



PROCUREMENT GUIDANCE MANUAL



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Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
Fax: (202) 690-7442; or
Email: program.intake@usda.gov

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INTRODUCTION

Institutions and sponsoring organizations must follow procurement standard as outlined in §225.17 of the Summer Food Service Program (SFSP) regulations and §226.22 of the Child and Adult Food Service Program (CACFP) when purchasing food, supplies, equipment, facilities, and services.

This manual further clarifies the procurement requirements that this State Agency requires all institutions to follow in order to comply with the Federal procurement processes and charge of program expenditures. This guidance is not all encompassing but is intended to address those specific situations that sponsors typically find confusing or difficult.

Uniform Requirements and Program Regulations

Goods and services purchased with funds received through the CACFP and the SFSP should be acquired according to the procurement procedures outlined in the uniform requirements listed below. Institutions and sponsoring organizations may have to meet other State, local, and/or agency standards, as well as special procurement requirements which may be established by the State agency to prevent fraud, waste, and program abuse. Depending on the type of institution conducting the procurement, different requirements and principles apply. To determine which uniform requirements the institution must follow, use the Step-by-Step guide in this document.

The uniform requirements and principles are provided in the following documents:

- 48 C.F.R. 31, Contract Cost Principles and Procedures:
 - New Restrictions on Lobbying;
 - Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations;
 - Grants and Cooperative Agreements to States and Local Governments;
 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Additional requirements may apply through program regulations, FNS Instructions, policies, handbooks and guidance materials.

- 7 C.F.R. Part 225 Summer Food Service Program Regulations
- 7 C.F.R. Part 226 Child and Adult Care Food Regulations
- 2 CFR 200.318-326
- Administrative Guidance for Sponsor (SFSP)
- Bright from the Start Budget Guidance Manual
- Bright from the Start Procurement Manual
- FNS Instruction 796-4, Revision 4

Purpose of Procurement

Procurement requirements are based on competitive purchasing procedures. All procurement actions must be conducted to maximize full and open competition. This means that an institution cannot just simply pick a company to use. It must either informally procure by contacting several suppliers and getting the best price for the product or services being purchased or formally advertise and obtain bids.

Competitive procurement does not mean that the institution takes whatever it can get from a supplier. The institution must specify in the solicitation documents exactly what product is needed from the supplier. However, the institution must also keep in mind the prohibited practices that would prevent a potential supplier from being able to provide the product or service.

PROCUREMENT GUIDELINES

The purchasing process begins with planning and ends with contract award, administration, and closeout.

Planning Your Purchase

- Prior to purchasing any goods or services, the institution is required to do the following:
 - Assess whether services can be provided by their current staff
 - Determine if lease versus purchase is more economical
 - Determine the anticipated cost of the goods or services
 - Decide optimal procurement procedure for acquisition of goods and services

Evaluate the bid

- Identify the goods or services actually needed by determining how the goods or services will be used
- Review current inventories and goods in order to prevent duplicative purchases
- Assess bid respondents ability to provide solicitation specifications

Award of Contract

Lowest Price

Lowest Price must be computed using the factors specified in the Invitation for Bid (IFB) and Request for Proposal (RFP). The computation cannot include factors not identified in the IFB or RFP. This includes credits, rebates, or discount not routinely utilized, or any unallowable cost or credit.

Bid Award

All bids in an amount which exceeds the lowest bid shall be submitted to the State agency for approval before acceptance.

CACFP Food Service Management Companies and Food Vendors

All bids shall be submitted to BFTS for approval before acceptance. Bright from the Start shall respond to a request for approval of such bids within 10 working days of receipt.

SFSP Food Service Management Companies and Food Vendors

All bids shall be submitted to BFTS for approval before acceptance. Bright from the Start shall respond to a request for approval of such bids within 5 working days of receipt.

Copies of all bids received are submitted to the State agency, along with the sponsor's reason for choosing the successful bidder.

Copies of all contracts between sponsors and food service management companies, along with a certification of independent price determination, are submitted to the State agency prior to the beginning of Program operations.

CACFP and SFSP Food Product Company Awards

All respective information from above, for individual food items, must also be available upon request. (See 2 CFR Part §200.324)

Contract Administration

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow-up of all purchases. Recipients shall evaluate contractor performance and document whether contractors have met the terms, conditions and specifications of the contract.

Contract Renewal

Each year the contract may be renewed or extended if renewal options were stated in contract and if prior performance has been met by the contracting institution. The renewal must be made by the contracting institution to the supplier/vendor in writing before the contract renewal date and must be sent to the State Agency (SA) for review in conjunction with a copy of the original solicitation. For each year a contract is renewed, a new basis for the contract value, including the actual expenditures of the previous year plus the value of the additional items must be established.

Contract renewals must also include additional goods and services to be added to original contract. If the value of the additional goods exceed the limit in which the contract may be increased, a separate procurement procedure for the additional goods must be conducted or the purchases will be considered an unallowable cost. Upon renewal of goods and services added to the contract, a contract amendment must be included.

Contract amendments do not constitute as a renewal. Any material changes that alter the scope of

work and/or exceed the Simplified Acquisition Threshold (SAT) valued at \$250,000 are subject to SA approval and may require to be re-solicited.

Unallowable costs shall not be paid from the food service account.

Contract Closeout

Contract closeout is the process of completing and settling the contract to ensure that all terms and conditions and deliverables have been met. A contract is not complete and ready for closeout until the contractor complies with all the terms of the contract.

STEP – BY – STEP GUIDE TO PROCUREMENT

TYPE OF INSTITUTION	PROGRAM REGULATIONS (Title 7 CFR)	GENERAL PROCUREMENT RULES (Title 2 CFR)	PROCUREMENT CODE OPTIONS	ALLOWABLE COST RULES
Public Schools	Parts 225, 226	Sections 200.317-326	Must follow State or local procurement codes except for provisions which are inconsistent with Federal procurement requirements. State or local codes must be more stringent than Federal.	2 CFR Part 220 Subpart E
Public Institutions (Local governments)	Parts 225, 226	Sections 200.317-326	Must follow State or local procurement codes except for provisions which are inconsistent with Federal procurement requirements. State or local codes must be more stringent than Federal.	2 CFR Part 225 Subpart E, FNS Inst. 796-4
Private Non-profit Institutions	Parts 225, 226	Section 200.317-326	Must follow own procedures that are compliant or more stringent than Federal.	2 CFR Part 230 Subpart E FNS Inst. 796-4
For-Profit Institutions	Parts 225, 226	Section 200.317-326	Must follow own procedures that are compliant or more stringent than Federal.	Federal Acquisition Regulation (48 C.F.R. Part 31), FNS Inst. 796-4

Step 1: Determine the Management Rules that apply to your institution.

Based on the type of institution/organization, the institution may be required to follow Federal Procurement Codes, State or Local Government procurement codes, or the Institution's own federally compliant procurement codes. Find the type of institution in column 1 to determine what rules apply to the institution and what codes will be followed.

Step 2: Determine what procurement code will be followed.

By looking at the chart, the fifth column indicates the codes the institution will need to follow. For example, if a private non-profit, chooses to follow the institution's own procurement codes, the institutions' procurement codes must be in compliance with all applicable State and local laws and regulations provided that the procurements conform to applicable Federal law and the standards identified in 2 CFR Part 200.318(a). When making purchases using Federal funds, the institution must conduct all procurements in compliance with Federal regulations.

Step 3: Determine the amount of the goods or services needed.

When creating the budget and forecasting for the year, considering all good and services needed for both the CACFP and the SFSP. When vending for meals from a food service management company, the amount of the contract for the year for both programs would be considered. For example, if an area has distributors that carry many or all of the products that need to be purchased, then the anticipated value for all products that could be obtained through the distributor must be added together to determine the total cost. If the majority of the suppliers are single item or specialty products (meaning the distributor carries only fresh produce, or only frozen products, or milk) then aggregating can be limited to the value of a specific product. Establish aggregate amounts for food costs and/or food categories in procurement policy prior to procuring. For example, the aggregate amount is defined by bi-yearly, quarterly, or yearly spend. Keep in mind that intentionally dividing items so that the small purchase threshold is not exceeded is in violation of the procurement requirements.

Items obtained by Section 4302 of Public Law 11-246, the Food, Conservation, and Energy Act of 2008, which amended Section 9(j) of the Richard B. Russell National School Lunch Act allowing institutions to apply a geographic preference in the purchase of unprocessed locally grown or locally raised agricultural products, are an exception.

When a good or service that were previously procured will be obtained from a different source, or the goods and services are modified in any way to be combined or separated, the institution must conduct a separate procurement process for the modified goods or services. Similarly, if a lease expires and there are no renewal terms, but a new and distinct lease will be acquired, the institution must again go through the procurement process. When determining the total or aggregate amount of the contract of products, the potential sources of supply must be determined.

Step 4: Determine the procurement method to perform a contractual acquisition.

The amount of the contract will determine what type of procurement must be conducted, either informal or formal procurement. Generally procurement codes have a small purchase threshold, which if exceeded, requires the institution to use formal procurement methods. Multi-year contracts will typically elevate cost which will then require the use of the formal procurement method.

Multi-State Sponsoring Organizations

For Sponsors with procurement procedures that benefit institutions in more than one state, the headquarters for the Sponsoring Organization is responsible and will apply headquartering state's procurement requirements. For states with procurement procedures that benefit institutions in a single state, the given state's procurement procedures will apply.

Bright from the Start (DECAL) must receive the procurement procedures for those Sponsors which operate institutions in more than one state.

