



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
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**CHILD NUTRITION PROGRAMS
ADMINISTRATIVE MEMO NO. 2
SCHOOL YEAR 2022-2023**

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

DATE: April 1, 2023

The purpose of this memorandum is to provide information on procuring a food service contract funded by a nonprofit food service account. This memorandum is intended for participants of the following USDA Child Nutrition Programs:

- National School Lunch Program (NSLP) (7 CFR Part 210)
- School Breakfast Program (SBP) (7 CFR Part 220)
- Child and Adult Care Food Program (CACFP) (7 CFR Part 226)
- Summer Food Service Program (SFSP) (7 CFR Part 225)
- Special Milk Program (SMP) (7 CFR Part 215)

This memorandum will detail:

- Types of food service contracts
- Sponsor to Sponsor food service agreements
- Small purchase threshold
- Competitive procurement methods
- Competitive procurement exceptions and clarifications
- Additional instructions

TYPES OF FOOD SERVICE CONTRACTS

FOOD SERVICE MANAGEMENT COMPANY CONTRACTS

A *Food Service Management Company (FSMC)* contract is a service contract where a company (commercial enterprise or nonprofit organization) provides at least a food service manager to oversee any appropriate aspect of the food service operation for a school food authority (district) or non-school sponsor (organization).

Meals are generally prepared and produced onsite at district facilities. The FSMC shall maintain such records as the school food authority will need to support its Claim for

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Reimbursement under this part, and shall, at minimum, report claim information to the school food authority promptly at the end of each month. Such records shall be made available to the school food authority, upon request, and shall be retained in accordance with 7 CFR 210.23(c).

If a school district participates in multiple Child Nutrition Programs in a contract year, the district is eligible to procure a year-round food service contract instead of conducting separate procurements.

FSMC contracts can either be *Cost Reimbursable* or *Fixed Price* in terms of the fee structure and charges.

Cost Reimbursable: A type of FSMC contract that provides for the payment of allowable costs incurred by the Contractor while performing the contract. Contractors are reimbursed at the value of the allowed expenses; plus, they may also be paid a fixed management and administrative fee to perform these services.

Fixed Price: A type of FSMC contract that provides a fixed price per meal agreed upon at the inception of the contract, without any adjustment during the duration of the contract.

Any economic cost adjustments upon renewal must be addressed in the original solicitation and based on the Consumer Price Index for All Urban Consumers (CPI rate). These fees are permissible for both Cost Reimbursable and Fixed Price contracts.

VENDED MEAL CONTRACTS

A *Vended Meal Contract (VMC)* is a *fixed price per meal* food service contract where a company (commercial enterprise, nonprofit organization, or public entity) prepares, cooks, and packages unitized or bulk-form meals, with or without milk, off-site at their own facilities and delivers them ready to eat or heat to the site/location requested by the participating institution. The vendor is not involved in any aspect of managing the Child Nutrition Programs.

If a school district participates in multiple Child Nutrition Programs in a contract year, the district is eligible to procure a year-round vended meal contract instead of conducting separate procurements.

Year-round vended meal contracts are also available for non-school participants in the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP). If participating in both programs, institutions are not required to complete separate procurements.

SPONSOR TO SPONSOR FOOD SERVICE AGREEMENTS

NATIONAL SCHOOL LUNCH PROGRAM SPONSOR TO SPONSOR AGREEMENT

When a local education agency (LEA) plans to purchase meals from another LEA's School Nutrition Program, the procurement responsibility differs depending on whether the SFA providing the meal is under an FSMC contract.

The longstanding USDA Food and Nutrition Service (FNS) policy has been that an SFA may contract with another SFA to provide meals in the Child Nutrition Programs, without going out for bid, only when the provider School Sponsor is self-operating and not under an FSMC contract of its own.

If an LEA wishes to purchase vended meals from a self-operated SFA and retain its own food service operation (i.e., applies to participate and administer the program, file claims, etc.), then the two districts may use a Michigan Department of Education (MDE) template agreement, and a competitive procurement is not required. The MDE School Nutrition Program Sponsor-Sponsor Agreement is available here: [Food Service Contracts \(michigan.gov\)](#). Each district must submit a copy of the Sponsor-to-Sponsor vending agreement in the application.

