required in solicitations for food products. FAs must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.



## Multi-step process

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Procurement procedures

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Forecasting

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Selecting the proper procurement method

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Developing a solicitation

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Advertising the solicitation

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Evaluating proposals/offers

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Awarding the Contract

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Managing the Contract

Competition drives the procurement process. The procurement process is a multi-step process for obtaining the best goods and services at the best possible price. An effective process ensures SFA procurement procedures are well thought out, reflect needs, are completed properly in compliance with regulations, and, in the end, are managed properly at the contract award level.

The steps in this multi-step process include:

- Procurement planning
- Forecasting ones needs
- Choosing the appropriate procurement method
- Developing a solicitation
- Advertising the procurement
- Evaluating proposals/offers
- Awarding a contract or making a purchase
- Managing the resulting contract and keeping documentation

# Procurement Procedures

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Required by regulations

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Helps to determine procurement  
Methods to be used

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Identifies parties that will address  
issues raised

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Includes a written code of standards of  
conduct to prohibit conflicts of interest



Courtesy of Hartford CSD

Procurement procedures play a critical step in the overall process because they determine the type of procurement methods that will be used by the SFA and the type of contracts that will result.

SFAs are required to have written procurement procedures. The procedures provide the specific roadmap for how the SFA is conducting procurement and compliance with regulations.

Written standards of conduct are required to prevent conflicts of interest and the use of noncompetitive practices

Additionally, the procedures should address who at the SFA conducts the contract monitoring and how issues will be addressed if identified.

## Purpose of a procurement plan

- Simplify the procurement process
- Include applicable federal, State and local procurement laws and regulations
- Ensures process uniformity, fairness and equity
- Safeguards taxpayer dollars
- Assists in maximizing an SFA's purchasing power, while providing increased efficiency, economy and flexibility



Courtesy of South Huntington UFSD

***Having a procurement plan is similar to following a recipe in a cookbook. It gives you a list of ingredients and the steps necessary to make the recipe.***

With procurement plans, you're listing the documents you need and the steps you take to make purchases. This assists in making the process simple and efficient.

The procurement plan must include how applicable federal, State procurement laws and regulations are met.

A procurement plan safeguards the procurement process, thereby ensuring taxpayer dollars are protected against fraud and abuse. When schools have a plan in place, it makes certain that each procurement is done properly and consistently, and vendors are treated fairly and equitably while maximizing an SFA's purchasing power.





Courtesy of Hilton CSD

## Restrictive Competition

***Procurement procedures may never unjustifiably restrict or eliminate competition***

- Placing unreasonable requirements on distributors in order to qualify
- Having organizational conflicts of interest
- Having unnecessary bonding and experience requirements
- Specifying only a brand name product instead of allowing a preapproved equal product to be offered

Procurement procedures may never unjustifiably restrict or eliminate competition.

Examples of restrictive competition for procuring food products include identifying only name brands or requiring all vendors to be college graduates.

Placing unreasonable requirements on distributors in order for them to qualify to do business. For example, there must be least two drivers at all times when delivering the food.

Being restrictive could also be organizational conflicts of interest. For example, a vendor is son of school nutrition director.

Also, having unnecessary bonding and experience requirements. For example, a vendor must be in business for a minimum of ten years.

You cannot specify only a brand name product(s) instead of allowing a pre-approved equal product to be offered. For example, we will only accept Donald's Broccoli Spears.

# Ethics



Important to Fair Competition



Moral Standards used to guide decisions in personal and professional lives



Practices that promote Free and Open Competition



Unethical practices can damage reputations of the person and company



Written Code of Ethics

Ethics are important to fair competition. Ethics can be defined as the moral standards individuals use to guide decisions in their personal and professional lives. In the business world, ethical behaviors are practices that promote free and open competition.

For school nutrition professionals, unethical actions can be cause for termination and loss of funding for their program. Unethical practices can damage an employee's reputation and the reputation of the district. In some cases, ethical violations could even result in legal ramifications or prosecution.