TYPE OF ORGANIZATION/INSTITUTION	SMALL PURCHASE THRESHOLD
Public Schools	State/local thresholds will vary. If State/local thresholds for small purchases are lower than the Federal threshold, SFA must apply state/local threshold since it is more stringent.
Public Institutions (Local governments)	State/local thresholds will vary. If State/local thresholds for small purchases are lower than the Federal threshold, institution must apply state/local threshold since it is more stringent.
Private Non-profit Institutions	Institution's own small purchase threshold may vary. Simplified Acquisition Threshold is \$250,000
For-Profit Institutions	Institution's own small purchase threshold may vary. Simplified Acquisition Threshold is \$250,000

The three commonly used procurement methods are:

- Informal Procurement
- Formal Procurement
- Non-competitive Procurement

INFORMAL PROCUREMENT METHODS:

Simple procurement methods used for the purchase of supplies, services, or property, where the aggregate and/or transaction dollar amount does not exceed the \$250,000 small purchase threshold. Simplified purchases also include micro-purchases of supplies or services whose per transaction or pre-determined aggregate cost, falls below the micro-purchase threshold of \$10,000. Minimal

documentation is usually required, including a determination that the price is fair and reasonable; and a process on how this determination was derived. See 2 CFR Part 200 Subpart D §200.318-326.

MICRO-PURCHASE

Procurement by micro-purchase is the acquisition of supplies or services whose per transaction or pre-determined aggregate cost does not exceed the micro-purchase threshold of \$10,000. Purchases must, to the extent be practical, be equitably distributed among qualified suppliers. Purchases should not be split to avoid the requirements for competition above their respective thresholds. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable. Receipts must be maintained. Program written procurement procedures, as required in 2 CFR Part 200.318(a) must include a procedure that such purchases must be rotated among qualified suppliers. Please refer to the policy memo regarding detailed micro-purchase guidance and questions

<http://www.dec.state.ga.gov/documents/attachments/QuestandAndTransitionImplemCFR.pdf>.

SMALL PURCHASE

Small purchase procedures are those relatively simple and informal for securing supplies, services, or other property whose one-time transaction(s) or pre-determined aggregate cost does not exceed the Simplified Acquisition Threshold of \$250,000. Price or rate quotations must be obtained from an adequate number of qualified sources - (2) preferably (3) responsive and responsible sources.

Intentionally dividing items so that the Simplified Acquisition threshold is not exceeded is a violation of the procurement requirements.

- 1) Bright from the Start requires the use of the “Small Purchase Item Documentation” form (found in Appendix D) to document the suppliers contacted and the selection made for small purchase procurements of \$10,000 to \$250,000. Institutions should attach any required documentation to this form for recordkeeping purposes. The submission of the Small Purchase Item Documentation form and Agreement to Furnish Food/Food Service Management Company may be required when submitting budgets for approval to ensure procurement procedures were followed.
- 2) Price or rate quotations must be obtained from at least two qualified sources, but three or more quotes are suggested. Qualified means the supplier is able to meet required licensing or certification requirements, is not prohibited from participating in the procurement action, and can fulfill the organization’s reasonable requirements. Seeking price quotes from only one source when more than one source is available is prohibited.

SMALL PURCHASE (Continued)

- 3) Documents used to solicit quotes from suppliers must be maintained and must provide sufficient information to permit an eligible supplier to respond. At a minimum, the documents must include:
- A description/ specification of the goods or services needed, including quantity, required certification, licensing, etc.
 - Descriptions/ specifications must be communicated equally among vendors, and should include the following: Case/package size, Measurement unit, Brand name equivalent.
 - The date by which the goods or services must be provided; and
 - Any other pertinent terms or conditions required by the organization.

The organization should ensure it is not being overly restrictive in its terms and conditions thereby limiting competition. The suppliers being compared should be able to deliver the product at the reasonable terms and conditions requested by the organization.

****If at least two suppliers cannot provide the goods and services at the organization's terms and conditions, the organization has not met the responsibility of comparing price quotes from a minimum number of suppliers.****

- 4) Price or rate quotations must be obtained from the supplier, with the price or quote valid for a specified time period. Price and rate quotes obtained should be documented in writing, identifying the pertinent details of the transaction. This information must be received from the supplier and the following details of the transaction must include:
- The name of the individual soliciting the information;
 - The name of the company solicited and the individual providing the price or rate quotation;
 - The date the information was provided;
 - The goods or services to be purchased, including the quantities upon which the price or rate quote was provided;
 - All pertinent terms or conditions imposed by either party; and
 - The duration of the price or rate quotation. A new solicitation must be conducted for purchases that will be made after the current quotation expires.
- 5) Negotiation of price and terms can be done; however, all potential suppliers must be treated fairly and given the same opportunity to match or better price and terms.
- 6) Selection is made by choosing the supplier that can deliver the goods and services at the lowest price based on the terms or conditions listed in the solicitation documents.

Small Purchase Procurement Records

All information used to solicit and select a supplier must be maintained, in addition to information documenting the actual purchases made from the successful supplier. This information includes:

- Copies of solicitation documents;
- Names and dates of suppliers contacted by phone;
- Copies of letters, advertisements, e-mails and faxes soliciting price or rate quotations;
- Trip reports identifying suppliers contacted in person;
- Copies of price or rate quotations received;
- Small Purchase Item Documentation form;
- Notification to the successful supplier; and
- Purchase documents, such as invoices, bills of lading and canceled checks.
- Agreements to Furnish Food/Food Service Management Company

FORMAL PROCUREMENT

Institutions securing supplies, services, or other property whose individual or aggregate cost exceeding the Simplified Acquisition Threshold of \$250,000 are required to use a formal solicitation and selection process. The competitive procurement methods available for use in fulfilling the requirement for full and open competition in the acquisition process are:

- Invitation for Bids (IFB)
- Negotiated Procurement (Request for Proposals (RFP))

Invitation for Bids (IFB)

An Invitation for Bid (IFB) is a competitive procurement method used when the best value is expected to result from a selection of the lowest evaluated priced offer and/ or lowest offer based on representative sample of solicited items. This process involves the following steps:

- Preparation of Invitation for Bids
- Publicizing of Invitation for Bids
 - a. Publicly announcing all IFBs not less than 14 days before bids are opened.
 - b. Notifying the State Agency of the time and place at least 14 days before the bid opening
 - c. Publicly opening all bid
- Submission of bids
- Submitting to the State Agency copies of all contracts, a certificate of independent price determination and copies of all bids received
- Evaluation of bids
- Contract award

IFB's are normally solicited if:

- Time permits the solicitation, submission, and evaluation of sealed bids;
- The award will be made on the basis of price, "Market Basket" Analysis and other price-related factors;
- It is not necessary to conduct discussions with the responding providers about their bids; and
- There is a reasonable expectation of receiving more than one sealed bid.

Request for Proposals

**** 7 C.F.R. Part 225 (SFSP regulations) do not allow competitive proposals. Part 225.15(g)**

requires that SFSP sponsors used the Invitation for Bid method of procurement.

Request for Proposals (RFP) is a procurement method used when the best value is expected to result from selection of technically acceptable proposals, where the lowest evaluated price or lowest price based on a representative sample of requested goods, is not the most important factor of evaluation and when technical aspects are not clearly defined.

The RFP process involves the following steps:

- Preparation of Request for Proposals documents (such as Terms and Conditions document)
- Developing Scope of Work
- Release of a public notice of solicitation
- Receipt of letters of intent and no-bid letters
- Pre-proposal meeting, mandatory or optional
- Receipt of proposals and proposal cover letters, kept closed in a secure place until due date
- Addenda or amendments to the RFP and, eventually, extension of the proposal receipt due date
- Modification of the initial RFP, modification and receipt of proposals, and, eventually, extension of the proposal receipt due date
- Disqualification of proposals, proposals returned unopened
- Proposal opening at proposal receipt due date
- Rating, scoring, and sorting proposals in a decision matrix
- Selection of the best matching proposals
- Reject non-responsive proposals or non-responsible providers
- Providers contacted and requested for their best and final offer (BAFO)
- Selection of the best matching proposal
- Decline unsuccessful proposal
- Handling of protest letters
- Award notice

Request for Proposals are normally solicited when:

- The use of sealed bids is not deemed appropriate; or
- It is necessary to conduct discussions with providers, because of differences in areas such as law, regulations, and business practices; or technical criteria is not explicitly defined.

Request for Proposal Evaluation Methods

One-Step Sealed Bid

The One-Step Sealed Bid is a competitive procurement method that negotiates price and technical components while price is primary factor. After evaluating, bidders who average an amount determined by the Institution/sponsor are entered into a round of negotiations. At the conclusion of negotiations, the RFP's are rescored and awarded to the bidder presenting the most advantageous proposal while price is used as the primary factor.

Two-Step Sealed Bid

Two-step Sealed Bid is a competitive procurement method that is a combination of bidding and negotiating and is designed to obtain:

- The benefits of negotiation for helping the requesting organization complete or define specifications without any pricing consideration; and
- The benefits of sealed bidding for getting the best price for the technically acceptable solution agreed-upon.

Two-step sealed bids can be used in preference to negotiated procurement when all of the following conditions are present:

- Specifications are not definite or complete or may be, without further technical evaluation or discussion, too restrictive to ensure mutual understanding between each source and the requesting organization;
- Definite criteria exist for evaluating technical proposals;
- More than one technically qualified source is expected to be available;
- Sufficient time will be available for use of the two-step sealed-bidding method;
- A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

During the two-step sealed bid, price is evaluated separately and is the awarding factor after technical evaluations are negotiated. Step 1- Negotiations are only held between bidders who receive scores over the average (determined by the Institution/sponsor) after technical components have been evaluated. Step 2- Bidders scoring over the average are asked to submit their best and final offer (BAFO) and an award is made based on the bidder who submits the lowest price.

NON-COMPETITIVE PROCUREMENT

Non-competitive procurement methods are considered to be exceptions, and thus should be used only under certain, well-defined conditions, and they should be carefully and thoroughly justified and documented. Non-competitive procurements cannot be justified because of a failure to plan in advance or concerns about the availability of related funds or budget.

