

PROCUREMENT UPDATES

Professional Standards Learning Code 2400

Length: 30 minutes



Released May 2016

"Procurement Updates" is intended for the School Food Authorities in the state of Arizona. All regulations are specific to operating the National School Lunch Program under the direction of the Arizona Department of Education.

COMPREHENSION CHECK

- ✘ Throughout this guide there will be comprehension quiz questions to test your knowledge and help you apply what you're learning.
- ✘ Be sure to review these quiz questions and the answers, available within the guide.



WHERE SHOULD WE START?

We need to understand:

- Competition is the basis for procurement rules
- Contract Administration is the umbrella that covers the many steps in the procurement process
- Failure to conduct proper procurements may lead to unreasonable costs

The conversation really has to start with explaining why competition is required and how understanding the fundamental benefit that competition brings to the programs can play a huge role in the success of an SFAs program delivery. Competition is the basis for the overarching regulations.

WHY IS COMPETITION IMPORTANT?

- ✘ The full and open standard of competition was established because of the strong belief that the procurement process should be open to all capable contractors who want to do business with the Federal Government
- ✘ Free and open competition means that everyone has the same opportunity to compete for business

So why is competition important and why does it provide the basic framework for the regulatory requirements?

The full and open standard of competition was established because of the strong belief that the procurement process should be open to all qualified contractors who want to do business with the Federal Government

Full and open competition means that everyone has an equal opportunity to compete for business.

Would it be ok for program operators who are the stewards of federal funds to offer contracts to relatives, friends, etc., without any regard for whether doing so was the most advantageous, the most responsive and lowest cost? This is what happens when the opportunity for business is not full and open, equal, transparent, or has integrity. As a taxpayer, I want to know that my tax dollars are protected and not being used improperly or recklessly. Should individuals offer contracts to just anyone? I think we'd all say no.

PROCUREMENT PROCEDURES

- ✦ Why are they important?
 - Required by regulations (2 CFR 200.318-326)
 - Helps to determine procurement methods to be used
 - Identifies parties that will address issues raised
 - Includes a written code of standards of conduct to prohibit conflicts of interest

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/Sponsor and the type of contracts that will result. You may ask why does an SFA need procurement procedures if the governing regulations in 2 CFR, formerly 7 CFR Part 3016 and 3019 as well as and program regulations in 7 CFR Part 210, 215, 220, 225, and 226 clearly outline the procurement requirements to include procurement methods, contract types, other contract provision needs, etc.?

For one reason, 2 CFR 200.318 requires that SFAs have procurement procedures in place. The procedures provide the specific roadmap for how the SFA is conducting procurement and compliance with regulations. For example, an SFA may choose to use fixed price contracts even though the larger 2 CFR requirements allow for the use of cost reimbursable and fixed priced contracts. Also, these procedures should include written standards of conduct which help to prevent conflicts of interest, the use of noncompetitive practices, and protests that delay contract award, or worse, require the solicitation process to be terminated, re-written, and re-issued.

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

PROCUREMENT PLAN



When the value of the purchase exceeds the applicable Federal, State, or local threshold for small purchases, the formal procurement method must be used; however, SFAs may use formal methods with any purchase. These are more rigorous and prescriptive, yet this process results in competition

Formal procurement methods require the development and use of a written solicitation, advertising, a formal written responses demonstrating competition, and must be free of anticompetitive practices.

This is a general overview of the formal procurement process and the requirements when the formal procurement process is required.

Select Method:

- Competitive Sealed Bidding (Sealed Bidding)
- Competitive Proposal

Developing and Publicizing Solicitations:

- Developing Specifications for products and services needed
- Developing elements of the solicitation such as terms, conditions and required contract provisions such as Buy American, Allowable costs including rebates, discounts and credits
- How responses will be received and what criteria will be used to evaluate

responses

Receiving and Evaluating Responses

- Once responses are received, these will be evaluated
- Invitations for Bid are opened publically and evaluated with price as the only dimension
- Competitive proposals have evaluated, top proposals are negotiated and prices are determined as price must be the primary consideration