All entities receiving public funding must develop a written Code of Ethics (which must include a specific conflict of interest policy) and Code of Conduct policies that are enforced within their organizations. Generally, codes of ethics and conflict of interest policies discourage conflicts of interests but acknowledge that conflicts of interest do exist and require that policies be developed to establish the protocols that must be followed when conflicts of interest arise. Codes of ethics help to minimize problems with conflicts of interests because they can spell out the extent to which such conflicts should be avoided, and what the parties should do when such conflicts are permitted by a code of ethics.

# Conflicts of Interest

Any action that allows a person to benefit at the expense of public interest or their employer

Individuals involved in a conflict of interest should be excused from the selection, award, or administration of contracts

SFAs are required to maintain a written conflict of interest policy

The best way to handle conflicts of interests is to avoid them entirely

Sometimes circumstances may arise that create a personal or professional conflict of interest. A conflict of interest is any action that allows a person to benefit at the expense of the public interest or the expense of their employer. A conflict of interest occurs when the individual involved in the decision-making process or someone close to this individual benefits by signing the contract. Conflicts of interest may arise in the relations of directors, officers, and management employees, family members, friends, and other employees, firms supplying goods and services or leased property and equipment.

No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Individuals involved in the conflict of interest should excuse themselves from the process.

Each SFA must adopt a written conflict of interest policy that clearly sets forth the procedures to be followed in instance where a member of the governing entity of the provider (for example, the provider's board or person in a management position) have personal or business interests that may be advanced by an action of the board, including a provision that such member may not participate in any decision to approve any transaction where such conflicting interests may be advanced. The policy should be reviewed and discussed with the provider's attorneys and auditors prior to its adoption.

The officers, employees, and agents of the non-federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

# Less-Than-Arms-Length Relationships and Transactions

One party to the transaction is able to control or substantially influence the actions of the other(s)

Include in Conflict-of-Interest Policy

Required to be identified and fully disclosed

Documentation to support reasonable price

The conflict-of-interest policy must also include a requirement and process for identifying and fully disclosing all Less Than Arms Length relationships and transactions on an ongoing basis.

**A less-than-arms-length transaction is a transaction between the SFA and its employee(s), officer(s), agent(s) or members of the sponsor's immediate family, either directly or indirectly through corporations, trusts or similar arrangements in which the SFA holds a controlling interest, no matter how represented. All related-party transactions are less-than-arms-length transactions.**

In general, this relationship exists when there are related parties and one party can exercise control or significant influence over the management or operating policies of another party, to the extent that one of the parties is or may be prevented from fully pursuing its own separate interests.

All conflicts of interest must be disclosed to our office.

All costs for less-than-arms-length transactions require scrutiny and the allowable cost to the Program may be limited.



When a less-than-arms-length relationship exists, documentation for procurement must fully support that the costs presented were obtained in good faith and at reasonable rates for the services or product offered.

# Confidentiality

- Providing confidential information to any person or entity that was not designated to be privy to that information is unethical
- Pricing of bids may not be made public until after the award process



Providing confidential information of any kind to any person or entity that was not designated to be privy to that information is considered unethical. For example, before contracts are awarded, distributors submit sealed bids. The cost and pricing information in these bids may not be made public until after a decision has been made to award the contract. Also, during the bidding process, you may not disclose information about your school district to a company unless the same information is given to all respondents. This information could give that company an unfair advantage in drafting its proposal.

It is important all stakeholders in the school nutrition supply chain practice ethical behaviors.

# Responsive and Responsible

- Consistent with the size and nature of the procurement
- Clearly indicates compliance without material deviation from the solicitation's terms and conditions
- Capable of performing successfully under the terms and conditions of the contract



Competition requires seeking responsive and responsible vendors who are consistent with the size and nature of the procurement, clearly indicating compliance without material deviation from the solicitation's terms and conditions. Responsive and responsible vendors have the capability to perform successfully under the terms and conditions of the contract.

A responsive bidder is one that responds to a solicitation and successfully fulfill the terms of the contract.