Sole (single) source is an example of non-competitive procurement or purchase process accomplished after soliciting and negotiating with only one source, thus limiting full and open competition. **All sole source procurements require prior written approval by DECAL and the Food and Nutrition Services Regional Office FNSRO.**

These circumstances, which can be invoked as sole source justification:

- Only one responsible source and no other supplies or services will satisfy requirements;
- Unusual and compelling urgency
- Industrial mobilization; engineering, developmental, or research capability; or expert services;
- International agreement
- Authorized or required by statute; National security; Public interest.

EMERGENCY PURCHASES

Emergency purchases are defined as situations when the welfare of life, property, or the continuation of vital programs are in jeopardy and require immediate, on-the-spot purchases of equipment, materials, supplies or services.

Emergency purchases can be issued when, due to a sudden condition or circumstance, there is limited time to purchase in the regular manner since the item or service is needed immediately. For an emergency purchase, telephone quotes are acceptable but the Institution must have a process in place to document written quotes.

Contact DECAL if emergency purchases exceed formal procurement threshold limits.

GENERAL PROCUREMENT REQUIREMENTS

Standard Codes of Conduct

Entities receiving Federal funds must develop and implement a written code of standards of conduct designed to govern the performance of employees engaged procurement (the award and administration of contracts). See USDA Memo Code SP 09-2015, CACFP 03-2015, SFSP 02-2015, 2 CFR 200.318(C)(1).

This code must prohibit employees from soliciting gifts, travel packages, and other incentives from prospective contractors. In addition, the code of conduct must prohibit an employee from participating in the selection, award and administration of any contract to which an entity or certain persons connected to them, have financial interest. The code of conduct must also provide for CNP operators to set standards when financial interest is not substantial or the gift is an unsolicited item of nominal value and may be acceptable. Finally, the code of conduct must provide for disciplinary actions to be applied in the event the standards are violated.

Conflict of Interest

No employee, office or agent of the organization can participate in the selection, award or administration of a contract supported with Federal funds if a conflict of interest, real or apparent, would be involved. Professional, social and personal activities and actions that compromise the Program's integrity must be avoided at all times. Real and apparent conflicts of interest exist when:

- The transaction is not arms-length;
- The employee, officer or agent; any immediate family member of same; partner or organization that employs or is about to employ any of the above has a financial or other interest in the firm selected for the award;
- Organizational structures and personnel practices exist that undermine the independence and integrity of the procurement process;
The official responsible for determining bid or proposal responsiveness is not independent, i.e., another individual within the organization can overrule the official;
- Gratuities, favors or anything of monetary value are solicited or accepted from current or potential contractors on behalf of any individual or the organization before, during or after contract award;

- Any action, inaction or relationship with current or potential contractors gives the appearance of a conflict of interest, whether or not such a conflict, in fact, exists.

Small and Minority Owned Businesses

All institutions are encouraged to take affirmative steps to ensure that minority firms and women's business enterprises are used when possible. Affirmative steps may include placing such businesses on solicitation lists and ensuring such businesses are solicited whenever they are deemed potential sources. The following steps can be used:

- Including these firms on solicitation lists
- Notifying these firms of proposed procurements
- Dividing total requirements into smaller tasks or quantities so as to permit maximum participation by minority business enterprises
- Establishing delivery schedules which will assist minority business enterprises

Purchaser Responsibilities

Organizations are responsible, without recourse to Food and Nutrition Services (FNS) or Bright from the Start, for all aspects of the procurement process. Purchaser responsibilities include:

- Establishing procurement procedures and systems that comply with applicable Federal, State and local requirements. These procurement procedures must strive to ensure free and open competition and conducted with fairness and integrity. Procurement procedures shall not restrict or eliminate competition. The procurement requirements also ensure that such materials and services are obtained for the program efficiently and economically;
- Evaluating all aspects of the procurement process to ensure procurements are conducted according to requirements;
- Resolving and settling all contractual and administrative issues arising out of procurements, including source evaluation, protests, disputes, and claims;
- Ensuring ethical safeguards exist and are maintained at all levels in the organization and in all aspects of the procurement process.

Cost and Price Analysis (Required for Formal Procurements)

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may include:

- Comparison of price quotations submitted;
- Establish the market price by obtaining a quote for a similar product or service from another vendor or by using catalog pricing from a manufacturer;
- Determine the price previously paid for a prior purchase of the same item.
- Awarding contracts based on a representative sample of good requested.

Documentation

Institutions and sponsoring organizations will maintain records sufficient to detail the significant 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
- Basis for the contract price.

Protest Procedures

Organizations must have protest procedures to handle and resolve disputes relating to procurement. Protests against award in negotiated acquisitions shall be handled in accordance with Part 33. Use of agency protest procedures that incorporate the alternative dispute resolution provisions of Executive Order 12979 is encouraged for both pre-award and post-award protests.

AGREEMENT

When the purchase amount falls beneath the small purchase threshold, an Agreement may be used instead of a contract. Bright from the Start has developed a sample agreement for use which is found in Appendix C of this manual. The sample agreement is not a mandatory form.

The institution may create their own agreement or modify the agreement to include specific terms or conditions as necessary as long as the terms and conditions are not in violation of program requirements and regulations and the following terms and conditions are included:

- 1) The vendor shall have Federal, State, or local health certification for the plant or the location in which it will prepare the meals and shall ensure that all health and sanitation requirements are met at all times;
- 2) The vendor must maintain a valid business license and/or any meet any other Federal, State, or local laws or regulations as it pertains to services provided;

CONTRACT TERMS AND CONDITIONS

A contract is an exclusive document requiring specific performance by both parties. A wide selection acquiring the large variety and volume of supplies and services required to operate CACFP and SFSP. Contracts resulting from sealed bidding shall be firm fixed-price contracts or fixed-price contracts with economic price adjustment. **“Cost-plus-a-percentage-of-cost” and “cost-plus-a-percentage-of-income” type contracts are strictly prohibited.**

A contract contains the following information:

PART I – General Information/Instructions for Bidders (Bid opening dates, contract start/end dates, applicable renewals, bid/payment bond information, and description of goods and/or services requested.

PART II – Delivery and performance schedules, contract evaluation requirements, terms and conditions, documents for bidders to sign and submit, and signed certification statements.

PART III – Contract Clauses (see page 21), special contract requirements, and definitions.

PART IV – Evaluation factors for award.

Solicitation/Advertising

All proposed contracts must be publicly announced at least once fourteen calendar days

prior to the bid opening date. The advertisement at a minimum must be placed in a newspaper of general circulation to the state, and as a suggestion, reach out to at least two suppliers once bid has been posted. Electronic means of soliciting are encouraged through social media, and/or e-procurement platforms; however, should be used in conjunction with newspaper advertisements.

Minimum Requirements of Advertisement

- Name of Organization
- Proposed operating days of food service program
- Meal type and estimated number of meals to be service
- General location(s) where program(s) will operate
- Due date of the bid, and time and place of bid opening
- Statement that contract is subject to review by Bright from the Start
- Contact Information to obtain a bid packet
- Bid and or performance bond requirement (if required)
- USDA Non-discrimination Statement
- Other pertinent information

Contract Form

Contracting officers shall prepare invitations for bids and contracts using the uniform contract format outlined below to the maximum practicable extent.

Depending on the type of contract the following terms and conditions may apply. The description below indicates which type of contract the term/condition applies. Bright from the Start has a prototype contract for vending with a food service management company for preparation of meals. When a food service contract other than the prototype contract provided by BFTS, the institution must ensure the applicable contract terms are included and the institution must receive **written prior approval from the State Agency** to use the contract. The method of procurement will determine when contracts are prepared.

- Invitation for Bid (IFB) - usually serves the dual purposes of soliciting bids and, when executed by both parties, becoming the contract. As a result, all required contract terms and conditions must be included in the IFB.
- Request of Proposal (RFP) - the non-negotiable terms of the contract are included in the RFP, while the negotiable contract terms are identified in the RFP, but the actual contract language is not prepared until after negotiations have been completed and an award made. The organization should ensure the nonnegotiable terms are reviewed for legal sufficiency prior.

When a contract exceeds the small purchase threshold, the following must be included:

- Provision that allows for administrative, contractual or legal remedies when the awardee has violated or breaches the contract terms

- Provision for termination
- Bid and Performance bond (CACFP optional; SFSP required)

When a food service contract other than the prototype contract provided by BFTS, the institution must ensure the applicable contract terms are included and the institution must receive written prior approval from BFTS to use the contract.

Supplies, Services and Prices

The contract shall include a brief description of suppliers or services.

Description/Specifications

The contract shall include a clear and accurate description of the product, material, and/or service to be procured. Incorporate a brand name equivalent as detailed product descriptions should be avoided. Specifications required must permit to full and open competition. RFP's must include a detailed scope of work provided by the Contracting Institution.

As part of the IFB, SFSP sponsor must provide the FSMC with a copy of the meal requirements outlined in Section 225.16 of the SFSP regulations, and/or 226.20 of the CACFP regulations. The sponsor also must provide a copy of the minimum food specifications and model meal quality standards required by Section 225.7(c) of the SFSP regulations. The FSMC must deliver meals that meet these meal requirements and minimum food specifications and model meal quality standards.

Site

SFSP sponsor must include a list of proposed site names, addresses, delivery locations, times of meal service, and days of operation. With this information, a bidder can estimate the cost of delivery and the feasibility of meeting the sponsor's requirements. The sponsor should specify in the IFB that single deliveries for multiple meals (e.g., breakfast and lunch) are allowed only at those sites that are equipped with adequate storage and refrigeration facilities.

