

Formal Procurement Checklist

School Nutrition Unit



Did the School Food Authority (SFA)...

Forecast product needs

Cycle menus, velocity reports, and production records are common tools used to forecast product needs

Conduct a cost or price analysis

Estimate the total dollar value of the contract, which includes product or service purchases for the duration of the contract

- SFA may use forecasted product needs and current or past product pricing to complete the cost analysis

Write product specifications

Product specifications should include the product name, description, case pack and weight, minimum and maximum sizes and pieces, main ingredients, prohibited ingredients, nutritional standards or Child Nutrition (CN) requirements, quality indicators, run and code numbers, etc.

- Note: specifications may include a brand name, but must include 'or equal'. A bidder should have the opportunity to propose an equal product
- An SFA may pre-screen products and provide bidders with a list of preapproved equal products. The SFA must ensure maximum free and open competition during the procurement process, and pre-screening procedures should be included in the SFAs written procurement procedures.

Create a solicitation document

There are two types of formal solicitations: Invitation for Bid (IFB) and Request for Proposals (RFP)

- **Invitation for Bid (sealed bid)**
 - Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid:
 - conforms with all the material terms and conditions of the invitation for bids, and
 - Is the lowest price
- **Request for Proposals (competitive proposal)**
 - The contract is awarded to the responsible and responsive vendor whose proposal scored the highest number of points, and is most advantageous to the program with price and other factors considered

A well-written solicitation gives a bidder clear information on what the SFA is planning to purchase and how. A solicitation should include:

- Background information on the district
 - Size, number of meals served, etc.
- General descriptions of the goods and/or services to be purchased
 - Solicitation should indicate if distribution services are requested

This institution is an equal opportunity provider.

- - Include distribution for processed USDA foods, if applicable
- Information about pre-proposal meeting to be held (if applicable)
- Date and time for solicitation submission
 - Time and location of public opening if IFB
- Time period of the contract and options for renewals
 - Generally 1 year with 4 optional renewals
- Type of contract to be awarded
 - An IFB must result in a firm fixed price contract.
 - An RFP may result in a firm fixed price or cost reimbursable contract. (Cost plus fixed fee is a type of cost reimbursable contract). Cost plus percentage is not allowable.
 - Fixed fee/price may be tied to a price index or price escalator/de-escalator clause
 - Cost reimbursable contracts must not include unallowable costs. The vendor must return all rebates, discounts, and credits to the SFA. A cost plus fixed fee contract may also be used.
- Protest procedures
- Proposal withdrawal procedures
- List of all products to be purchased and specifications
- Options for 'piggybacking', adding goods or services, or increasing contract volume over time
 - Changes to the contract may not result in a material change- no more than a 10% change in contract value is recommended
- Criteria for award
 - IFB- award will be made to the lowest bidder
 - RFP- include all criteria that will be used to evaluate proposals
 - Cost must be the highest weighted factor but does not have to be 51%
 - A scoring rubric is required that identifies all evaluation factors and their relative importance
 - If using geographic preference, indicate how preference will be given
- Method for evaluating cost
 - How will cost be evaluated for the products or services requested? Common ways to evaluate cost are:
 - By line item: each line is awarded separately based on individual product cost
 - By product groupings: the total cost of groups of products are evaluated and awarded as a group. Example: frozen, produce, canned goods.
 - Bottom line (all-or-nothing): the total cost of the goods or services is evaluated; all products/services are awarded together.
 - Market basket cost analysis: representative sample of products, called a 'market basket' is used to estimate the total cost. The sample should consist of products that represent at least 75% of the total value of the contract (high-velocity items). The SFA must obtain a price for all products not included in the market basket prior to the award of the contract.
- Technical requirements of the vendor
 - Responsibilities of the vendor: delivery days, delivery windows, HACCP plan, staff requirements, etc.
 - Procedures for recalls or substitutions
 - Buy American Provision Requirements
 - Common legalities
 - Required forms and certifications: suspension and debarment, lobbying activities, anti-collusion, etc.