For example, if a school issues a solicitation for apples and the bidder responds with a bid for peaches, the vendor is not responsive

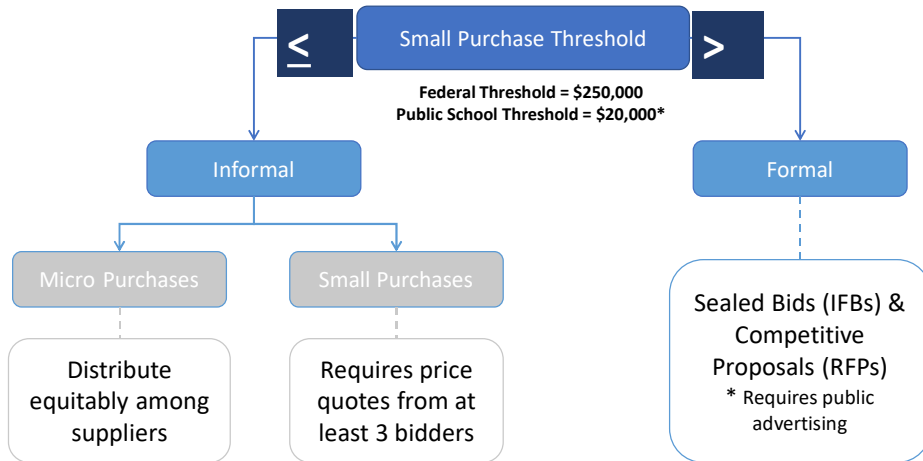
A responsible bidder is capable of performing successfully under the terms and conditions of the contract, can clearly indicate compliance without material deviation from the solicitation's terms and conditions; and possess, at the time of contract award, the experience, facilities, reputation, financial resources, and other factors necessary to fulfill the terms of the contract successfully.

For example, if a school requires that responders provide evidence of past success meeting delivery times and upon calling the bidders references learns that the bidder has a poor track record regarding on-time deliveries, the bidder would not be considered responsible.

Similarly, schools can use reputation as a factor when evaluating responsible bidders. The school may call other schools that have used the bidder to verify reputation.



# Procurement Methods



\* Exemptions available for purchasing NYS Foods directly from farmers and producers

The method of procurement SFAs use is determined the estimated amount of the purchase.

There are federal, state and local procurement thresholds that may apply however, the SFA must adhere to the most restrictive threshold. SFAs must be aware of the small purchase threshold that applies to them. For example, although the federal threshold is currently set at \$250,000, state law for public schools is more restrictive and set at \$20,000. As noted in the slide, there are limited exemptions from this threshold for public schools purchasing NYS foods directly from farmers and producers. We will cover these exemptions and how to procure local foods, including applying geographic preference in the November 9<sup>th</sup>, Farm to School and Local Procurement webinar.

This slide demonstrates how the value of the procurement dictates what procurement method to use. When the value of the purchase is estimated at less than or equal to the small purchase threshold, informal methods including micro-purchase and small purchase may be followed. However, when the value of the purchase is estimated at greater than the small purchase threshold, formal procedures including sealed bids (IFBs) and competitive proposals (RFPs) apply.

## Informal procurements

Courtesy of Broome Tioga BOCES



Now we will look at Informal procurement methods- micro purchase and small purchase methods.

## Micro-Purchase

- No quotes required
- Up to \$10,000 or small purchase threshold, whichever is less
- Should be distributed equitably among qualified suppliers, to the maximum extent practical
- Price must be reasonable
- Buy American provision applies



Federal Regulations permit SFAs to make purchases without obtaining quotes in certain instances. These purchases are called micro-purchases.

The federal regulations allow the use of a micro-purchase when the dollar amount of a procurement event does not exceed \$10,000. However, keep in mind that SFAs must abide by the most restrictive threshold applicable to them. For example, if the SFA's small purchase threshold is \$5,000, the SFA would be limited to utilizing the micro-purchase method for purchases equal to or under \$5,000. An SFA may not be able to utilize micro-purchases at all if their local policy requires bids for all purchases.