Cycle Menu

SFSP sponsors also must attach a cycle menu that lists the types and amounts of food in each meal. Program regulations specify minimum meal pattern requirements, but sponsors may improve upon these minimums to increase the variety and appeal of menus. Sponsors may request approval from the State agency for variations from the meal requirements only when necessary to meet ethnic, religious, economic, or nutritional needs.

Unitized Meals

SFSP sponsors must ensure that FSMCs provide "unitized" meals with or without milk or juice. This means that meals must be individually portioned, packaged, delivered, and served as a unit. The milk or juice may be packaged and provided separately, but

must be served with the meal unit. Other variations of unitized meals can be approved by the State agency.

USDA Foods

SFSP sponsor of vended programs can only receive USDA Foods if the vendor is a school or school district, or if the sponsor is an SFA that competitively procures its SFSP meals from the same FSMC that competitively provided its most recent NSLP meals.

Meal Range Adjustments

Actual participation under a given sponsorship frequently varies from the estimate specified in the IFB. The FSMC bases a bid on the specifications and expects to be serving close to the number of meals listed in the estimate. A sizeable discrepancy between estimated and actual participation can increase or decrease the FSMC's unit production cost. Therefore, the SFSP sponsor must carefully estimate the number of meals it will need each day. SFSP sponsor also should consider including a provision that will decrease the per-meal price if the number of meals served exceeds expectations. SFSP sponsor may increase or decrease the number of meals specified in the IFB only after notifying the FSMC. Sponsors should consider specifying in the IFB a time period during which changes in a site's meal orders may be made to the vendor. A reasonable time frame for notifying the vendor may be within 24 to 36 hours of the change. Increases in maximum meal service levels at sites receiving vended meals must be approved by the State agency.

Special Accounts

BFTS may require SFSP sponsor to set up special accounts at financial institutions. If such accounts are established, the sponsor must deposit any payments received from the State agency in the special account. Both the FSMC and the SFSP sponsor must authorize any checks drawn on this account. This is to help ensure that the company receives payment for the eligible meals it provides to the sponsor's program.

Packaging & Marking

The contract shall include a brief description of packaging, packing, preservation, and marking requirements.

Inspection & Acceptance

The contract shall include inspection, acceptance, quality assurance, and reliability requirements.

Quality Control

An effective quality control system is essential for verifying that meal components meet the minimum quantity requirements. During food preparation, the FSMC should regularly inspect and measure items to ensure correct sizes and weights. Setting production equipment for the desired specifications is no substitute for a quality control system, because equipment settings may become distorted during operation. State agencies and sponsors are responsible for sampling meals and disallowing payment for meals that fail to meet minimum standards. The entire meal must be disallowed for reimbursement if any component does not meet minimum standards.

Deliveries or Performance

The contract shall include the specify requirements for time, place, and method of delivery or performance.

+ Reimbursable Meals

Under the provisions of the contract between the sponsor and the FSMC, SFSP sponsor is required to pay only for the delivered meals that meet these requirements and should not pay for ineligible meals. Similarly, the sponsor will receive payments from the State agency only for meals that meet these requirements.

Contract Administration Data

The contract shall include any required accounting and appropriation data and any required contract administration information or instructions other than those on the solicitation form.

Special Contract Requirements

The contract shall include a clear statement of any special contract requirements that are not included Contract clauses, or in other sections of the uniform contract format.

+ Executive Order 11246, "Equal Employment Opportunity"

Contracts must contain a provision requiring compliance with Executive Order 11246, as amended by Executive Order 11375 (October 13, 1967) and Department of Labor Regulations (41 C.F.R. Part 60). Additional information can be obtained from the U.S. Department of Labor or the State's Department of Labor.

+ (31 U.S.C. 1352), New Restrictions on Lobbying- Byrd-Anti-Lobbying Amendment

Applies to contracts and renewals in excess of \$100,000. Contractors must comply with the certification and reporting requirements, and disclose that Federal appropriated funds were not used to pay any person or organization for influencing and attempting to influence a member of Congress, or Congress officer in connection to obtaining a Federal contract or award.

+ 2 CFR Part 200 Appendix II, and Debarment and Suspension. A contract award must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 and 12689 "Debarment and Suspension."

+ Clean Air and Clean Water Acts

Applies to contracts and subcontracts in excess of \$100,000. Contractors must certify compliance with the applicable provisions of the Clean Air Act; the Clean Water Act; the Federal Water Pollution Act; Executive Order 11738; and Environmental Protection Agency regulations.

+ Buy American Provisions

Applies to contracts involving food acquisitions using nonprofit food service account funds and the use, or processing, of substitutable USDA donated foods. Contracts must contain provisions meeting the requirements of the "Buy-American Provisions" per 49 CFR Part

661, required for NSLP agreements.

✚ *USDA Rights in Data, Reporting Discoveries and Inventions and Copyrights* Rights to Inventions made under a contract or agreement under 37 CFR 401.2(a). Applies to research, developmental (such as new food product or software), experimental or demonstration work contracts. Contract terms that comply with the standards established in USDA regulations, 2 CFR Parts 200 concerning USDA rights to copyrighted materials, patent rights; rights in data and contractor responsibility to report discoveries and inventions are required.

✚ *Construction and Repair Contracts and Subcontracts*

Applies only to the construction and repair contracts and subcontracts. These contracts must contain:

- The Copeland "Anti-Kickback Act" (18 USC 874) as supplemented by Department of Labor regulations (29 C.F.R., Part 3); and
- Provisions of the Contract Work Hours and Safety Standards Act (40 USC 327-330), as supplemented by the Department of Labor Regulations (29 C.F.R. 5) for applicable contracts in excess of \$100,000 for construction contracts and subcontracts involving the employment of mechanics or laborers.
- Davis-Bacon Act as amended (40 U.S.C. 3141-3148). Required for prime construction contracts in excess of \$2,000 awarded by a non-Federal entity.

CONTRACT CLAUSES

This section shall include all clauses required by law or by CACFP or SFSP regulations and any additional clauses expected to apply to any resulting contract.

Breach of Contract

Provisions must provide for administrative, contractual and legal remedies for breach of contract, including sanctions and penalties, as may be appropriate. Since either party can cause a breach of the contract, both parties usually require breach of contract terms and remedies.

The contract should contain a general provision regarding breach of contract in addition to specific breaches and the actions that will be taken for breach of contract. When either party will allow the other to remedy a breach, the procedures and timeframes should also be included in the contract. Again, both parties to the contract should be treated equally.

In general, institutions cannot use nonprofit food service account funds to pay for a breach of contract, including late payment fees, since penalty payments are not allowable costs.

Guaranteed Return Provisions

The most frequently used contractor remedy for breach of contract in Child Nutrition programs is the guaranteed return provision. Guaranteed return provisions provide for financial compensation to the institution when the contractor fails to meet contract terms. Since payment of the

guaranteed return is a remedy for nonperformance:

- The institution must ensure the financial terms are adequate compensation for nonperformance; and
- Future successful performance does not negate prior period nonperformance. Payments received for breach of contract are not loans and cannot be returned to the contractor for future successful performance. If an institution agrees to refund a guaranteed return payment in a future period, the institution cannot use nonprofit food service account funds to make this payment.

Termination for Cause Provisions

Once either party is notified that a termination for cause has been determined, timely termination of the contract is required. The notification must identify the basis for the determination, sent certified mail, return receipt requested, or by similar notice, and identify other actions that will result such as the forfeiture of bonds, deposits, accrual of interest, etc.

- Should apply equally to both parties to the contract;
- Are not be used to establish the procedures for remedying performance deficiencies. These remedy procedures are separate and apart from contract termination for cause procedures. Institutions/sponsors should establish a “cure notice” before ending terms on an agreement. A cure notice should address factual reasoning to terminate the contract.

Termination for Convenience Clauses

The terminating party is not required to provide any reason for terminating the contract other than for its own convenience. Termination for convenience should not be used in lieu of termination for cause.

Food Service Management Company Contracts

FSMC contracts shall include a termination clause whereby either party may cancel for cause with a 60-day notification.

BONDS AND OTHER FINANCIAL PROTECTIONS

Bid Bond Guarantee

Bid bond guarantees are only required for Institutions/sponsors contracting with a Food Service Management Company (FSMC) in the Summer Food Service Program (SFSP). Sponsors/Institutions contracting with FSMCs for the Child and Adult Care Food Program (CACFP) is optional. A bid bond ensures the bidder can adhere to the pricing throughout the term of the contract. A contracting officer shall not require a bid guarantee unless a performance bond is also required. A FSMC must submit a bid bond in an amount not less than 5 percent and no more than 10 percent of the value of the contract for which the bid is made, as determined by the sponsor and specified in the IFB. Bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” shall consist of a firm commitment such as bond or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance, execute such contractual documents as may be required within the time specified.

Food service management companies are prohibited from posing any alternative forms of bid bonds. Cash, certified checks, letters of credit, and escrow accounts, are not acceptable substitutes for bid bonds. The bond must be from one of the companies listed in the most recent issue of the United States Department of Treasury Circular 570. [See 7 CFR 225.15 (h)(6) through (h)(8)] and <http://dec.al.ga.gov/documents/attachments/ProcurementThresholdsSFSP-012214.pdf>

Performance Bond

A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.

Whenever a food service management company contracts for food services exceeding the simplified acquisition threshold and where a bid bond guarantee has also been required, the food service management company shall obtain and furnish a copy of a performance bond to the sponsor within 10 days of awarding the contract. The performance bond shall be in an amount ranging from a minimum of 10 percent to a maximum of 25 percent of the total value of the contracts. The percentage level shall be determined by the Sponsor.

