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Agencies must comply with procurement requirements in 2 CFR Part 200 as well as 7 CFR 226 and any State, local, and tribal laws and regulations that may be in place. These requirements apply to the purchasing of meals from vendors or food service management companies, food, supplies, administrative services (i.e. data processing services, technical services etc.), employment, and consultants (i.e. technical, managerial etc.) used in the agency’s CACFP operation.

CACFP regulations prohibit agencies from contracting out administrative responsibilities that includes contracts, claims, monitoring, and financial requirements.

When procuring or purchasing goods and/or services, agencies must:

1. Ensure open and free competition;
2. Ensure that the agency receives the best product or service at the lowest price; and
3. Make efforts to use minority, small, or women business enterprises.



**ETHICS AND CODE OF CONDUCT**

State agencies (DPI) and agencies must maintain a written a code of conduct to govern the performance of employees engaged in procurement. These written standards must:

- Prohibit employees from soliciting gifts, travel packages, and other incentives from prospective contractors;
- Prohibit employees from participating in the selection, award, and administration of any contract with entities or individuals having financial interest that or who are in some way connected to them;
- Include a set of standards that establish acceptable parameters for these employees to adhere to when their CACFP procurement activities may involve insubstantial financial interest on behalf of and/or unsolicited gifts of nominal value from a contractor; and
- Establish disciplinary procedures when these standards of conduct are violated by these employees

Refer to this [Sample Code of Conduct](#) for more information.

DPI will review agencies’ compliance with Federal, State, and local regulations on procurement by reviewing the agency’s written standards of conduct and investigating any reported (real or apparent) conflicts of interest by employees involved in the agency’s CACFP procurement activities. If the agency’s ethics and code of conduct do not meet the requirements, findings will be cited and corrective action will be required.

**SELECTING SUPPLIES AND VENDORS**

All agencies must purchase their goods and services or award contracts only to responsible suppliers possessing the ability to perform successfully under the terms and conditions of a proposed procurement or sell products that meet industry and government quality and safety standards. Consider the supplier/vendor’s integrity, compliance with public policy, and past performance. Purchases must be restricted from and contracts must not be awarded to suppliers/vendors that are debarred, suspended, or are not eligible for Federal assistance programs because of their lack in business integrity.

**Record Retention**

Procurement records must be maintained to detail the agency’s procurement history, including why the agency selected its specific suppliers/vendors, rejected others, and the basis for its price agreements.

**Conflict Resolution**

Agencies are responsible for resolving any protests, disputes, or concerning issues connected with its procurement activity.

**PROCUREMENT AGGREGATES**

A procurement aggregate is the sum total of goods or services which can be purchased from one or more vendors during a specified period of time based on the agency’s anticipated needs. Federal regulations have established procurement requirements for specific aggregate dollar thresholds.

**Aggregate Dollar Thresholds**

Based on the purchase aggregates of goods and services, the following methods of procurement must be used. Refer to *Methods of Procurement* section (below) for more information:

- **Less than \$10,000:** Use the *Micro-Purchase* procurement method.
- **\$10,000 to \$250,000:** Use the *Micro-Purchase* or the *Small Purchase* method.
- **More than (or equal to) \$250,000:** Use the competitive *Invitation for Bid (IFB)*, *Request for Proposal (RFP)*, or *Noncompetitive Proposal* (when appropriate).

**Purchases of Fresh Produce, Meat, and Frozen Goods**

Aggregate dollar thresholds typically do not apply to the purchase of fresh produce, meat, or frozen goods, which, due to their perishability and/or market fluctuations, are purchased more frequently. However, if purchases of these items made on a weekly, monthly, or bimonthly basis aggregate to more than established thresholds for that period, applicable procurement method requirements may apply.

- **Local Foods:** Agencies are encouraged to purchase local foods from farmers, farmer's markets, and Community Supported Agricultures (CSAs), or grow their own food in gardens. Refer to [Farm to Early Care and Education](#) webpage for more information on accessing local foods and gardening opportunities and GM 11 for allowable costs.