To the maximum extent practicable, micro-purchases should be distributed equitably among qualified suppliers. This distribution among suppliers can happen at the time of the purchase or over several purchasing events. For example a school procuring apples may purchase them either: from various suppliers at the same time (the total of the purchases cannot exceed the SFAs micro-purchase threshold), or choose one supplier for the purchase of the apples and another supplier the next time apples need to be purchased (each of the purchases cannot exceed the SFAs micro-purchase threshold).

Micro-purchases can be made when the SFA considers the price to be reasonable. An SFA can consider the price to be reasonable based on research, experience, purchase history or other information that is documented and maintained by the SFA.

As with any purchase made from the school food service account, costs must be necessary and reasonable, and the buy American provision applies to food purchases.

## Micro-Purchase

- No quotes required
- Purchases up to \$50,000 (federal threshold)
- SFA annual self-certification required
  - Justification, clear identification of threshold
  - Supporting documentation of:
    - A qualification as a low-risk auditee; or,
    - An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
    - For public institutions, a higher threshold consistent with State law
- For purchases over \$50,000 request from SED

Federal Regulations permit SFAs to use the micro-purchase method for a purchase up to \$50,000 when SFAs self-certify on an annual basis and must maintain documentation of such self-certification.

The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

- A qualification as a low-risk auditee, in accordance with the criteria in the uniform grant's guidance for the most recent audit
- An annual internal institutional risk assessment to identify, mitigate, and manage financial risks or
- For public institutions, a higher threshold consistent with State law

Some SFAs, if state and local thresholds and procedures allow, can request approval from the state education department to make micro-purchases over \$50,000.



## Micro Purchase Method

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- Does the SFA require price quotes for all purchases?
- Is it more of an administrative burden to distribute purchases among qualified vendors?



Courtesy of East Rochester UFSD

The micro purchase method may not be the most appropriate and/or practical procurement method to select based on the needs and/or circumstances at your school.

The key to selecting a procurement method is to not only look at the aggregate dollar value of the purchase but to also to look at the process. Many SFA's require price quotes for all purchases, regardless of the value. If you obtain quotes, this procurement would be categorized as the Small Purchase method, even if the dollar value of the purchase fell under the Micro Purchase threshold. The process of obtaining quotes makes this a small purchase.

An SFA should consider whether it more time efficient to obtain 3 price quotes on an item or service that the SFA utilizes throughout the year than to try to distribute the purchases among qualifies vendors? If so, obtaining 2-3 quick price quotes and completing the procurement as a small purchase would make sense.

Just because purchases could be made with the micro-purchase method, it may be more practical and appropriate to utilize another procurement method instead.

# Small Purchases

- Relatively simple and informal procurement methods
- \$250,000 threshold or most restrictive threshold (local/State thresholds may be more restrictive)
- Competition must still occur



Courtesy of Cambridge CSD

Small purchase procedures are those relatively simple and informal procurement methods for securing services or supplies. The federal small purchase threshold is \$250,000. Note that state and local regulations often set lower small purchase thresholds that are more restrictive than the federal level.



## Small Purchase Documentation

- Develop written specifications
- Request the same information from all prospective vendors
- Obtain three sources

Written specifications should be used to ensure consistency, clarity, and fairness in the procurement. Sources can be contacted by phone, in person, or a written solicitation document can be sent to them by postal mail, email, or fax. Regardless of how the vendor is contacted, it is important to request the same information from all prospective vendors. It is a good practice to obtain, in writing, three sources that are eligible, able, and willing to provide the product, goods, and/or services.

Developing a small purchase request template will ensure consistent communication is provided to all vendors. In addition to being a good practice, this information will assist the state agency reviewer when examining the district's records. A small purchase request tool can be found in the procurement tab on the child nutrition website



Formal procurements are used when purchases exceed the small purchase threshold. We will be discussing both invitation for bids (IFB's) and Request for Proposals (RFP's).



## Invitation for Bid (IFB)

***A competitive, formal, sealed bid method to obtain a price quote***

- Must be publicly announced and opened
- Awarded to lowest responsive and responsible bidder
- Results in a fixed price contract



Courtesy of Schuylerville CSD

An IFB is a competitive, formal, sealed bid method which results in a fixed price contract.