- Contract provisions required by 2 CFR 200 appendix II (as applicable):
 - Termination for cause and convenience- contracts in excess of \$10,000
 - Equal Opportunity Employment- 'federally assisted construction contracts'
 - Davis-Bacon Act- construction contracts in excess of \$2,000
 - Contract Work Hours and Safety Standards Act- contracts in excess of \$100,000 that involve the employment of mechanics or laborers
 - Right to inventions made under a contract or agreement- if the contract meets the definition of a 'funding agreement' under 37 CFR 401.2 (a)
 - Clean Air Act and the Federal Water Pollution Control Act- contracts in excess of \$150,000
 - Debarment and Suspension- all federally awarded contracts
 - Byrd Anti-Lobbying Amendment- contracts in excess of \$100,000
- Required provisions for cost reimbursable contracts:
 - Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority.
 - The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or that the contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification.
 - The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit.
 - The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract.
 - The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.

Publicize the solicitation

Formal solicitations must be publicly advertised and seek/invite two or more qualified sources willing and able to compete.

Allow sufficient time for vendors to respond

Response time may vary depending on the complexity of the solicitation. A minimum of two weeks for IFBs and 30-35 days for RFPs is recommended.

Accept bids or proposals from responsive and responsible vendors

An SFA must determine if the vendor is *responsive* and *responsible* before accepting their bid or proposal

- Responsive: Did the vendor respond to the IFB or RFP on time and include all required attachments, certifications, etc.?
- Responsible: Does the vendor meet the criteria outlined in the solicitation? Do they have a good track record with providing products and services to similar institutions?

Evaluate the bids or proposals

- IFB:
 - Bids are publicly opened at the location, date, and time prescribed in the IFB
 - Any or all bids may be rejected if there is a sound, documented reason
 - Cost is evaluated as outlined in the IFB, which includes all costs such as transportation and delivery costs
- RFP:
 - Proposals cannot be opened until after the closing date and time specified in the RFP
 - An evaluation committee should score the proposals *only* on the criteria outlined in the RFP
 - An SFA may conduct negotiations of the top-ranked proposals to ensure that each vendor fully meets the needs of the RFP. This must be done before cost proposals are opened. The SFA may also allow vendors to amend their cost proposal to reflect any changes made during the proposal negotiation. All negotiations must be done fairly and may not give a competitive advantage to one vendor.

Award the contract

Formal procurement should always result in a (signed) written contract between the two parties. The contract should include:

- Identification of the parties involved in the contract
- Contract duration
- Scope of work
- A complete list of products, including specifications (and price)
- Type of contract (fixed price or cost reimbursable)
 - Fees must be identified and agreed upon
- Contract renewal options, including provisions for changes such as the addition of goods or services
- Contract modification and change procedures
- Default and breach of contract provisions, remedies, cancellation procedures, and penalties
- Required compliance certifications
- Contract termination rights for cause and convenience
- Recordkeeping requirements
- Laws that govern the contract
- Cost reimbursable contracts: requirements that all costs be net of discounts, rebates, and other applicable credits
- Sanitation and licensing requirements
- Professional certification requirements

Manage the contract

SFAs are responsible for ensuring that vendors are compliant with all terms of the contract. Contract management is ongoing for the duration of the contract.

Maintain records

The SFA must maintain records sufficient to detail the history of procurement. All records must be kept for a period of 3 years after the submission of the final claim for reimbursement for the fiscal year or longer if an audit has not been resolved.

Renew the contract as applicable

If the contract allowed for renewal options, both parties may agree to renew the contract for additional terms as applicable.

Add products to the contract

New products may be added to the contract as long as the cost of the new products does not create a material change (no more than 10% of the contract value is recommended). Substitutions for unavailable products are not considered new products.

- The SFA should evaluate the estimated cost of new product(s) for the duration of the contract period and determine if the cost would be considered a material change against the total estimated contract value. No more than a 10% change is recommended.
- If the cost to add new products would not constitute a material change, the SFA may add new products to the contract. During the contract renewal, the SFA must amend the contract to include additional items.
- A new contract value is determined annually (or at the end of the contract term), and the new contract value may be used to estimate material changes moving forward
- If the cost to add new products would constitute a material change, the SFA may procure new products using another approved procurement method (micro-purchase, small purchase, formal purchase)