### **METHODS OF PROCUREMENT**

Federal regulations allow for the following methods of procurement:

- **Informal:** micro-purchase or small purchase
- **Formal:** competitive sealed bids, competitive proposals, or noncompetitive proposals.

Refer to the [Methods of Procurement](#) handout for detailed information. Regardless of which method is used, agencies must avoid all provisions that might restrict competition or result in the agency paying higher prices because only one or a limited number of vendors can supply the needed product/service.

### **Informal Procurement Methods (<\$250,000 per Aggregate)**

#### **Micro-purchase Method: <\$10,000**

Purchases of product and services may be made without obtaining price quotes from various suppliers when the aggregate cost is less than \$10,000 and the agency considers the costs reasonable. To the extent possible, purchases must be distributed equitably among qualified suppliers. For example, when the surrounding area has three comparable grocery stores, purchases should be rotated among these three grocery stores in order to "spread the wealth."

#### **Small Purchase Method: >\$10,000 and <\$250,000**

Small purchase methods may be utilized when goods or services are under \$250,000 in aggregate value. With small purchase procedures, price or rate quotations (bids) must be obtained from an adequate number of qualified sources. This purchase procedure is sometimes referred to as "3 Bids and a Buy." Small purchase methods are not appropriate when a purchasing agency divides a unified contract requirement into smaller purchases in order to bring each individual purchase under \$250,000.

### **Formal Procurement Methods (> \$250,000 per Aggregate)**

Prior to beginning the formal procurement process, analyze the price associated with each procurement action that will exceed the \$250,000 threshold to assess which method will be most effective.

- Contact your [assigned consultant](#) for DPI approval of the IFB or RFP prior to finalizing for release.

**Competitive Sealed Bids: Invitation for Bid (IFB)** is used when:

- The procurement value is expected to be \$250,000 or more;
- The product or service can be completely described in the agency's bid specifications; and
- The award of a contract can be made primarily based on price alone.

**Competitive Proposal: Request for Proposal (RFP)** is used when:

- Procurements are expected to be over \$250,000 and are of such a complex and technical nature (i.e. consulting, research and development, etc.) that they cannot be fully described in bid specifications.
  - The award of the contract must be based on evaluation factors other than price, **but price must be a primary evaluation factor.**
  - Evaluation factors must be clearly described in the agency's bid specifications; in the case of a competitive proposal, this is called a Request for Proposal (RFP).
- Agency requests the respondent details how the objective can best be attained. Therefore, in addition to a cost proposal, a respondent to an RFP also submits a technical proposal that describes the methods the respondent will employ in carrying out the project described in the RFP. It also relates these methods back to their underlying costs, as described in the respondent's cost proposal.



**Noncompetitive Proposals**

This method of procurement is appropriate only when:

- The item is available only from a single source;
- A public emergency for the procured goods or services will not permit a delay resulting from competitive bidding process;
- The Federal or State Agency authorizes the contracting agency to use noncompetitive procurements in response to its written request; or
- After solicitation, only one bid or proposal is received and/or competition is determined inadequate.

**Funding Approval for Noncompetitive Procurements:**

All contracts over \$250,000 using a noncompetitive proposal must have the approval of the DPI prior to awarding the contract. To obtain approval for using USDA funds for noncompetitive procurement, an agency must submit documentation that supports the efforts to solicit competition. This may include:

- A copy of the public advertisement;
- A copy of the IFB or RFP;
- Copies of all letters received from prospective bidders or respondents, including letters indicating prospective bidders' lack of interest in competing for the contract; and
- Any other materials that would serve to justify the agency's use of noncompetitive procurement.

**PURCHASING MEALS FROM A VENDOR**

An agency may purchase meals from a vendor such as a school food authority, agency participating in the CACFP, restaurant, caterer, nursing home, hospital, or food service management company (FSMC).

Meals purchased from a vendor must meet CACFP meal pattern requirements. It is the CACFP agency's responsibility to ensure meals provided meet the CACFP meal pattern. Refer to Guidance Memorandum (GM) 12: Meal Requirements for more information.

