**Procurement Standards**

As required by federal regulations set forth in 2 CFR §200.318 *General procurement standards* (d) – (k) and 2 CFR §200.319 *Competition* (a) – (d) the school food service department must follow procurement standards, competition, and other local general procurement processes described in this section of the Procurement Policy and Procedures Manual.

When conducting a procurement, the SFA department must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

**When to Consolidate or Break out Procurements (Split Purchases) – 2 CFR §200.318 (d)**

The school food service department cannot intentionally split purchases to have them fall below the micro purchase or small purchase thresholds to avoid the formal procurement method. There may be instances in which a specific market supports the need to separate certain products from the overall procurement. For example bread and milk are commonly procured separately from frozen, canned, and dry goods procured through a prime vendor.

**Lease versus Purchase Alternatives – 2 CFR §200.318 (d)**

When the school food service department is considering a lease versus purchase alternatives, it is usually less economical to lease equipment when compared to purchasing it. However, there are some instances where this is not true. For example, short-term leases of equipment which is required for a short time or for a unique task may be reasonable and economically sound. It may also be advisable to lease equipment which undergoes rapid technological change such as personal computers and other Information Technology related equipment. In some cases, it is easier to have equipment maintained if it is leased. However long term leases and leases for items which should be purchased and capitalized, but cannot be because of budget constraints are not economically prudent. If a decision is made to lease equipment, a lease versus purchase analysis should be made. The analysis should be appropriate to the size and complexity of the procurement.

In determining whether the lease of equipment is feasible, the following factors may be considered:

* Estimated length of the period the equipment is required and the amount of time of actual equipment usage
* Technological obsolescence of the equipment
* Financial and operating advantages of alternative types and makes of equipment
* Total rental cost for the estimated period of use
* Net purchase price, if acquired by purchase
* Transportation and installation costs
* Maintenance, storage and other service costs
* Trade-in or salvage value
* Attributed interest costs
* Availability of a servicing facility especially for highly complex equipment (consider if the school food service department service the equipment if it is purchased)

## Analysis to Determine the Most Economical Approach to Purchasing (Needs Analysis) – 2 CFR §200.318 (d) and 2 CFR §200.323 (a) - (d)

The purchasing requirement originates when the school food service department identifies an organizational need for goods or services. The school food service department should consider three important phases of the needs analysis which are the preparation phase, investigation phase, and decision phase. Needs analysis includes all the activities used to collect information about the school food service department needs, wants, wishes, and desires. A needs analysis can be very formal, widespread, and time consuming, or it can be informal, specific, and quick.

The information collected from a needs analysis can be used to help the school food service department define its procurement objectives and understand the costs involved in the procurement. These objectives can then be stated as specific procurement outcomes, which in turn will function as the foundation to which the SFA can develop the solicitation document. Basically, a needs analysis will help the school food service department clarify the purposes of the procurement. The SFA may consider the follow steps in needs analysis:

Preparation phase

1. Understand the user’s goals
2. Understand the decision criteria and constraints

* Economic feasibility
* Operational feasibility
* Technological feasibility
* Timeline feasibility

1. Define the problem clearly
2. Identify the roles of stakeholders
3. Identify sources of information

Investigation phase

1. Develop an understanding of the existing situation
2. Investigate alternatives to the existing situation

Decision phase

1. Develop a model of the proposed solution
2. Make a build-versus-buy decision

**Intergovernmental Agreements and Purchasing Used Equipment from another School or Government agency – 2 CFR §200.318 (e) and (f)**

The SFA will consider use of federal, state, and local government excess and surplus property in lieu of purchasing new equipment whenever such use is feasible and reduces costs. See section Procurement Policy and Procedures Manual for more detailed information.