IFB's must be publicly announced and opened to ensure level and fair competitive playing field. Bids are awarded to the lowest responsive and responsible bidder.



## Use an IFB *when*:

- Complete specifications or descriptions of the product or service are available
- Responsive bids do not differ other than price
- More than one qualified source is willing and able to compete for the award
- Food Service Management Company Contracts

IFBs are used when:

- complete specifications or descriptions of the product or service are available or could easily be developed by the school nutrition staff,
- responsive bids do not differ other than price,
- more than one qualified source is thought to be willing and able to compete for the award, and

In NYS, state law requires IFB to be used when procuring a food service management company.

# Request for Proposal (RFP)

- Proposal that explains how the prospective vendor will meet the objectives of the solicitation document
- Includes a cost element that identifies the costs to accomplish the proposal
  - Identify goods, products, and/or services needed
  - Publicize
  - Used to solicit proposals

RFPs is a technical proposal that explains how the prospective bidder will meet the objectives of the solicitation document. RFPs include a cost element that identifies the costs to accomplish the technical proposal.

While price alone is not the sole basis for award, price remains the primary consideration when awarding a contract through an RFP. The RFP identifies the goods, products, and/or services needed, and all significant evaluation factors. The RFP is publicized and is used to solicit proposals from a number of sources.

# Components of the RFP

Define	Define the purchasing agency's need
Specify	Specify anticipated terms and conditions
Provide	Provide information that the respondent must include in their proposal
Identify	Identify factors for evaluation and award
Describe	Describe how technical and cost factors will be considered
State	State the award will be made to the firm most advantageous to purchasing agency

RFP must, at a minimum, meet the following criteria:

- Define the purchasing agency's need, using clear and thorough specifications that are not overly restrictive
- Specify the anticipated terms and conditions of the contract
- Provide information that the respondent must include in their proposal regarding how they will accomplish the services requested
- Identify each factor that the purchaser will use to evaluate the proposals and award the contract
- Describe how technical and cost factors will be considered in making the final determination regarding which respondent will receive the contract [i.e. the relative importance (or weight) of each factor in the award of the contract]; and
- State that the award will be made, on the basis of price and other factors, to the responsive and responsible firm or individual whose response is most advantageous to the purchasing agency, after price and other factors have been considered

RFPs are awarded to the bidder with the lowest price that can meet the specifications of the entire solicitation document, barring no unusual circumstances or documented reasons. The evaluation criteria may include these items: price, product specifications, service and deliveries, geographic preferences for local products, and overall qualifications.

Since the award is granted on lowest price after an evaluation of both technical and cost factors, and potential negotiation, has occurred, an objective evaluation with measurable outcomes should be developed in advance by the school nutrition staff.

# RFP Scoring Criteria/Ranking

- Scoring Criteria
  - Include RFP scoring criteria in the solicitation document
  - Assign a point value, percentage, or scoring system for each element to be evaluated
  - Cost should be primary factor but does not need to be at 50% or more
- Ranking Proposals
  - Have at least two persons reviewing and rating proposals
  - Two-step process: review technical proposals before cost proposals
  - Score based on points or percentages



Scoring criteria for evaluation must be developed in advance and should be clearly defined in the solicitation. Assign a point value, a percentage, or a scoring system for each of elements to be evaluated. While cost does not have to exceed 50%, it must be the primary factor.

Staff should ensure that the proposals are responsive and eligible for consideration. Next, the team needs to carefully review and rank the proposals.

To do this, it is strongly recommended the team:

- have at least two persons—a subject matter expert and a person with knowledge of the district’s contracting requirements—review and rate the proposals, using the evaluation criteria set forth in the RFP. Each person should rank the proposals independently.
- employ a two-step process in which:
  - all technical proposals received are evaluated before cost proposals are reviewed, and
  - companies with the top-rated technical proposals are identified and scored based on points or percentages.