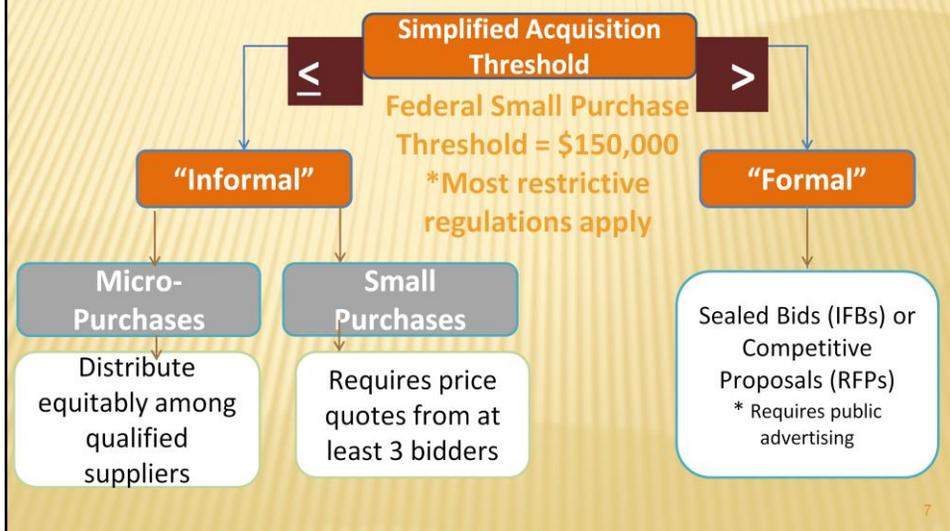
Contract Award and Execution:

- Once contracts are evaluated and the most responsive and responsible bid/proposal is identified, the contract award may occur. Some contracts require prior approval by the State agency before contract award.

Manage Contract:

- Every contract must be monitored to ensure compliance with the specifications, terms, and conditions contained.
- Contract management is more than just a requirement of Federal regulations. Contract management protects Federal funds.
- Contract management is really the beginning of the real work required by every contract.

PROCUREMENT METHODS



This slide demonstrates how the value of the procurement corresponds to the procurement thresholds. The small purchase threshold is \$150,000. When the value of the purchase is estimated at less than or equal to \$150,000, informal methods including micro-purchase and small purchase may be followed. However, when the value of the purchase is estimated at greater than \$150,000, formal procedures including sealed bids (IFBs) and competitive proposals (RFPs) apply.

***Note most restrictive local, State, or Federal regulations apply**

PROCUREMENT METHODS

- Micro-purchase
- Small Purchase Procedures (Informal)
- Competitive Sealed Bidding (Formal)
- Competitive Proposals (Formal)



What does one need to know about selecting the proper procurement method? In a nutshell, the procurement regulations allow certain methods to be used to procure goods and services and those methods are determined by thresholds based on the value of the purchase, scope, and need.

MICRO-PURCHASES

- ✘ Micro-Purchase Threshold = < \$3,500
- ✘ 2 CFR Part 200.67 and 2 CFR Part 200.320
 - a) Aggregate dollar amount does not exceed the micro-purchase threshold.
 - b) Distribute micro-purchases equitably among qualified suppliers.
 - c) May be awarded without soliciting competitive quotations if the price is considered reasonable.
- ✘ **Best practice – include in the procurement procedures** 

The process begins by asking if the aggregate purchase is equal or less than \$3,500. If so it may be considered a micro-purchase. To the extent practicable, micro-purchases must be distributed equitably among qualified suppliers and may be awarded without soliciting competitive price quotes as long as the price is considered reasonable by the entity doing the purchase.

SFAs may get a better price if they use another method that allows for more competition. They are not obligated to choose the micro-purchase method.

As a best practice, this should be included in the procurement procedure plan as discussed earlier.

PROCUREMENT THRESHOLDS

\$100,000

- Arizona Law, applies to:
Arizona School Districts and Non-Exempt Charter Schools

\$150,000

- Federal Law, applies to all participants:
Exempt Charter Schools (A.R.S. Section 15-183(E)(6)),
Non-Profits, and Residential Child Care Institutions

Most restrictive applicable threshold applies

Under A.R.S. Section 15-183(E)(6) charter operators may be granted an exception to local and state procurement regulations. The Arizona Board of Charter Schools is responsible for granting exceptions and has established eligibility criteria. Generally, the charter must have timely audit submissions, be in good standing with the AZ corporate commission, be compliant with the AZ Charter Board and ADE grants management and contribute to the AZ State Retirement System. The charter school's board must also approve the exemption and the school must complete a procurement policy. Note the federal requirements still apply.

Most restrictive applicable threshold applies. The 150,000 federal threshold applies to all expenditures of child nutrition program federal funding. AZ school districts and Non-exempt charter schools fall within the federal rule, however, because the 100,000 AZ rule applies to them it controls and they must perform formal procurement for expenditures over that amount.