Food service management companies shall obtain performance bonds only from surety companies listed in the current Department of the Treasury Circular 570. [See 7 CFR 225.15 (h)(6) through (h)(8)] and <http://dec.al.ga.gov/documents/attachments/ProcurementThresholdsSFSP-012214.pdf>

Surety Bonds

Under the SFSP, Food Service Management Companies that submit formal bids and enter into a food service contract exceeding the simplified acquisition threshold must obtain bid and performance bonds as stated above. The Small Business Association (SBA) makes the bonding process accessible to small and emerging contractors that find bonding unavailable to them. The SBA is authorized to guarantee a qualified surety up to 90 percent of losses incurred under bid payment bonds. The SBA can also guarantee performance bonds that are issued to contractors on contracts up to \$1 million. FSMCs that anticipate problems in obtaining bid and performance bonds for the SFSP may contact the SBA for assistance.

OPENING OF BIDS

Safeguarding Submission

All submissions must be safeguarded.

- Submissions must be kept in a secure location preferably locked or otherwise protected.
- Access to submissions must be limited to authorized personnel.
- A record of all submissions received must be kept and include the following pertinent data:
 - a. Name of individual or firm;
 - b. Date and time the submission was received;
 - c. Whether the submission arrived sealed or unsealed; and
 - d. Method by which the submission was received (mail, messenger, etc.)

Opening Submission

Submissions must be processed according to the procedures identified in the solicitation documents.

- The bid opening officer shall decide when the time set for opening bids has arrived and shall inform those present of that decision.
- The bid offer should read the bids aloud to the persons present and have the Bids properly recorded.
- Each State agency shall have a representative present at all SFSP food service management company procurement bid openings when sponsor's contracted costs are expected to exceed the simplified acquisition threshold or as necessary.
- The sponsoring organization must notify the State agency of the time and place at least 14 days before the bid opening.
- A bid opening may be postponed if:
 - a. Material delay in mail or communication system that is beyond the control or with fault or negligence
 - b. Emergency or unanticipated events interrupt normal process so that the conduct of bid opening is impractical
 - c. Public notice must be posted for any postponement of openings

EVALUATION OF BID

Responsive Bids

Responsive bids must meet all material requirement of the IFB. All required elements of sealed bids must be evaluated on a pass/fail basis. Any bid that fails to meet a material requirement is a nonresponsive bid. At a minimum, the following procedures must be observed:

- All submissions missing required information must be rejected.
- All nonresponsive submissions must be rejected. Examples of unresponsive bids include:
 - a. Bids received unsealed.
 - b. Bids which do not conform to the bid specifications, such as product grade, quality, pack size, etc.
 - c. Bids that change the terms and conditions of the IFB, for example, bids that change delivery schedules.
 - d. Bids that fail to contain required bid bonds, certifications, etc.
 - e. Bids that fail to comply with applicable State, local, or Federal requirements.
 - f. Bids submitted late.
- Any bid may be rejected if the prices for any lines items or sub line items are materially unbalanced.
- Bids received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the bid opening date shall be rejected unless a compelling reason determination is made.
- Low bids received from concerns determined to be not responsible pursuant to subpart 9.1 or subpart 19.6 shall be rejected with respect to certificates of competency.
- After submitting a bid, if all of a bidder's assets or that part related to the bid is

transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid. Accordingly, the contracting officer shall reject the bid unless the transfer is affected by merger, operation of law, or other means not barred by 41 U.S.C. 15 PR 31 U.S.C 3727.

When it is determined necessary to reject all bids, the contracting officer shall notify each bidder that all bids have been rejected and shall state the reason for such action.

Bidders shall not be permitted to withdraw or modify “all or none” qualifications after bid opening since such qualifications are substantive and affect the rights of other bidders.

If a bid received by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the invitation for bids cannot be ascertained, the contracting officer immediately shall notify the bidder that the bid will be rejected unless the bidder provides clear evidence of the content of the bid as originally submitted and that the unreadable condition of the bid was caused by software or hardware problems of the awarding office.

Market Basket Analysis

“Market Basket” analysis allows an Institution/Sponsor to review bids using an established, representative sample of goods and use this subset of prices to award a contract as long as the published solicitation includes language that allows for this type of an evaluation. When using a market basket analysis, the Institution/Sponsor must obtain pricing for the remaining listed goods that were not included in the market basket analysis prior to the final award. The pricing of these miscellaneous goods must be reasonable.

Institutions/Sponsors must also comply with the requirements of 2 CFR Part 200. Evaluating the price on all goods, either as an aggregate (bottom line or total cost) or by line item, is the preferred method of awarding a contract. However, we recognize price analysis can be simplified and a valid price analysis can still be achieved when only the bottom line costs of major items are totaled to determine lowest price between bidders.

As always, consistent with 2 CFR 200.320, all contracts must be awarded to responsive and responsible contractor(s), price must be the primary factor when evaluating bids and proposals, and contracts must be awarded to the lowest bid or proposal most advantageous to the Program.

RECORD RETENTION

Contract terms must establish the contractor’s responsibility to retain required records. Records must be retained for at least the Federal record retention period of three years **plus the current year**; however, records must be retained longer when:

- The State or the organization’s record retention requirements is greater than the Federal requirement;
- Contracts that are renewed exceed the three year timeframe*; or
- Until all pending matters, are resolved. Pending matters include contract disputes, audit, investigative and review findings.

The Federal record retention period begins with the later of the date:

- The final payment is made under the contract;
- The contract concludes; or
- The final claim for reimbursement for the fiscal year in which the contract concludes is submitted.

For renewable contracts, records of the initial procurement action through the conclusion of the final renewal must be maintained. For example, a contract is executed on August 1, 2013, and renewed individually for four more years, concluding on July 31, 2018.

BRIGHT FROM THE START REPORTING REQUIREMENTS

Contracts must provide notice of the organization’s responsibility to meet CACFP, SFSP, and Bright from the Start’s reporting requirements, including applicable program regulatory citations. This notice should identify the contractor’s responsibility to provide information that will permit the organization to comply with its reporting requirements. Contract terms should identify the records, data and documents the contractor must supply to the organization and the timeframes for submission.

For procurements exceeding the Simplified Acquisition Threshold (SAT) of \$250,000. You must provide Bright from the Start the following documentation for **review and written approval BEFORE and AFTER Solicitation**:

Before Solicitation	After Solicitation
Company Procurement Policy	Proof of Advertisement Posting
Company Written Standard Codes of Conduct	Completed copies of evaluation/scoring sheets from evaluator(s) and selection of apparent winner based on evaluation.
Public Advertisement and Notice	Bids from Respondents <ul style="list-style-type: none"> • CACFP Bids over \$50,000 • SFSP Bids over \$100,000
Evaluation Scoring Sheet Template (Must be on Pass/Fail basis for Invitation for Bids)	Reasoning for selection of winner (only for those being awarded and did not provide lowest price)
Copy of Invitation for Bid/Request for Proposal package	

GA ATLAS – UPLOADING PROCUREMENT DOCUMENTS

Procurement and solicitation documents must be uploaded to GA ATLAS under the attachment list and/or checklist summary corresponding to the budgeted cost line item **before** submitting the budget. Please be sure to name the document(s) as appropriate. The procurement documents must prove free, open, and fair competition was achieved and the most responsive and responsible bidder providing the lowest price was selected.

ACCESS TO RECORDS

While not required for nonprofit institution contracts below the Simplified Acquisition threshold, FNS recommends nonprofit institutions include an access to record provisions in all contracts. Contract terms must provide access to books, documents, papers and records of the contractor and any subcontractors by the Federal government, the grantee and institution.

The contract terms must ensure that sufficient access is provided to the entire scope of records required to determine contract compliance and cost allow-ability for costs charged to the nonprofit food service.

SOLICITING LOCAL SCHOOLS

Organizations and Institutions that use School Food Authority facilities must enter into a written agreement with the school, but are not required to utilize the competitive bid procedures described below if the school itself does not obtain its meals from an FSMC. This written agreement must contain all the pertinent parts of the meal arrangement. The organization may use the sample Agreement found in Appendix C for this purpose.

CONTRACTING WITH A FOOD SERVICE MANAGEMENT COMPANY OR FOOD VENDOR

Food service management company (FSMC) means any commercial enterprise or nonprofit organization with which a sponsor may contract for preparing unitized meals, with or without milk, for use in the program, or for managing a sponsor's food service operations in accordance with the limitations set forth in the program regulations on management responsibilities of sponsors. Food service management companies may be (a) public agencies or entities; (b) private nonprofit organizations; or (c) private, for-profit companies.

Food Vendors are any commercial enterprise with which an institution/sponsor may contract for food items for use in the food service program in accordance with the limitations set forth in the program regulations on management responsibilities of sponsors.

There are some specific program management responsibilities that sponsors may not contract out to an FSMC or Food Vendor, including, but not limited to:

- Ordering meals;
- Assuming official recordkeeping responsibilities;
- Submitting claims;
- Training and monitoring administrative and site staff;
- Announcing availability of meals to the news media; and
- Determining income eligibility and maintaining individual income eligibility statements.

Sponsors should check with the BFTS before allowing an FSMC or Food Vendor to undertake any other tasks that may have been identified as management functions that may not be delegated.

A food service management company or food vendor cannot subcontract for the total meal, with or without milk, or for the assembly of the meal.

Contracting for Summer Food Service Program (SFSP)

The duration of an agreement with an FSMC or Food Vendor generally is limited to a single year, due to the nature and design of the SFSP. However, to be consistent in the administration of all child nutrition programs, SFSP sponsors, with State agency approval, may execute agreements with FSMCs or Food Vendors that include an option for renewal that does not exceed four additional years from the original agreement. This optional extended agreement streamlines the procurement process with FSMC/Food Vendor contracts but does not compromise the integrity of SFSP.

FOOD SERVICE MANAGEMENT COMPANY (FSMC) AND FOOD VENDOR REQUIREMENTS

Health Certification and Inspection

An FSMC/Food Vendor must have State or local health certification for the facilities used to prepare meals/food items. The company must ensure that health and sanitation requirements are met at all times. In addition, the company must ask local health authorities or independent agencies to periodically inspect the meals they serve to determine bacteria levels. These levels must conform to the standards set by local health authorities. The company must submit the results of the inspections promptly to the sponsor and the State agency.

