



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
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Food Service

**ADMINISTRATIVE POLICY NO. 11
SCHOOL YEAR (SY) 2015-2016**

SUBJECT: Guidance on Procurement Procedures for United States Department of Agriculture (USDA) Child Nutrition Programs

DATE: January 13, 2016

The purpose of this memorandum is to provide further guidance on procurement for USDA Child Nutrition Programs in preparation for the addition of Procurement Reviews in SY 2016-2017. The memorandum will (1) describe the required threshold for the purchase of food, services, and/or supplies (non-food items) used in USDA Child Nutrition Programs and funded by a non-profit food service account, including clarifying the procurement requirements as they relate to Group Purchasing Organizations (GPOs); (2) provide specific guidelines and procurement methods (formal and informal) applicable to all participants in the Child Nutrition Programs for the purchase of food, services, and/or supplies including the addition of the new micro-purchasing method; and (3) discuss written code of conduct and procedures in procurement.

Food and/or Services

Non-public schools and non-school institutions¹ in the Child Nutrition Programs are required to obtain competitive bids (formal purchase method defined later in this guidance) for procuring food and/or services purchased in a single transaction² if the purchase is \$150,000 or more. This is referred to as the small purchase threshold. However, a school's board of education or an institution's board of directors can set small purchase thresholds lower than \$150,000 for food and/or services. Participants must use a lower, more restrictive threshold if their respective organizational thresholds are set at a lower amount as indicated in the agencies' adopted policies.

¹ Non-school institutions are non-profit and for-profit institutions, local government agencies, and community service agencies.

² Single transaction may refer to different situations. See the "Small Purchase Threshold and Single Transactions" section of this memo.

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All participants in the Child Nutrition Programs must have policies in place regarding procurement, and all transactions must be conducted as outlined in these policies.

Public schools, public school academies, and intermediate school districts participating in the Child Nutrition Programs are required to obtain competitive bids (formal purchase method defined later in this guidance) for procuring food purchased in a single transaction³ if the purchase is \$100,000 or more (M.C.L. 380.623a and 380.1274).

Participants in the Child Nutrition Programs including public schools, public school academies, and intermediate school districts are required to obtain competitive bids (formal purchase method defined later in this guidance) for procuring services relating to the food service program purchased in a single transaction if the purchase is \$150,000 or more. This is referred to as the small purchase threshold.

However, a school's board of education or an institution's board of directors can set small purchase thresholds lower than \$100,000 for food and \$150,000 for services. Participants must use a lower, more restrictive threshold if their respective organizational thresholds are set at a lower amount as indicated in the agencies' adopted policies. All participants in the Child Nutrition Programs must have policies in place regarding procurement, and all transactions must be conducted as outlined in these policies.

Group Purchasing Organizations and Third Party Purchasing Agents

School Food Authorities (SFAs) must follow Federal procurement regulations when entering into contractual agreements with entities for goods or services. As a result, SFAs are required to conduct procurement transactions in a manner providing full and open competition. When entering into these agreements, all procurement standards in program and government-wide regulations apply to the purchasing cooperative, group purchasing organization, group buying organization, and/or third party purchasing agent the same way as to the SFA. The SFA is ultimately responsible for ensuring that all contracted vendors have been properly procured and contract monitoring is performed. This is true even when the services are offered free of charge. Competition ensures the best quality product or service at the lowest price. Therefore, the SFA should always seek advice from the Michigan Department of Education (MDE) before agreeing to use any services without conducting a competitive procurement. More information can be found regarding purchasing cooperatives, group purchasing organizations, and group buying organizations in USDA Memo SP 35-2012.

Supplies (non-food items)

Non-public schools and non-school institutions are required to obtain competitive bids for procuring supplies (non-food items) purchased in a single transaction if the purchase is \$150,000 or more. However, a school's board of education or an institution's board of directors can set thresholds lower than \$150,000 for supplies and the lower, more restrictive threshold must be used.

³ Single transaction may refer to different situations. See the "Small Purchase Threshold and Single Transactions" section of this memo.

The small purchase threshold for the purchase of supplies (non-food items) is lower for public schools, public school academies, and intermediate school districts. Schools are required to obtain competitive bids for purchasing supplies (non-food items) purchased in a single transaction if the purchase is \$23,230 or more. However, a school's board of education can set thresholds lower than \$23,230 for supplies. The lower, more restrictive threshold must be used in these situations. This base amount, or threshold, is for the 2015-2016 Fiscal Year. It is set by Michigan legislation and is adjusted annually. The Michigan Department of Education communicates changes to this base amount on an annual basis to all affected schools (Competitive Bid Threshold Memorandum, FY 2016).

Small Purchase Threshold and Single Transactions

When determining how the small purchase threshold applies, it is **not** permissible for the SFA to split a purchase into smaller units or subgroups for the purpose of avoiding the formal procurement process.

For example, if a participant (in this case a non-public school institution) purchases \$150,000 of bread, the participant may not split the purchase of bread between two suppliers at \$75,000 each in order to avoid the formal procurement process. This is not to say the participant must use a single supplier for bread. If the participant wants two different types of bread, the appropriate method would be to complete the formal procurement process but in the bid specifications indicate it may be a multi-award contract based on the two different types of bread. The key is that the formal procurement process is conducted because the amount the participant pays for bread in aggregate over the course of the year will be \$150,000.

A single transaction may refer to any of the following:

- Single purchase order for an item or items
- Aggregate total of all invoices of a service contract
- Aggregate total of all purchase orders from a single supplier
- Aggregate total of all purchase orders for a specific item or group of items from multiple suppliers

Procurement Process

There are two types of procurement methods, formal or informal, that all participants in Child Nutrition Programs must use when purchasing food, services, and/or supplies (non-food items).