LEAs must follow all applicable Federal program and procurement regulations when meals will potentially be provided by an SFA that is already under its own FSMC contract. If the SFA providing the meals has not yet entered into an FSMC contract and another SFA will receive meals from this SFA, the requirements for both should be written into the bid specifications at the time of bidding. The SFA should discuss this with MDE prior to entering into an agreement to verify compliance with procurement requirements.

NATIONAL SCHOOL LUNCH PROGRAM SPONSOR ALTERNATE AGREEMENT

Under an Alternate Agreement, the contract must state that the LEA is relinquishing its authority to operate the specified School Meals Program(s) to the listed School Food Authority (SFA)/Sponsor. The contract between the SFA and LEA must state that the SFA is accepting total legal and financial responsibility for the newly incorporated LEA's School Meals Program(s) at the specified sites as indicated. The MDE School Nutrition Program Alternate Agreement is available here: [Food Service Contracts \(michigan.gov\)](#)

CACFP OR SFSP PURCHASING MEALS FROM A LOCAL SCHOOL DISTRICT

Per USDA guidance, CACFP or SFSP institutions that will purchase vended meals from a local school district may do so without completing a competitive procurement as long as the SFA providing the meal is self-operated for its own food service. This competitive procurement exception does not apply when obtaining meals from another non-school CACFP or SFSP sponsor, even if they are self-operated for their own meal service. This is because a non-school CACFP or SFSP sponsor providing the meal would fall into the non-school contractor category and a competitive procurement is required when obtaining meals from a non-school contractor.

When an SFA operates under an FSMC, the institution is not required to complete a separate competitive procurement as long as the SFA included the requirements for the CACFP or SFSP institution in the bid specifications for the FSMC/VMC contract. If the vending arrangement was not included in the original procurement of the SFA's FSMC contract, then one of the entities may be required to complete the proper competitive procurement to establish the relationship. Institutions may not be aware of what the SFA included in its original FSMC contract procurement documents. Thus, it is best to discuss the potential agreement with the MDE Food Distribution/Contracts Unit staff to ensure the applicable process to establish the relationship is followed.

The local school district must provide the CACFP or SFSP Sponsor a fixed price per meal that follows Revenue from Non-Program Foods guidance here: [Resource Management \(michigan.gov\)](#).

SMALL PURCHASE THRESHOLD

All participants (school and non-school institutions) in the Child Nutrition Programs are required to complete the formal procurement method (defined later in this guidance) for obtaining a food service contract that in aggregate (i.e., total paid to the Contractor for the one-year term of the contract) meets or is greater than the annual small purchase threshold of \$250,000.

However, a school's board of education or a sponsoring organization's board of directors can set small purchase thresholds lower than \$250,000 for services related to the food service program. Participants must use the lower, more restrictive threshold if their respective organizational thresholds are set at a lower amount as indicated in the institutions' 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.

Participants in the Child Nutrition Programs are allowed to complete the informal procurement method (defined later in this guidance) for obtaining a food service contract that in aggregate (i.e., total paid to the Contractor for the year) is less than the annual small purchase threshold of \$250,000.

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

COMPETITIVE PROCUREMENT METHODS

All school and non-school institutions in the Child Nutrition Programs must have policies in place regarding procurement, including procurement ethics and best practices, and all transactions must be conducted as outlined in the policies.

Institutions may use their own procedures for procurement to the extent that procurements comply with applicable State or local laws and the standards set forth in 2 CFR 200, the program regulations for each specific Child Nutrition Program, as well as those established by the Michigan Department of Education (MDE) to help prevent abuse, fraud, and waste, as well as protect program integrity.

A "responsible" offeror/bidder is an entity capable of performing successfully under the terms and conditions of the contract. A "responsive" bid/proposal is one which conforms to all the material terms and conditions of the solicitation.

PRE-REVIEW REQUIREMENT

The pre-review requirement of the formal procurement process is already established in program regulation. However, per the authority set forth under Federal program regulations, MDE elected to establish a pre-review requirement of all bid documents for the formal and informal procurement processes to obtain a food service contract. [7 CFR 210.21(c)(1); 7 CFR 226.21; Summer 2016 SFSP Administrative Handbook]

Pre-review assists participants in ensuring compliance with program requirements, regulation, and guidance. It also helps institutions develop strong bid specifications to include the types of meals and services they expect (i.e., types of meals, food quality, etc.) that will later aid in the administration of the contract once in place.