State Agency Inspections

FSMCs also should be aware that BFTS must inspect the FSMC's facilities as part of the sponsor review. In addition, the Sponsor may conduct inspections of food preparation facilities and food service sites and perform meal quality tests. This inspection is independent of the one the FSMC provides.

Records

FSMCs and Food Vendors must maintain records (supported by invoices, receipts, or other evidence) that the sponsor needs to meet program responsibilities. Companies must report to the sponsor at the end of each month, at a minimum. The FSMC and/or Food Vendor must keep the books and records

concerning the sponsor's food service operations for three years or longer if required by BFTS, from the date of receipt of final payment under the contract. Representatives of BFTS, USDA, and the United States General Accountability Office may examine or audit these records at any reasonable time and place. Records must be retained longer if there is an unresolved audit or investigation.

Subcontracts

FSMCs may not subcontract with another company for the total meal (with or without milk) or for assembling of the meal. Subcontracting is prohibited because it inflates costs and lessens the sponsor's control over the quality and supply of the meals.

Contract Responsibility

It is important for the prospective FSMC and/or Food Vendor to realize that the contract is a private contract between the FSMC/Food Vendor and the sponsor. Neither USDA nor the State agency has any jurisdiction in the payments made to the FSMC/Food Vendor. Before contracting to provide meals or food items, the FSMC/Food Vendor needs to assess the institution/sponsor's capability to meet the terms of the contract and the institution/sponsor's capability to pay them for all meals and/or food items that are properly delivered. If applicable, the company should become familiar with the institution/sponsor's past performance in this or other federally funded programs.

PROHIBITED PRACTICES

Prohibited Practices are actions that limit, restrain or restrict competition. Prohibited practices include:

- Non-competitively awarded contracts, regardless of amount. Awarding a contract without competition is prohibited in all cases. This prohibition applies regardless of the method of award used, i.e., small purchase or formal procurement procedures, including noncompetitive negotiation. Costs resulting from noncompetitive awards are unallowable nonprofit food service account expenses;
- Awarding a contract to a potential contractor that drafted bid or proposal specifications, contract terms or conditions, or other procurement or contract documents or procurement process procedures;
- Unreasonable requirements placed on firms for them to qualify to do business; this includes:
 - a. Imposing excessive bonding requirements;
 - b. Requiring excessive or inappropriate liability insurance; and
 - c. Requiring specific skills, education or experience beyond what is needed to perform successfully.
- Geographical preferences or procedures that provide a competitive advantage based on geographic location in the evaluation or award of bids or proposals. State statutory or administratively imposed in-State or local geographic preferences are prohibited in all procurements conducted under the Child Nutrition Programs. This prohibition does not conflict with the statutory requirements for "Buy American;" Geographical preferences are not prohibited for non-public institutions following 7 CFR 210.21(g); The geographic

preference, authorized by Section 4302 of Public Law 110-246, the Food, Conservation, and Energy Act of 2008, which amended Section 9 (j) of the Richard B. Russell National School Lunch Act, of the procurement of unprocessed locally grown or locally raised agricultural products, is also excluded.

- Limiting, without cause, the time to respond to a solicitation to the extent that competition is irreparably impaired;
- Seeking price quotes from only one source under small purchase procedures when more than one source is available;
- Contacting suppliers who are related or affiliated with one another;
- Drafting specifications, other procurement terms, award criteria or contract terms so that only one source can respond successfully;
- Failing to draft procurement documents that accurately describe all of the goods and services to be obtained or performed. This includes failing to notify potential FSMC contractors under the cost reimbursable contract pricing method that all reimbursable costs for purchased goods and services must be competitively procured, i.e., foods, nonfood supplies, subcontracted labor, etc.;
- Awarding a contract without conducting noncompetitive negotiations when inadequate competition exists;
- Failing to negotiate in good faith with potential suppliers so that the award is given to a preferred supplier;
- Collusion and noncompetitive pricing among firms and affiliated companies;
- Allowing a potential contractor to draft bid or proposal specifications, contract terms or conditions, or other procurement or contract documents or procurement process procedures;
- Using descriptions of goods or services that unreasonably restrict competition, such as using a specific brand name instead of issuing product specifications;
- Negotiating with a firm prior to evaluating proposals;
- Negotiating with any bidder, at any time, when competitive sealed bid procurement is used;
- Providing only certain firms with the results of pre-bid meetings or answers to bid or proposal questions;
- Releasing the contents of a bid or proposal to other bidders or proposal offerors prior to public bid opening or proposal evaluation;
- Organizational conflicts of interest;
- Less-than-arms-length transactions;
- Intentionally subdividing a purchase to avoid formal competitive procurement;
- Failing to comply with applicable State or local rules, including substituting a less restrictive State or Federal procurement small purchase threshold, unless specifically permitted;
- Failing to publicly advertise formal procurements.

SFSP SPONSORS SERVING AS FOOD VENDORS/FSMC'S

GA DECAL instructs SFSP sponsors with additional business activities involving the sale of meals (serving as vendor or FSMC's) to properly allocate shared costs. Additionally, SFSP sponsors are required to document whether they are using a vendor or FSMC to prepare meals through completing items #37-46 of the Institution Application section in GA ATLAS. Costs associated with producing both agreed-upon Program meals and non-Program meals are considered "shared costs" and DECAL requires these costs to be allocated in the SFSP sponsor's Program budget based upon "the number meals served." Costs contributing to the production of meals sold to other SFSP sponsors, or to other non-SFSP entities, are not considered allowable SFSP costs and must be paid with income (revenue) from the sale of those meals or another income source. Please see the Budget Guidance Manual and SFSP memorandum titled "Reporting and Allocating Program Costs Associated with SFSP Sponsors Serving as Food Vendors and/or Food Service Management Companies to other SFSP Sponsors or Non-SFSP Entities" for additional guidance and information.

GLOSSARY

Aggregate is the total amount of purchases the Institution/sponsor has determined for a single item or related group of items for a period of time; i.e. one (1) year, one (1) quarter, weekly, monthly or other period of time as determined by the Institution/sponsor.

Agreement is the written documentation that results from an award under the small purchase procedures. The agreement can be as simple as a purchase order or as formal as a contract.

Allowable cost means an amount meeting the requirements of the applicable Program, State and USDA regulations, guidance and instructions and the OMB Cost Circulars.

Award is the acceptance of a bid or proposal from a potential contractor that leads to the execution of a binding contract between the parties.

Bid means an offer to perform for a fixed price, in accordance with the specifications and conditions set forth in an invitation for bids.

Bidder is a prospective contractor in a competitive sealed bidding procurement.

Code of Conduct must prohibit employees from soliciting gifts, travel packages, and other incentives from prospective contractors. In addition, the code of conduct must prohibit an employee from participating in the selection, award, and administration of any contract to which an entity or certain persons connected to them, have financial interest. The code of conduct must also provide for Institutions/sponsors to set standards when financial interest is not substantial or the gift is an unsolicited item of nominal value and may be acceptable. Finally, the code of conduct must provide for disciplinary actions to be applied in the event the standards are violated.

Competitive Proposal Procurement is a competitive procurement method used when the best value is expected to result from selection of technically acceptable proposals, with the lowest evaluated price, in other words, when cost is not the most important factor of evaluation. The negotiated procurement method relies on a solicitation document called *request for proposals* (RFP).

Competitive Sealed Bidding is a competitive procurement method used when the best value is expected to result from a selection of the lowest evaluated priced offer. It relies on a solicitation document called *Invitation for bids* (IFB) or *Request for Proposals* (RFP).

Conflict of Interest arises when one of the following has a financial or other interest in the vendor/contractor selected for the purpose or award of the contract.

Contracting institution is the organization that has the authority to enter into, administer, or terminate contracts and make related determinations and findings.

Contractor is a commercial enterprise, public or nonprofit private organization or individual that enters into a contractual arrangement with a school food authority, CACFP institution or SFSP sponsor.

Contract is a mutually binding, legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them. Under Federal procurement requirements, a contract must be in writing. A written contract that encompasses the rights, responsibilities, obligations and prohibitions of the parties is required when formal procurement methods are used. The term contract includes subcontracts under contracts.

Cost means an amount determined on cash, accrual or other basis acceptable to contracting agency.

Cost Plus a Percentage of Cost is a prohibited contract cost method that provides the contractor with revenue above costs based upon a percentage of the costs incurred by the contractor.

Cost Plus a Percentage of Income is a prohibited contract cost method for FSMC contracts. The cost plus a percentage of income cost method provides the contractor with revenue above costs based on a percentage of income derived from contract activities.

Cost Reimbursable is a contract cost method that reimburses the contractor for the actual, allowable net costs incurred under the contract.

Cost Reimbursable with Fixed Fee is a type of cost reimbursable contract that includes reimbursement for costs plus a fee fixed on a per unit basis or lump sum.

Discounts are reductions applied to current prices.

Ethics means the moral standards individuals use to guide decisions. Ethical behaviors are practices that promote free and open competition.

Firm Fixed Price is a contract cost method that establishes a fixed price, usually on a per unit basis, for the goods and/or services provided by the contractor for the duration of the contract, including renewals.

Firm Fixed Price with Economic Price Adjustments is a contract cost method that allows for upward and downward price adjustments to the stated contract price when certain events that are specified in the contract occur. Dairy product contracts in the CN programs that have price changes indexed to milk marketing orders are an example of this form of contract pricing.

Firm Fixed Price with Prospective Price Redetermination is a contract cost method that establishes a firm fixed price for the initial contract period, but allows for changes (increases or decreases), at stated times. Often, the time period for a price change coincides with contract renewal.