# Awarding the Contract

Submit	After negotiations and modifications, each company will submit a best and final offer
Meet	Technical proposals must meet the SFA's needs
Award	Award contracts on the basis of the best overall value

*\*The award decision must always be based on the criteria outlined in original RFP. Decisions can't be based on additional services/products vendors can provide*

After all negotiations and modifications have been completed, each remaining company will submit a best and final offer. The SFA staff needs to review the technical proposals within each best and final offer to ensure that each proposal still fully meets the SFA's needs. Once the team has determined that each of the remaining technical proposals would fully meet its needs, the team's decision regarding the contract award should be fairly straightforward. The SFA staff should seek to award contracts on the basis of the best overall value.

Sometimes a vendor will offer goods or services that are above and beyond what was initially requested in the solicitation document. These cannot be factored into the scoring evaluation. The award decision must always be based on the criteria outlined in original RFP and not on any additional factors a vendor has chosen to add. To factor in overly responsive items allows for unfair competition. Vendors who were strictly following the criteria listed in the solicitation document are now at an unfair disadvantage. An example of overly responsive items could be the inclusion of hundreds of thousands of dollars of Point of Sale (POS) equipment, when POS equipment was not sought in the original solicitation document.

## Emergency Procurement

- Available only while the public exigent or emergency circumstances exist
- SFAs can obtain goods and services without conducting formal procurement
- Award noncompetitive contracts



Emergency procurement is a procurement method used when competition is deemed inadequate or impossible due to public exigency or emergency, allowing SFAs to enter into a contract without conducting formal procurement. This allowance is beneficial in circumstances such as unanticipated cancellation of food and supply contracts.

Because noncompetitive procurement is available only while the public exigent or emergency circumstances exist, SFAs should, upon awarding a noncompetitive contract, begin the process of competitively procuring goods and services to transition to the competitively procured contracts as the exigency or emergency circumstances cease to exist.



## Noncompetitive Procurement

- Item available from a single source
- After solicitation of several sources, competition is determined inadequate.

Courtesy of Pine Bush CSD

In addition to emergency procurement, SFAs can utilize noncompetitive procurement under if the item is available only from a single source; or after solicitation of a number of sources, competition is determined inadequate.

# Solicitation Document

- Written document used to request potential vendors to offer a quote, bid or proposal to acquire goods, supplies and or service
- Creates a “level playing field”
- Identifies measurable criteria
- Clearly expresses procedures
- Ensures sufficient number of responsive offers

Solicitation documents are required for every procurement of a good or service, regardless of whether the procurement falls under or over the small purchase threshold. A solicitation is used to request potential vendors to offer a quote, bid or proposal to acquire goods, supplies and or services.

The solicitation document is important because it:

- Creates a “level playing field” so all potential vendors receive the same information at the same time resulting in full and open competition
- Identifies measurable criteria that will allow potential vendors to receive the contract award
- Clearly expresses procedures so the outcome is in the best interest of the SFA
- Ensures the SFA receives a sufficient number of responsive offers

# Elements of a Solicitation

- Contract Type
- Introduction /Scope
- **Specifications - General descriptions of the goods /services**
- Technical Requirements - Determine responsiveness & responsibility
- Evaluation Criteria
- Timeliness and Procedures
- Terms, Conditions & Required Contract Provisions

The elements of a solicitation may be ordered differently or have different names, but in general, a solicitation document will include the following elements:

- Title of the solicitation & contract type
- Introduction, scope & SFA general information
- Specifications (General descriptions of the goods /services) – should be specific, but not so strict they restrict competition.
- Evaluation Criteria, if utilizing an RFP
- Timeliness and Procedures including award procedures, delivery and invoice req's and payment schedules
- Terms, Conditions & Required Contract Provisions



## Types of Solicitations

- Line-item solicitation
- Market Basket Solicitation/Product Groupings Bids
- All or Nothing Solicitation/Prime Vendor



There are three types of solicitation which all have advantages and disadvantages and should be used based on each SFA's specific needs and circumstances.

- Line-item bids are solicitations where individual items are solicited, and the vendor can bid on each item accordingly. The individual bids are then awarded to the vendors which bids the lowest price deemed to meet the specification.
- Market Basket solicitations award a single vendor for a group (or "lot") of items where the weighted cost of all items is aggregated. This type of solicitation can minimize the number of contracts to manage.
- All-or-Nothing (Prime Vendor Solicitations)... Are awarded as an all-or-nothing bid. All estimated quantities and pricing are multiplied to determine the price for each item. The total of these estimations are added together to determine the total price bid by each respondent. The respondent with the lowest total price is awarded the contract.