ADE requires that if informal procedures are used the contract should be year to year.

SMALL PURCHASE PROCUREMENT METHODS

- ✘ Use when the estimated amount of your purchase falls below the simplified acquisition threshold. Small purchases require that schools:
 - a) Develop written specifications;
 - b) Obtain price quotes from at least three responsible and responsive vendors; and
 - c) Document all quotes.

When the purchase price has been estimated to fall within the applicable small purchase threshold, written specifications must be developed, and the SFA obtains quotes from at least three responsible and responsive vendors. As we mentioned earlier, while informal procurement methods are less rigorous than formal procurement methods, the procedures must be documented. Why is this necessary?

Answer: To ensure vendors are quoting prices for the same specified product or service, the product/service specified is provided, and the price quoted is the price charged. In short, this ensures program integrity in all purchases, even small purchases.

Federal regulations require that all procurements (above micro-purchase threshold) are competitive (even if other entities do not).

SMALL PURCHASE PROCUREMENT METHODS

- ✘ Award to responsive and responsible bidder with lowest price
 - a) Responsive means that the vendor submits a bid that conforms to all specifications and terms of the solicitation.
 - b) Responsible means that the vendor is capable of performing successfully under the terms of the contract.
- ✘ Document all procedures



Documentation ensures the purchase was necessary, reasonable, and allocable to the program, and that contractors provide what was requested and at the price quoted.

SMALL PURCHASE PROCEDURES



Here is a simple way of looking at the process for small purchases:

- 1) Draft specifications in writing
- 2) Identify and contact at least 3 sources eligible, able, and willing to provide products
- 3) Evaluate quotes provided in response to the developed specifications
- 4) Determine most responsive and responsible quote at lowest price and award the contract
- 5) Manage the contract

FORMAL PROCUREMENT METHODS

- ✘ Value of purchase exceeds Federal, State, or local threshold for small purchases
- ✘ More rigorous and prescriptive:
 - Competitive Sealed Bidding (i.e., IFB)
 - 2 CFR 200.320(c)
 - Competitive Negotiation (i.e., RFP)
 - 2 CFR 200.320 (d)
- ✘ Allows for the identification of evaluation factors and their relative importance
 - + Price always most important factor to consider

When we refer to the formal procurement methods we are referring to the more rigorous procedures used to obtain goods and services that fall above the Simplified Acquisition Threshold. These include competitive sealed bids (commonly conducted through an Invitations for Bid) and Competitive Negotiation (commonly conducted through a Request for Proposal).

We will identify evaluation factors and scoring to identify their importance.

COMPETITIVE SEALED BIDDING (I.E. IFB)

2 CFR 200.320(c)

Bids that 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

15

Competitive sealed bidding procedures use an Invitation for Bid. These are publically solicited and a firm, fixed-price contract is awarded. There may be one contract awarded to the most responsive and responsible bidder using a lump sum, AKA bottom-line, based on price, or multiple awards may be made if the evaluation and award provisions in the solicitation state awards to multiple bidders will be based on unit price by items, or groups of items.

COMPETITIVE PROPOSAL (I.E. RFP)

- ✘ Requests for proposals must be publicized and identify all evaluation factors and their relative importance
 - + Any response to publicized requests for proposals must be considered to the maximum extent practical
 - + Price always most important factor to consider

COMPETITIVE PROPOSAL (I.E. RFP)

- ✘ Proposals must be solicited from an adequate number of qualified sources
- ✘ The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients

CONTRACTS TO BE AWARDED

- ✘ Competitive Sealed Bid (IFB) results in a Fixed Price Contract only.
- ✘ For Competitive Proposal, (RFP) the SFA must decide if their solicitation will result in a:
 - + Fixed Price Contract
 - + Cost Reimbursable Contract

****The solicitation must clearly state what type of contract will be awarded****

18

Competitive Sealed Bid (IFB) results in a Fixed Price Contract only.

For Competitive Proposal, (RFP) the SFA must decide if their solicitation will result in a fixed price or cost reimbursable contract will be awarded. This must be stated clearly in the solicitation document.