Formal Procurement Methods include Sealed Bid and Competitive Proposal procurement methods. Formal procurement methods are required when the expenditures for annual aggregated purchases exceed the small purchase threshold.

Food Service Management Company means any commercial enterprise or nonprofit organization with

which a sponsor may contract for preparing unitized meals, with or without milk, for use in the program, or for managing a sponsor's food service operations in accordance with the limitations set forth in the program regulations on management responsibilities of sponsors. Food service management companies may be (a) public agencies or entities; (b) private nonprofit organizations; or (c) private, for-profit companies

Invitation for bid is the document used to solicit a response in the sealed bid procurement method. The invitation for bid specifically defines the goods or services for which bids are sought and includes instructions prescribing all conditions for bidding.

Less-than-arms-length transaction is one under which one party to the transaction is able to control or substantially influence the actions of the other(s). Such transactions include, but are not limited to those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization and a director, trustee, officer, or key employee of the school/ institution/sponsor or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

Market Basket Analysis is a method of awarding contracts based on an evaluation of the lowest price a vendor can offer using a representative sample of goods being requested.

Master supplier list means a list of suppliers that have satisfied specific criteria for participation in procurement transactions.

Micro –purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does NOT exceed the micro-purchase threshold. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is (< \$10,000) except as otherwise discussed in Subpart 2.1 or that regulation.

Noncompetitive Contract is a contract awarded without any competition. Noncompetitive contracts do not include sole source contracts or contracts awarded under noncompetitive negotiation, both of which require negotiation. Costs resulting from noncompetitive contracts are unallowable in all Child Nutrition Programs.

Noncompetitive Negotiation is a procurement method that requires negotiation with at least one potential supplier and can only be used in specific situations.

Offer is the response submitted by a prospective contractor under a competitive proposal or noncompetitive negotiation procurement.

Offeror is the prospective contractor under competitive proposal or noncompetitive negotiation procurement.

Procurement is the process of acquiring goods and/or services.

Purchases include cash, credit, rental, and barter transactions.

Qualified product list means a list of products that have been examined, tested and have satisfied all applicable qualification requirements.

Rebates are price reductions applicable to prior prices.

Request for proposal is the document used to solicit a response in the competitive negotiation procurement method. The request for proposal includes general information, functional or general specifications, statement of work, proposal instructions and evaluation and ranking criteria.

Renewal means contracting with the same contractor for an additional contract period, after the initial contract period, pursuant to contract terms that specially provided for the renewal.

Responsive means a bid or offer meets all material requirements of the solicitation.

Responsible means the bidder possesses the ability to perform successfully under the terms and conditions of the proposed award.

Sealed Bid Procurement is a formal method of procurement that uses sealed bidding and results in a firm, fixed price contract awarded to the responsible bidder, whose bid, conforming to all the material terms and conditions of the invitation for bid, is lowest in price.

Simplified Acquisition Threshold means the dollar amount below which a purchase or services may be made using small purchase methods. Currently, the Federal acquisition small purchase threshold is set at \$250,000.

Sole source means an item with no functional equivalent that is available on a national and international basis from only one source. It does not apply when competition is limited due to a lack of local suppliers or when an item that is made by only one manufacturer is distributed and available through more than one supplier.

Solicitation is an Invitation for Bid, Request for Proposal or small purchase procedure price quote request.

Specification is the description of the characteristics of specific goods or services. A specification contains the explicit requirements furnished with a solicitation upon which purchases order or contract is to be based. Specifications set forth the characteristics of the goods and services to be purchased so as to enable the vendor to determine and understand what is to be supplied. This information may be in the form of a description of the physical, functional, or performance characteristics and it may include a description of any requirement for inspecting, testing, or preparing a material, equipment, supplies, or service for delivery. Specifications may be incorporated by reference and/or through attachment to the solicitation.

Unallowable cost is the amount of any cost which, under the provisions of the pertinent law, regulations or contract, cannot be included in prices, cost-reimbursements or charges under the contract to which it

is allocable. The amount may be specifically prohibited as a cost in the Child Nutrition programs or fail to meet the requirements of an allowable cost.

Vendor means a merchandiser of complete meals, meal components, or raw materials

STEP-BY-STEP PROCUREMENT CHECKLIST



Georgia Department of Early Care and Learning

2 Martin Luther King Jr. Drive, SE, Suite 754, East Tower, Atlanta, GA 30334
(404) 656-5957

Brian P. Kemp
Governor

Amy M. Jacobs
Commissioner

WRITTEN PROCUREMENT PROCEDURES CHECKLIST for the CHILD AND ADULT CARE FOOD PROGRAM (CACFP) and/or SUMMER FOOD SERVICE PROGRAM (SFSP)

Name of Institution

Agreement Number

The procurement procedures will be implemented on _____ from that date forward until amended. All purchase acquisitions must adhere to free and open competition. Source documentation must be available to determine open competition, the reasonableness, the allowability and the allocation of costs.

Signature of Chief Executive or Program Contact

Date

Organization

Signature of Board Officer (when applicable)

Date

Organization

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:

Mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
Fax: (202) 690-7442; or
Email: program.intake@usda.gov.
This institution is an equal opportunity provider.

General Description of Goods and/or Services

Check the proposed vendor type your organization primarily uses, then follow the steps. If more than one is selected, please determine the procurement method for each located on Page 3. Then complete separate checklist starting on page 5 per purchase acquisition.

- School Food Authority/Board of Education School System** (Complete Step 1a - Submit a copy of agreement to furnish food CACFP or SFSP to DECAL)
 - Name: _____
- Food Service Management Company
 - Name: _____
- National Vendor or Group Buying Organization (applies to Multi-State Sponsors – Complete Step 1b: Submit a copy of Procurement Policy and Master Agreement)
 - Name: _____
- State/Local/City Government or University System
 - Name: _____
- Military/National Defense
 - Name: _____
- Vendor(s)
 - Name: _____
 - Name: _____
 - Name: _____
 - Name: _____
 - Name: _____

Step 1a: If using a School Food Authority/Board of Education School System

- 1) Submit a copy of the Agreement to Furnish Food -Appendix C;
- 2) Sign and date on page 4 of this checklist. You do not have to complete the remaining steps. Proceed to Page 5.

Step 1b: If using a National Vendor or Group Buying Organization

- 1) Submit a copy of Vendor Master Agreement along with Procurement Policy
- 2) Sign and date on page 4 of this checklist. You do not have to complete the remaining steps. Proceed to Page 5.

Step 2: Find your type of institution, refer to column 5 of the Step-by-Step Guide (page 4 of Procurement Manual), then check below the procurement codes that were used when making the purchase.

Public School or Government Agency

- State procurement codes
- Local procurement codes
- Agency own procurement codes (must at the minimum meet Federal requirements or be more restrictive than Federal requirements)

Private For/Non-profit Organization

- Using Federal procurement codes (must adhere to all requirements and provisions in 2 CFR 200.318-326)

- Institutions own procurement codes (must at the minimum meet Federal requirements or be more restrictive than Federal requirements)

Step 3: Indicate the aggregate (total) amount of meals to be purchased for the upcoming contract year. Refer to the Step-by-Step Guide for information on how to determine the aggregate amount of the contract.

Price per Meal	Meal Type	X	# Meals Needed Per Day *	X	# of Operating Days for Contract Period **	=	Estimated Total Cost of Food Service Contract
\$	Breakfast	X		X		=	\$
\$	AM Snack	X		X		=	\$
\$	Lunch	X		X		=	\$
\$	PM Snack	X		X		=	\$
\$	Supper	X		X		=	\$
\$	Evening Snack	X		X		=	\$
					Total Estimated Cost of Food Service for Contract Period***		\$

If the number of meals varies per day, submit documentation to indicate how the organization estimated the number of meals needed for the contract period and determined the total contract price. The contract period should not extend beyond one year. Therefore, the number of operating days should equal the total number for the year. If contract price is below Small Purchase threshold, an Agreement can be signed. Otherwise formal procurement must be conducted.

Step 4: Disclose the small purchase threshold of the code being used for your organization. If the Total Estimated Cost of Food Service amount in Step 3 is larger than the small purchase threshold, formal procurement is required. Check the type of procurement conducted.

Public School or Government Agency - State/local small threshold is \$ _____.

- Over \$ _____ formal procurement must be conducted.

Private Non/For-profit Organization- Federal small purchase threshold is up to \$250,000. Check applicable response.

- Using Federal Threshold Limits for Micro, Small, and/or Formal Purchases.
- Institution's own small purchase threshold is \$ _____.
- Institution's own formal procurement threshold is \$ _____.
- Purchases during Program Year will not require formal procurement. Will be using informal procurement procedures.

If an informal procurement can be used, do not proceed to Step 5. The institution may use the Agreement to Furnish Food-Appendix C provided by Bright from the Start with the prospective vendor. Submit the Agreement with this checklist.

Step 5: If formal procurement was necessary, indicate the method that was used.

- Sealed Bid – **Must use Bright from the Start’s prototype Invitation for Bid or Request for Proposal unless waiver granted by State Agency**
- Other: _____ (Must have prior approval from State Agency and or USDA.)

I certify that the organization has made every effort in good faith to conduct a procurement process in compliance with the applicable regulations and will maintain all documentation of the procurement process.

Signature of Authorized Official

Date

Disclaimer: This document is a sample and is not intended to be all inclusive. Institutions and sponsors are ultimately responsible to ensure that when exercising procurement (purchase acquisition), all Federal Regulations, State Procurement Code and Regulations and local procurement policies are applied and the process meets Bright from the Start: Georgia Department of Early Care and Learning’s (DECAL) approval.