It's important to understand a critical variable in the sealed bid method: line-item versus single awards. In a line-item bid, each item is considered separately, and the award is made to the bidder offering the lowest price for an item deemed to meet the specification. The benefit of this approach is that the aggregate cost of the products being purchased will be the lowest possible. However, the work of awarding—and of compliance monitoring—is greater, as more vendors and invoices must be reviewed. Also, in responding to the bid,



vendors must consider the cost of being awarded only one item; thus, each item must include sufficient margins, to offset the associated costs of serving the district. In a single award approach, the weighted cost of *all* items in the bid is aggregated, with the award going to the one vendor with the lowest total price for all goods or services requested. On the plus side, this minimizes the number of contracts to be administered. Also, bidders can defray their cost of doing business against all of the items, potentially lowering prices overall. But a major concern with single awards (also called “market basket bids”) is the accuracy of forecasting by the SFA. Bidders must consider that the quantities requested may not reflect the actual needs of the district.

# Contracts

- Formal, legally enforceable agreement between an SFA and vendor
- Establishes a legally binding obligation
- Includes all terms of agreement



Once the procurement process is complete the SFA enters into a contract with the vendor. A contract is a formal, legally enforceable agreement that establishes a legally binding obligation for the vendor to furnish goods and/or services and for the SFA to compensate the seller. A contract must clearly and accurately describe the goods, products, and/or services to be delivered or performed and all other terms and conditions of the agreement.

It is imperative to check with your district's legal authority before implementing or signing a contract

## Required Clauses for Contracts

- ✱ Termination for cause and for convenience (>\$10K)
- ✱ Equal Employment Opportunity (>\$10K)
- ✱ Contract Work Hours and Safety Standards Act (>\$100K)
- ✱ Davis-Bacon Act
- ✱ Rights to Inventions Made Under a Contract or Agreement
- ✱ Clean Air Act and the Federal Water Pollution Control Act (>\$150K)
- ✱ Debarment and Suspension
- ✱ Byrd Anti-Lobbying Amendment (>\$100K)

[Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards](#)

School Food Authorities must include standard clauses in contracts supported by federal funds. Some clauses are only required when the value of the contract meets a specific value, as noted on the slide.

- **The required clauses can be found under the procurement tab of the Child Nutrition website, the information is labeled**
- [Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards](#)

## Fixed Price/Fixed Fee Price Contracts

- Agreed upon amount fixed at the inception of contract
- Based on index
- Index must be
  - Auditable
  - Public

*\*Fixed Price Contracts offer SFAs protection against escalating costs*

Fixed price or fixed fee means an agreed upon amount that is fixed at the inception of the contract. In some cases, a fixed price contract may contain an economic price adjustment tied to an appropriate index, such as milk. Indexes must be auditable and available to the public.

Fixed price contracts offer the SFA staff the best protection in handling:

- escalating costs, and
- vendors who allow their costs to climb upward quickly after the award of a contract.

# Cost Reimbursable Contracts



Formal, legally enforceable contract



Reimburses vendor for costs incurred under contract



Does not provide other payment to the contractor, with or without a fixed fee



Only allowable net costs being charged to nonprofit school nutrition account



Vendor is using efficient business practices and effective cost controls

A cost reimbursable contract is a formal, legally enforceable contract that reimburses the vendor for costs incurred under the contract but does not provide for any other payment to the contractor, with or without a fixed fee.

The oversight required by a cost reimbursable contract provides the SFA staff with assurance that:

- only allowable net costs (costs minus any discounts, rebates, and other applicable credits) are being charged to the nonprofit school nutrition account
- the vendor is using efficient business practices and has effective cost controls.