COMPREHENSION CHECK



- ✘ In order for sealed bidding to be feasible, the following conditions must be present:
 - A. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price
 - B. A complete, adequate, and realistic specification or purchase description is available
 - C. The item is available only from a single source
 - D. Two or more responsible bidders are willing and able to compete effectively for the business
 - E. a, b, & d

COMPREHENSION CHECK



✘ In order for sealed bidding to be feasible, the following conditions must be present:

- A. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price
- B. A complete, adequate, and realistic specification or purchase description is available
- C. The item is available only from a single source
- D. Two or more responsible bidders are willing and able to compete effectively for the business
- E. **a, b, & d (200.320(c)(1)(i-iii);3016.36(d)(2)(i)(A-C))**

For option c, "the item is available only from a single source", this is an element contained only within procurement by noncompetitive proposals method but may be the result of a properly solicited formal or informal procurement.

COMPREHENSION CHECK



- ✘ I don't have to use price as a selection factor if I use a RFP.
 - A. True
 - B. False

COMPREHENSION CHECK



✘ I don't have to use price as a selection factor if I use an RFP.

A. True

B. **False (200.320(d)(4);3016.36(d)(ii)(D))**

Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

COMPREHENSION CHECK



- ✘ Can a firm fixed price contract resulting from an IFB be made in writing to the lowest responsive and responsible bidder and not include factors such as discounts, transportation cost, and life cycle costs.
 - A. Yes
 - B. No

COMPREHENSION CHECK



- ✘ Can a firm fixed price contract resulting from an IFB be made in writing to the lowest responsive and responsible bidder and not include factors such as discounts, transportation cost, and life cycle costs.

A. Yes

B. No (200.320(c)(2)(iv);3016.36(d)(2)(ii)(D))

A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

COMPREHENSION CHECK



- ✘ It is allowable for bidders to provide unsolicited additional items (milk cooler, score boards, etc.) for consideration when the SFA evaluates the bid?
 - A. Yes
 - B. No

COMPREHENSION CHECK



✘ It is allowable for bidders to provide unsolicited additional items (milk cooler, score boards, etc) for consideration when the SFA evaluates the bid?

A. Yes

B. **No (200.320(c)(2)(ii))**

No, it is not allowable for SFA to evaluate bid responses and include the overly responsive item for consideration of award.

PROCUREMENT AND CONTRACTS

Every year, the SFA will do one of the following:

- Conduct procurement and award a new *informal* contract/agreement
- Renew an existing *formal* contract
- Go out to bid for a new *formal* contract

What is procurement? What makes it different from a renewal?

Procurement is the process of obtaining goods or services from an external source. It is commonly associated with government purchases. The purpose of procurement procedures is to provide a framework for free and open competition and reduce fraud, favoritism, and other subjective motives for purchases in order to ensure that public funding is used in the most beneficial and responsible way.

For our purposes, only after proper procurement procedures are followed can you execute a contract.

PROPER PROCUREMENT PROCEDURES

Determining Factors:

- ✘ Type of Sponsor
- ✘ Value of Contract

Choose one of the following methods based on the determining factors:

- ✘ Micro-purchasing
- ✘ Informal
- ✘ Formal

LOCAL AGENCY PROCUREMENT REVIEW

- ✘ USDA memos 02-2016 and 04-2016 have been released by the State Agency regarding local agency procurement reviews
 - + Can be found at: <http://www.azed.gov/health-nutrition/memorandum/>
- ✘ ADE will review procurement for Child Nutrition Programs
 - + Applies to NSLP,SBP,SFSP, SMP, CACFP

LOCAL AGENCY PROCUREMENT REVIEW

- ✘ USDA tool for procurement review to be released summer of 2016
- ✘ ADE will review procurement plans, micro-purchases, small purchases, and formal contracts

CONTRACT TERMS

Every approved contract is for one year or less

Informal Contracts (Standard Agreement):

- ✘ Do not contain renewal language
- ✘ Cannot be renewed
- ✘ Required to be re-procured and re-executed every year

Formal Contracts/RFP:

- ✘ RFP allows the contract to be renewed four times, (4) additional one year periods
- ✘ Formal contract is for not more than 5 years total

CONTRACT MANAGEMENT

- ✘ What is a contract?
 - Set of promises that creates duties and expectations that are enforceable by law
- ✘ Common Contract Issues
 - One or both parties:
 - Didn't read the contract
 - Read the contract but did not understand it
 - The contract doesn't include all terms that were agreed upon

CONTRACT MANAGEMENT

- ✘ Know your responsibilities listed in the contract
- ✘ Remember that you are responsible for meeting the Child Nutrition Program (CNP) requirements
- ✘ Any changes to the contract need to be documented in writing
- ✘ Contract may be terminated with 30 day notice

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.