Formal Procurement

Formal procurement procedures are used to purchase food or services when the single transaction cost exceeds the small purchase threshold. Schools and non-school institutions must use a competitive process by issuing an Invitation for Bid (IFB) or a Request for Proposal (RFP) for any procurement over the small purchase threshold. Both must be formally advertised and contain reasonable bid specifications.

- **Invitation for Bid**, also called a sealed bid, is a formal competitive procurement procedure used to publicly solicit bids for securing food, services,

and/or supplies that cost more than the small purchase threshold. A firm fixed price contract is awarded to the responsible bidder whose bid conforms to all of the material terms and conditions of the Invitation for Bid and is the lowest in price.

- **Request for Proposal**, also called a competitive proposal, is a procedure conducted where more than one source submits an offer for securing food, services, and/or supplies that costs more than the small purchase threshold and where either a fixed price or cost reimbursable contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. Price and non-price criteria may be used to determine the award with price assigned as the primary factor.

Informal Procurement

Informal procurement procedures are used when the purchase of food, services, and/or supplies from a supplier (wholesaler, retailer, and/or vendor) for a single transaction is less than the small purchase threshold. The school and non-school institution must contact at least three known suppliers of the food, services, and/or supplies needed and obtain competitive price quotations. Bid quotes obtained by telephone should be followed up with a written document or communication from the vendor confirming items and prices discussed. Bid quotes should be obtained in writing.

Generally with the informal procurement process, the responsive and responsible bidder with the lowest total price should be selected. If the lowest price of the responsive and responsible bidder is not selected, the organization must submit justification to MDE for prior approval. Therefore, school and non-school institutions must draft thorough bid specifications to ensure bidders are made aware of all requirements and services that would address responsiveness and responsibility. All information and prices discussed must be documented in the program's procurement files.

Schools and non-school institutions must ensure that all suppliers receive the same information about the food, services, and/or supplies. To the extent possible, a comparison should be made of equivalent food, services, and/or supplies, and all suppliers should be informed of any special need that could affect the price. An example of a special need would be the delivery of the product to a specific building or kitchen.

Micro-purchasing is a new method of informal procurement available in SY 2015-2016 and may be used for the procurement of food, supplies, or services when the aggregate dollar amount does not exceed \$3,500 (2 CFR Part 200.67). This base amount, or threshold, of \$3,500 was set as of October 1, 2015, and will be adjusted periodically for inflation. Micro-purchases may be awarded without soliciting competitive quotations if the operator considers the price to be reasonable. To the extent practicable, schools and non-school institutions must distribute micro-purchases equitably among qualified suppliers. The micro-purchase threshold may not be used in lieu of applicable procurement methods that may achieve a more economical approach. The SFA's written procurement procedures, as required (2 CFR Part 200.318), must include a procedure that such purchases be rotated among qualified suppliers.

All competitive procurement procedures, be it informal or formal, must be done to assure compliance with all applicable federal regulations and guidance, including:

- Standard of conduct.
- Full and open competition.
- Equal employment opportunity.
- Any price adjustments allowed for changes in the base price of a product are validated using standards (Consumer Price Index, Market Basket, etc.) specified in the bid. Methods allowing "cost plus a percentage of cost" or "cost plus percentage of income" are not allowed.
- Procedures are properly documented and all documentation is kept for three years after the close of the fiscal year or as long as there are unresolved audit findings or investigations related to those records.
- Bid specifications do not limit supplier companies' operation or structure based on geographic preference. However, the purchase of unprocessed, locally grown and locally raised agricultural products is exempt from the geographic preference requirement.
- Any person that develops specifications, requirements, statements of work, invitations for bid, requests for proposals, contract terms and conditions, or other documents is excluded from competing for contract awards resulting from that procurement.

Participants in the National School Lunch Program, the Child and Adult Care Food Program, or the Summer Food Service Program that wish to obtain a food service management or vended meal contract must contact MDE for the prototype contracts and to satisfy pre-review requirements prior to starting a competitive procurement process. Refer to Food Service Contracts Administrative Policy #1 SY 2015-2016 for more information.

Written Code of Conduct and Procedures in Procurement

Per federal regulations, Child Nutrition Programs are required to develop and implement a written code of conduct and procurement procedures designed to govern procurement activities (2 CFR Part 200.318). The code of conduct and procurement procedures should include the following:

Standard of Conduct: Maintain written standards of conduct to cover real or apparent conflicts of interest and governing the actions of employees engaged in the selection, award, and administration of contracts. SFAs must ensure that any person involved in the preparation of bid documents, the procurement process, including evaluation and selection/award, or administration of the contract does not have an organizational, personal, or financial interest in the bid award, including familial relationships that have personal or financial interests in the bid award. This extends to any other legal or financial conflict of interest whether it is real or apparent.

Responsive and Responsible Vendors: Award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Documentation: Maintain records sufficient to detail the history of procurement. These records will include, at minimum, rationale for the method of procurement, selection of the contract type, contractor selection or rejection, and the basis for the contract price.

Contract Responsibility: Be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. While bid protest procedures are no longer required, they are strongly encouraged as a best practice to handle and resolve disputes relating to their procurements.

Product Specifications: Have written procedures for procurement transactions that incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured, and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.

USDA Child Nutrition Programs will be required to submit their code of conduct and procurement procedures to the School Nutrition Program staff during Procurement Reviews beginning in SY 2016-2017.

Contact Information

General procurement questions or questions regarding this memorandum may be directed to the School Nutrition Programs at 517-373-3347.