Courtesy of Fort Edward UFSD

## Cost Reimbursable Uncertainties

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- Appropriate when uncertainties involved in a contract's performance will not allow costs to be estimated with enough accuracy to use fixed contract pricing

This type of contract is appropriate to use when uncertainties involved in a contract's performance will not allow costs to be estimated with enough accuracy to use fixed contract pricing. Cost reimbursable contracts frequently occur in the SNP as cost plus fixed fee contracts. We will discuss uncertainties involved in a contract's performance in more detail later in this training.

Solicitations that result in a cost reimbursable contract or contract that includes cost reimbursable provisions must require the return of rebates, discounts, and other applicable credits to the SFA account. Rebates, discounts, and other applicable credits should be clearly documented on the invoice.



## Cost Plus Fixed Fee Contracts

- Provides reimbursement of allowable costs plus the payment of a fixed fee to vendor
- Are often used for milk and produce

A cost plus fixed fee contract provides for the reimbursement of allowable costs, plus the payment of a fixed fee to the vendor. This is an appropriate type of fixed price contract to use when market conditions are such that potential vendors are unwilling to commit (i.e., milk and produce) to a fixed price for an extended period.

In contrast to the fixed price contract, a cost plus fixed fee provides for upward and downward revision of the stated contract price, based upon the occurrence of specified contingencies, such as cost indexes of labor or material changes. These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

When using this type of contract, it is important to clearly state that price adjustments should reflect both increases and decreases in the identified index.

Cost plus fixed fee contracts include fees that are fixed, documented, and cannot fluctuate based on volume. The fees are clearly defined in the contract. Incidentals, such as promotion allowances, cash discounts, label allowances, rebates, applicable credits, and freight rates should be discussed and agreed upon before signing the contract.

The fixed fee component of the cost plus fixed fee contract does not represent the costs associated with the item and/or service being purchased. Rather, it represents the vendor's

related costs, such as:

- storage and distribution,
- delivery of the products, and
- the vendor's profit for performing the services.

# Cooperative Purchasing

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- Group of people or entities join together to accomplish all or part of the steps in the purchasing process
- Use collective buying power to obtain highest quality products at the best price
  - Verify cooperative purchasing group follows federal, state, and local rules, regulations, and policies governing procurement



Cooperative purchasing occurs when a group of people or entities join to accomplish all or part of the steps in the purchasing process. Cooperative purchasing is a system aimed at using group purchasing in an effort to increase buying power, reduce costs, and improve the quality of products and services available to members. In this reference, a purchasing cooperative consists of a group of school districts. The purpose of a cooperative purchasing group is to use the collective buying power and expertise of the group to obtain the highest quality products at the best price.

Verify cooperative purchasing group follows federal, state, and local rules, regulations, and policies governing procurement

# Group Buying Service (GBS)

*An organization that buys on behalf of other entities in larger quantities*

- Can be for-profit or not-for-profit
- Service must be competitively procured
- Prices obtained through the service are considered source



Some individuals confuse a cooperative purchasing group with a Group Buying Service (GBS). Although the two have may appear to have some similarities, there are differences .

A Group Buying Service can be for-profit or not-for-profit. It is vital that all procurement transactions be conducted in a manner providing free and open competition. This principle fully applies to purchases made through a GBS.

GBSs differ from a cooperative purchasing group that consists exclusively of school districts and other government entities. The services of a GBS must be competitively procured by SFAs and the prices obtained are considered one bid source



*Procurement documentation  
must be maintained for 3 years  
plus, the current year*

All documentation related to procurement is subject to the federal record retention requirement, 3 years previous, plus the current year.

Now please welcome our Guest Speaker Kyle Swan from the Long Beach City School District. He will be discussing some tips and best practice ideas for procurement.



# Procurement Strategies

by Kyle Swan

- Organization
- Building Relationships
- Communication



*Questions?*

Call your Child Nutrition Rep or the Training team

518-473-8781

[CNtraining@nysed.gov](mailto:CNtraining@nysed.gov)

Thank you for attending the General Procurement webinar.

We will now take questions on anything discussed during today's webinar. Again, please use the Q&A box in the lower corner to type and send it in to our staff to which we will answer for all viewers to hear. Please remember you may always contact your CN representative for questions specific to your SFA.