**Value Engineering Clauses – 2 CFR §200.318 (g)**

Whenever possible the school food service department will consider use of value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

**Responsible Contractors – 2 CFR §200.318 (h)**

The school food service department will 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. It is the responsibility of the school food service department to ensure:

* All bids or proposals are responsive,
* All bids or proposals are evaluated and ranked properly
* The awarded contract is made to the lowest-priced responsive and responsible bid or highest scoring proposal.
  + A “responsive offeror” is able to meet the requirements of the solicitation.
  + A “responsible offeror” is willing and capable of furnishing the goods or services solicited.

**Responsive and Responsible Contractors – 2 CFR §200.318 (h)**

The school food service department will facilitate a competitive environment when conducting a procurement. Regardless of the procurement method used, the awarded contracts can only be made to a responsive contractor whose bid or proposal meets all of the minimum product or other requirements specified in the solicitation and who’s a responsible contractor who can and will successfully fulfill the terms and conditions of the contract.

**Responsive and Responsible Bidder and Offeror Determination – 2 CFR §200.318 (h)**

The school food service department shall award its contracts to the responsive, responsible contractors offering the best value, and whose offer or proposal is technically compliant with the requirements listed in the solicitation document. Awarded contracts shall be made to the bidder or proposer offering the lowest price, being the highest ranked, or as otherwise prescribed in the solicitation. The use of the term bidder or offeror shall be understood to include any participant in the procurement process and the term bid or proposal shall be understood to include any offer in response to a solicitation.

A determination of bidder or offeror responsibility shall be made, on a contract-by-contract basis.

In making the determination of whether the bidder or offeror has the capability to perform the contract the school food service department may consider factors including, but not limited to, the following:

1. past performance of the bidder or offeror, its principals, affiliates, or supervisory personnel in the execution of prior school food service department contracts;
2. any information which the school food service department may obtain relating to the performance of the bidder or offeror, its principals, affiliates, or supervisory personnel on contracts with third parties, including without limitation, contracts with other governmental entities;
3. financial performance and capability, including without limitation, pending and unsatisfied claims;
4. qualifications and past performance of the personnel who will have supervisory responsibility for the performance of the specific school food service department contract;
5. licensing, certifications, and other permits; and
6. any significant changes in the bidder’s or offeror’s financial position or business organization.

**Record Policy – 2 CFR §200.318 (i)**

The school food service department will maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

**Bid and Proposal Disputes – 2 CFR §200.318 (k)**

The school food service department will 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. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction. See the ‘Ethics and Code of Conduct’ section in this Procurement Policy and Procedures Manual for more detailed information on this topic.

**Competitive Procurements** – **2 CFR §200.319 (a) - (1) - (7)**

“*Competitive Procurement*” means that all procurement transactions, including small purchases, must be conducted in a manner that maximizes free and open competition.

"*Free and open competition*” means that all suppliers are "playing on a level playing field" and have the same opportunity to compete.

Procurement procedures must not unduly restrict competition or eliminate competition.

The school food service department will conduct all procurement transactions in a manner providing full and open competition consistent with federal and state procurement standards requires. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals will be excluded from competing for procurements issued by the school food service department.

Some of the situations considered to be restrictive of competition include but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business
2. Requiring unnecessary experience and excessive bonding
3. Noncompetitive pricing practices between firms or between affiliated companies
4. Noncompetitive contracts to consultants that are on retainer contracts
5. Organizational conflicts of interest;
6. Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement
7. Any arbitrary action in the procurement process

**Geographic Preferences – 2 CFR §200.319 (b)**

The school food service department will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal and state statutes expressly mandate or encourage geographic preference.

Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application allows for an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

**Written Procedures for Procurement Transactions – 2 CFR §200.319 (c) - (1) through (2)**

Per this Procurement Policy and Procedures Manual the school food service department has met the federal requirement for written procedures for procurement transactions. These procedures contained herein ensure all solicitations:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description will not, in competitive procurements, contain features which 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. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

1. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

**Technical Specifications, Scope of Services, or Statements of Work** **– 2 CFR §200.319 (c)**

The school food service department requires all technical specifications, scope of services, or statements of work be stated in terms of function, performance or design. The type of specifications selected is to be based on the school food service department minimum requirements and the market available to satisfy those requirements.