FORMAL PROCUREMENT

Formal procurement procedures are used to obtain an FSMC or VMC contract when the value of the contract meets or exceeds the annual small purchase threshold of \$250,000 (or lower if the organization is required to use a lower 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 (IFB): Also called a sealed bid, an IFB is a formal competitive procurement procedure used to publicly solicit bids for securing food, services, and/or supplies costing in total more than the small purchase threshold. A firm fixed price contract is awarded to the responsible bidder whose bid conforms to all material terms and conditions of the IFB and is the lowest in price. The IFB format is usually used by non-school organizations that are seeking vended meals for SFSP or CACFP and is awarded based on price alone.

Request for Proposal (RFP): Also called a competitive proposal, an RFP is a procedure conducted where more than one source submits an offer for securing food, services, and/or supplies costing in total more than the annual small purchase threshold, and where either a fixed price or cost reimbursable contract is awarded. Price and non-price criteria may be used to determine award with price assigned with at least 51% total weight of the evaluation criteria. The RFP is usually used by school food authorities that are seeking a food service management company contract or a vended meal contract for the NSLP.

INFORMAL PROCUREMENT

Informal procurement procedures are used when the aggregate total of the food service contract will be less than the annual small purchase threshold of \$250,000. The school and non-school institution must contact at least three known suppliers of

the vended meal service and obtain competitive price quotations. Bid quotes must be obtained in writing. Bid quotes obtained by telephone must be followed up with a written document or communication from the vendor confirming items and prices discussed.

Generally, with the informal procurement process, the responsive and responsible bidder with the lowest total price should be selected. If the lowest price responsive and responsible bidder is not selected, the organization must submit justification to the State Agency for prior approval.

School and non-school institutions must take care to draft thorough bid specifications and ensure bidders are 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, including the informal procurement log.

For NSLP participants, due to the nature and scope of service, MDE provides SFAs with a prototype Request for Quotation (RFQ) document to be used in the informal process of obtaining bid quotes for a vended meal contract.

For non-school institutions participating in CACFP and/or SFSP, although using the MDE prototypes are recommended, the sponsoring organization may use whatever contract it normally uses for this type of service, but it must indicate that bidders are required to adhere to the program requirements and regulations of the CACFP and/or SFSP program.

COMPETITIVE PROCUREMENT EXCEPTIONS AND CLARIFICATIONS

MICRO-PURCHASE THRESHOLD

Unless the aggregate total of an institution's food service contract is less than their established micro-purchase threshold, a competitive procurement is required to obtain a food service contract in the Child Nutrition Programs. Competitive procurement can refer to either the formal method or informal method. There are five basic steps in the Micro-Purchase process:

1. Develop specifications for services/goods.
2. Conduct market research to determine reasonable price.
3. Contact vendor to make a purchase.
4. Maintain documentation and manage the "contract."
5. Distribute micro-purchases equitably among qualified suppliers.

SOLE SOURCE PROCUREMENT

Non-competitive negotiation, or sole source procurement, occurs only when the goods or services are available from only one manufacturer through only one distributor or supplier. When faced with an actual sole source situation, an SFA must first obtain MDE approval before initiating the procurement. [2 CFR 200.320(f); 7 CFR 226.22]

ADDITIONAL INSTRUCTIONS

CONTRACT DURATION

The contract duration for all food service contracts across all Child Nutrition Programs is limited to the original contract year with the option of up to four one-year renewals (assuming no material changes). The contract year is established as July 1 of the current year, or upon written approval of the Michigan Department of Education, to June 30 of the following year.

FEDERAL GUIDANCE AND REGULATION

“Contracting with Food Service Management Companies: Guidance for School Food Authorities” can be found on MDE’s Food Service Contracts website at [MDE Food Service Contracts](#).

Additional federal regulation can be found at [USDA National School Lunch Program](#).

LOCATION OF FSMC OR VMC PROTOTYPE DOCUMENTS – FORMAL PROCESS

Instructions and prototype FSMC or VMC contracts for the National School Lunch Program, Summer Food Service Program, or the Child and Adult Care Food Program are only available upon request at MDE-FSMC-Vended@michigan.gov.

Questions regarding this memo may be directed to the MDE Food Distribution/Contracts Unit staff at MDE-FSMC-Vended@michigan.gov.