- **Agencies must not claim meals that do not meet meal pattern requirements.**

**CACFP Vendor Agreement**

Agencies must use the DPI CACFP Vendor Agreement to Provide Meals/Snacks to execute the agreement for purchasing and providing meals. The agreement specifies CACFP requirements the vendor and the agency are responsible for, the agreed-upon meal price, and the service involved in providing meals. If an alternate agreement is used, it must contain all the required elements, follow all procurement requirements, and receive prior approval from DPI.

- [CACFP Vendor Agreement to Provide Meals/Snacks](#)
- [CACFP Vendor Agreement to Provide Meals/Snacks – Adult Care Component](#)

**It is best practice to consult a legal professional before entering and signing any agreement.**

**Menu Documentation**

The agency must ensure that menus provided by the vendor meet CACFP requirements. Use the [Menu Checklist](#) to ensure menus comply with these requirements.

**Vendor Meals Delivery Slip**

The vendor must provide documentation of meals provided with each delivery; the *CACFP Vendor Agreement to Provide Meals/Snacks* details the information that must be included. In addition, it is best practice to include the following information on the required daily record of foods provided by the vendor upon meal delivery or pick-up:

- Staff signatures from both the vendor and agency upon the agency receiving the meals each day.
- Record of the internal temperature of foods taken before meals leave the vendor's facility and upon delivery of meals at the agency's facility to assure food is maintained at proper temperatures.

The template [Vendor Meals Delivery Slip](#) may be used.



### Accommodating Special Dietary Needs

USDA requires programs make reasonable modifications to meals to accommodate disabilities that restrict a participant's diet. When an agency contracts with a vendor, the agency and the vendor must determine who will provide meal modifications. If a vendor charges a higher price for a special meal, this cannot be passed onto the participant. Meals accommodated for non-disabilities are not required and must meet the CACFP meal pattern requirements. For more information on accommodating special dietary needs, see Guidance Memorandum 12: Special Dietary Needs.

### Existing Agreements

An existing vendor agreement can be renewed/updated for an additional period; agencies are not required to annually rebid/obtain competitive price quotations. However, DPI recommends agencies obtain price quotations from competitors no less than every 5 years (to the extent practicable). When renewing an existing agreement, complete a new *CACFP Vendor Agreement to Provide Meals/Snacks*.

### Documentation of Procurement for Vended Meals

#### When aggregate purchase of meals/snacks is under \$250,000 per year

- Use Small Purchase method of procurement. Refer to [Methods of Procurement](#) handout for details.
- Document vendors contacted for attempting to obtain bids on the [Record of Potential Vendors Contacted \(\\$10,000 - \\$250,000\)](#). Include each vendor's service specifications (menus, delivery arrangements, packaging, number of meals, etc.) and bid prices per meal. The agency must document all information and prices discussed and retain this documentation on file.

#### When aggregate purchase of meals/snacks is more than \$250,000 per year

- Use a Formal Procurement Method. Refer to the [Methods of Procurement](#) handout for details.

### Purchasing Meals from a School Food Authority (SFA)

Agencies are not required to obtain price quotations from vendors when purchasing meals from a SFA. However, it is best practice to verify that the SFA has a comparable price and meal quality to other vendors that could potentially provide meals.

Meals purchased from an SFA must follow the CACFP meal pattern and not the National School Lunch Program (NSLP), School Breakfast Program (SBP) and/or Summer Food Service Program (SFSP) meal patterns.

### SFA Adding the CACFP to an Existing SFA FSMC Agreement

When an SFA, that contracts a Food Service Management Company (FSMC), participates in the CACFP, a FSMC contract amendment must be completed. Refer to the [SFSP/CACFP Amendment to FSMC/RFP Contract](#). When adding the CACFP to an existing FSMC contract, the SFA must evaluate if the change to the current contract will result in a material change of the original value of the awarded FSMC. The SFA must contact your [assigned consultant](#) for additional guidance.

CACFP regulations prohibit agencies from contracting out administrative responsibilities or allowing the vendor or FSMC to complete the following administrative responsibilities:

- Completion of the CACFP contract with DPI
- Monitoring sites for CACFP compliance
- Completing and submitting monthly claims
- CACFP financial management requirements

**The CACFP agency is ultimately liable** for these responsibilities and must accept final administrative and financial responsibility for their operations under the Program.