The school food service department when drafting its solicitation document will consider the following factors in developing specifications:

1. Does it describe the needs in terms of function or performance required?
2. Does it clearly state the minimum requirements acceptable?
3. Does it indicate the end usage or expected results?
4. Is it clear, concise, and understandable?
5. Does it encourage competition by considering more than one source of supply?
6. Are standard specifications available?
7. Are the specifications tailored to more than one contractor?
8. If a specific brand and model are referenced, have you included the term “or approved equal”? If not, have you included a reason why an equal is not acceptable?
9. Is there anything unusual to be considered?

**Solicitation Documents Guidelines – 2 CFR §200.319 (c)**

The school food service department when developing its solicitation documents will ensure the description and scope are aligned with what is being procured. Furthermore, the school food service department will clearly define in the solicitation document what is meant by a responsive offer, such as:

* Identify all of the requirements which the bidders or offerors must fulfill
* The solicitation must specify the resulting contract type (clearly state whether solicitation will result in fixed price or cost reimbursable contract)
* Include contract duration
* Include specific pricing structure
* Include how all bids or proposals will be evaluated
* Include clear and accurate description of the requirements for the material, product, or service to be procured will be incorporated but should not contain features which unduly restrict competition
* Other elements to include: clear and specific time periods, clauses regarding termination for cause or convenience, and remedies for breach (i.e., negligence, nonperformance)

**Prequalified Lists – 2 CFR §200.319 (d)**

The school food service department will ensure all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the school food service department will not preclude potential bidders or offerors from qualifying during the solicitation period.

**Line Item versus Total Cost – 2 CFR §200.320 (c)**

“*Line Item*” is a process of awarding a contract based on individual pricing for each item contained in the solicitation. The solicitation may have contained several items, but the award will be based on lowest individual price quoted for each item. Multiple contract may be awarded using this process.

“*Total Cost or Lot*” is a process of awarding a contractor a contract based on overall (bottom line) pricing of all the items contained in the solicitation. The solicitation may have contained several items but the award will be based on the overall lowest price quoted for all the items. Normally only one contract may be awarded using this process.

**Contract – 2 CFR §200.22**

“*Contract*” means any agreement, including but not limited to a purchase order, informal or formal agreement, which is a legally binding relationship and enforceable by law, between a contractor who agrees to provide or perform goods or services and the school food service department which agrees to compensate a contractor, as defined by and subject to the terms and conditions of the agreement.

**Addenda to Solicitation Document or Contract**

There may be occasions when it will be necessary to change the specifications, terms, or conditions of a given solicitation or contract during the course of the bid (or proposal) period or after the award. Such changes may be required in response to request or clarifications, contractor questions, or other reasons. Such changes shall be formalized by the issuance of solicitation or contract addenda by the school food service department, to all potential contractors which have obtained the solicitation document or entered into the awarded contract. The addenda becomes part of, and supersedes, the original solicitation document or awarded contract.

**Publicly Advertised Procurements – 2 CFR §200.320 (c) (2) (i)**

All Invitation for Bid (IFB) and Requests for Proposals (RFP) will be publicly advertised in the local newspaper. If two or fewer bids or proposals are received, the SFA will use a newspaper or publication with a larger readership to ensure contractors had an opportunity to compete for the awarded contract.

**Opening of Bids and Proposals – 2 CFR §200.320 (c) (2) (iii)**

Sealed bids under the Invitation for Bid (IFB) process shall be opened at the place, date and time specified in the solicitation or any subsequent addendum. Proposals submitted under the Requests for Proposals (RFP) process shall be opened at the time and place specified in the solicitation or any subsequent addendum.

**Late Bids or Proposals – 2 CFR §200.320 (c)(2)(iii)**

The school food service department will not accept late bids or proposals. All late bids or proposals will be returned to the sender unopened.

**Bid or Proposal Requirements – 2 CFR §200.318 (h)**

Each offer shall meet all the requirements of the specific solicitation, unless waived as an irregularity or informality by the school food service department.

**Tied Bids and Proposals Evaluation Scores**

Tied bids are offers where one or more responsive and responsible bidders offer the same low price for an item or group of items, depending on the method of award. In such instances, the school food service department will request best and final offers (BAFOs) from the bidders that offered the same price. The BAFOs must be requested at the same time or soon after the preliminary bid tabulation is provided to all responding bidders. This allows all bidders to see the prices that were bid, and the bidders that offered the same pricing.

Request for best and final offers (BAFO) must include a due date (close of business is acceptable) and may be emailed directly to the school food service department or delivered to the school food service department business office. In the event responses to best and final offers result in another tied bid, the tie shall be broken by the food service manager or designee flipping a coin in the presence of representatives from the offers company and/or other school district directors.

**Option to Renew a Contract**

An option to renew an awarded contract is a provision providing for the option to renew at the expiration of the initial term of the contract. Authorization to exercise future renewal of contracts must be contained in the language of the solicitation document and subsequent awarded contract. For SFAs located in Wisconsin, the base contract (original awarded contracted) may be renewed up to four times in increments of 12 months (base contract year plus option of four 1 year renewals).

**Request for Information (RFI)**

A Request for Information (RFI) is a written solicitation prepared and issued for the purpose of seeking information, comments, or reactions from the industry by a certain date and time. A RFI may be used during the market research phase of a procurement to assist the school food service department in identifying potential bidders, proposers, approaches, prices, or other relevant information. The RFI precedes the issuance of a RFP or bids.

Contract awards cannot be made on responses to a RFI.

**Rejection of Bids or Proposals**

The school food service department may reject any and all bids or proposals or parts of all bids or proposals when such rejection is in the best interest of the school food service department. Rejection of bids or proposals may also be protested.

A bid or proposal may be rejected if any of the following conditions exist:

1. The bid or proposal does not conform to the technical specifications and/or solicitation documents;
2. Insufficient financial resources and/or lack of technical ability, physical capacity and/or skill of the contractor to perform the contract or the service required;
3. Inability of the contractor to perform the contract or provide the service within the time specified without delays or interference;
4. Previous and existing non-compliance by the contractor with laws and ordinances relating to the contract for services;
5. Inadequate quality or performance on previous contracts for goods and/or services;
6. Contractor has been declared to be in default on any school food service department or public entity contract, or debarred or suspended by any public entity;
7. Taking exceptions to the terms, conditions, and specifications of the bid or proposal;
8. Non-conformance with minority business and/or disadvantaged business enterprise provisions and requirements, where applicable;
9. When the school food service department determines that the price quoted is not fair and reasonable;
10. Insufficient competition;
11. Any other cause in the best interest of the school food service department.

**Sale Tax Exemption – 2 CFR §200.470; also see Wisconsin State Statute regarding sale tax exemption**

The school food service department is exempt from paying Wisconsin State Sales Tax. The Sales Tax Exemption privilege is for the purchase of goods exclusively for use of the school food service department. The school food service department employees are expressly prohibited from purchasing goods or supplies for personal use using the school food service department’s tax exemption number/certificate.

**Solicitation of Small and Minority Business – 2 CFR §200.321**

The school food service department may take affirmative steps to ensure that small businesses, minority-owned businesses and women’s business enterprises are used whenever possible. Affirmative steps shall include the following:

1. Including qualified small businesses, minority-owned businesses and women’s business enterprises on solicitation lists
2. Assuring that small businesses, minority-owned businesses and women’s businesses are solicited whenever they are potential sources;
3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small business, minority-owned business and women’s business participation;
4. Where the requirement permits, establishing delivery schedules which will encourage participation by small businesses, minority-owned businesses and women’s businesses;
5. Using the services and assistance of the Small Business Administration and the Department of Commerce’s Minority Business Development State Agency in the solicitation and utilization of small businesses, minority-owned firms and women’s business enterprises.