I. DETERMINING WHICH PROCUREMENT METHOD TO USE**INFORMAL PROCUREMENT**

Purchases below \$250,000.00 require micro purchases or small purchase procurement methods. When using these methods, institutions and sponsors must obtain at least two written quotes (recommended three quotes) from qualified sources and must maintain the documentation in accordance with DECAL's CACFP and/or SFSP recordkeeping policies. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable. Note: Although not required, institutions and sponsors may use formal procurement methods for small purchases as a preference.

 Micro Purchase

Procurement by micro-purchase, a subset of the small purchase method, is the purchase of supplies or services, the aggregate and/or transaction dollar amount of which does not exceed the micro-purchase threshold of \$10,000.00. Aggregate can be defined in terms of quarterly, annual, or etc. spend in a period of time. This must be stated in the purchasing policy prior to conducting the purchase.

Micro purchases are defined as transactions or costs in the aggregate of supplies or services that do not exceed the micro purchase threshold of \$10,000. Micro-purchase procedures are used in order to expedite the completion of the lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. Purchases must, to the extent practicable, be equitably distributed among qualified suppliers and purchases shall not be split (in the same categorized grouping) to avoid the requirements for competition above their respective thresholds.

A detailed checklist for both the small and micro-purchase procurement processes can be found on Bright from the Start (BFTS) Procurement Manual.

 Small Purchase (Simplified Acquisition Threshold)

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods [2 C.F.R. §200.88]. The small purchase threshold remains at \$250,000 for all Child Nutrition Programs. This means institutions and sponsors must use formal procurement methods to procure anything that costs more than \$250,000.00. State and local agencies may set a lower small purchase threshold and thereby impose more restrictive procurement methods as authorized in 7 C.F.R., §226.22(c)(1) (CACFP) and 7 C.F.R., §225.17(c) (SFSP). If this is the case, State and local procurement requirements would apply thereby superseding the Federal threshold.

The small purchase threshold applies to the same vendor during a one-year period. For example, if a school plans to purchase \$250,000.00 or more worth of products in one year from the same vendor, the institution or sponsor must use the formal procurement method. Institutions and sponsors are prohibited from arbitrarily splitting purchases, whether the purchase is coming from the same vendor or not, if the only justification is to keep the price below the small-purchase threshold.

USING THE INFORMAL PROCUREMENT METHOD

If the amount of purchases for items is less than the small purchase threshold, the institution/sponsor will follow **SMALL PURCHASE** (purchases under \$250,000.00) or **MICRO PURCHASES** (purchase transaction(s) and/or aggregate category costs under \$10,000.00) procurement procedures. The following are required under the small purchase and/or micro-purchase procurement procedures.

- Written specifications will be prepared and provided to the vendor.
- Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. A minimum of two (2) or more responsive and responsible vendors shall be contacted (**not required for micro-purchases**).
- The (Title of person/position) will be responsible for contacting potential vendors when price quotes are needed.
- The price quotes will receive appropriate confidentiality before vendor selection(s).
- Quotes will be selected by (Title of person/position). Quotes selected will be the lowest and best quote based upon quality, service availability, price, and/or _____.
- The (Title of person/position) will be responsible for documentation of records to show selection of vendor, reasons for selection, names of all vendors contacted, price quotes from each vendor, and written specifications (**not required for micro-purchases**).
- The (Title of Person) will be responsible for documentation that the actual product specified is received/proof of payment.
- Any time an accepted item is not available, the (Title of person/position) will select the acceptable alternate. Full documentation will be made available as to the selection of the acceptable item.
- Quotes will be selected on the following criteria (**not required for micro-purchases**):
 - Price _____ (Ex.: quality, delivery, service, etc.)
 - _____
 - _____
- The (Title of person/position) is required to sign all quote tabulations, signifying a review and approval of the selections.

FORMAL PROCUREMENT

Purchases at or above the simplified acquisition threshold of \$250,000.00 require full and open competition and/or outside of full and open competition methods that are consistent with 2 C.F.R. §200.319, 7 C.F.R. §§ 225.15, 225.17 and 7 C.F.R. 226.22. The goal of full and open competition is to ensure objective contractor performance, transparency, and eliminate unfair competitive advantage. Due to the potential for purchases beyond \$250,000.00, it will be the responsibility of (Title of person/position) to document the amounts to be purchased so the correct method of procurement will be followed. The following summarizes formal procurement methods. The **institution/sponsor will use the formal procurement method selected:**

Sealed Bid (Formal Advertising): Invitation for Bid (IFB)

Sealed bids are a competitive procurement method used when the best value is expected to result from a selection of the lowest evaluated price offer. The bids are specific, are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded. This procurement method relies on a solicitation document called an Invitation for Bids (IFB). A detailed checklist for completing the IFB process can be found in Section II, A, 1.

Competitive Negotiation/ Request for Proposal (RFP)-CACFP ONLY

A Competitive Negotiation or Request for Proposal (RFP) is a competitive negotiation procurement method used when the best value is expected to result from selection of technically acceptable proposals and when cost is the primary consideration while evaluation criteria are specified in the solicitation (i.e. delivery, packaging requirements, etc.). RFP's are requested from a number of sources and is publicized.

Negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. The proposals shall be solicited from an adequate number of qualified bidders to permit reasonable competition consistent with the nature and requirements of the procurement. The institution shall provide a scoring method for technical evaluation of the proposal received, determinations of responsible bidders for the purpose of written or oral discussions, and selection for contract award. The award may be made to the responsible bidder whose proposal will be most advantageous to the Institution. Unsuccessful offerors must be notified promptly. **A competitive proposal is not a required procurement method in the SFSP.** A detailed guide on the RFP process can be found: <http://www.theicn.org/ResourceOverview.aspx?ID=70> (Page 21)

USING FORMAL PROCUREMENT

Invitation for Bid (IFB) or Competitive Proposal (Request for Proposals)

When a formal procurement method is required, the institution/sponsor will apply the following Invitation for Bid (IFB), or Competitive Negotiation (Request for Proposals) procedures:

- Prepare the solicitation using the **Invitation for Bid (IFB) or a Request for Proposal (RFP)** template.
- An advertisement is required for all purchases over the small purchase threshold of (\$250,000 or the State required threshold if it is more restrictive than the Federal small purchase threshold.)
- An announcement (advertisement, public notice or legal notice) of an Invitation for Bid (IFB) or a Request for Proposal (RFP) will be placed in the _____ (Newspaper/media, IPS Website, other internet source) to publicize the intent of the institution/sponsor to purchase needed items. Electronic means of soliciting are encouraged through social media, and/or e-procurement platforms; however, should be used in conjunction with newspaper advertisements. The advertisement for bids/proposals or legal notice will run at least once 14 calendar days before the day the bid closes.
- The public announcement will contain at the minimum:
 - For vended meals, the School Food Service first right of Refusal Letter.
 - General description of items to be purchased (i.e. meal service), procurement type, USDA non-discrimination statement, CACFP/SFSP purpose, begin and end dates of CACFP/SFSP contract operation dates,

- Deadline for submission of questions and the date written responses will be provided including addenda to bid specifications, terms and conditions as needed,
 - Contact person to receive bids, date of pre-bid meeting, if provided, and if attendance is a requirement for bid award,
 - Deadline for submission of sealed bids or proposals, and
 - Address of location where complete specifications and bid forms may be obtained.
 - Please refer to BFTS Appendix B: Advertisement Checklist.
<http://www.decal.ga.gov/documents/attachments/ADChecklist.doc>
- The institution/sponsor will notify DECAL of the time and place 14 calendar days before the bid opening.
- In an IFB or RFP, each vendor will be given an opportunity to bid on the same specifications. Create bid specification sheet to attach to bid document.
- The developer of written specifications or descriptions for procurements will be prohibited from submitting bids or proposals for such products or services.
- The IFB or RFP will clearly define the purchase conditions. The following list includes requirements, not all inclusive, that must be addressed in the procurement document and policy (if not using template):**
- Contract period (Maximum of 5-years; inclusive of applicable 1-year renewals)
 - The institution/sponsor is responsible for all contracts awarded (statement)
 - Date, time, and location of bid opening (IFB); proposal submission deadline/closing dates
 - How vendor is to be informed of bid acceptance or rejection
 - Delivery schedule
 - Set forth requirements (terms and conditions) which bidder must fulfill in order for bid to be evaluated
 - Benefits to which the institution/sponsor will be entitled if the contractor cannot or will not perform as required
 - Statement assuring positive efforts will be made to involve minority and small business; provisions stated in 2 CFR §200.321(a)(b)(i-vi)
 - Statement regarding the return of purchase incentives, discounts, rebates, and credits to the institution/sponsor non-profit Child Nutrition account
 - Contract provisions as required in 2 CFR § 200.326
- Price adjustment clause (escalation/de-escalation) based on appropriate standard or cost index (Consumer price index, or other as stated in terms and conditions for pricing and price adjustments)
 - Contract provisions as required in 2 CFR § 200.101 for all cost reimbursable contracts
 - Method of evaluation and type of contract to be awarded
 - Method of award announcement and effective date (if intent to award is required by State or local procurement requirements)
 - Specific bid protest procedures including contact information of person and address and the date by which a written protest must be received
 - Provision requiring access by duly authorized representatives of the institution/sponsor, DECAL, United States Department of Agriculture, or Comptroller General to any books, documents, papers and records of the contractor which are directly pertinent to all negotiated contracts
 - Method of shipment or delivery upon contract award
 - Provision requiring contractor to maintain all required records for *three* years after final payment and all other pending matters (audits) are closed for all negotiated contracts
 - Description of process for enabling vendors to receive or pick up orders upon contract award

- Provision requiring the contractor to recognize mandatory standards/policies related to energy efficiency contained in the State Energy Plan issued in compliance with the Energy Policy and Conservation Act (PL 94-165)
 - Signed statement of non-collusion (non-conspiracy) and Conflict of Interest form.
 - Signed Debarment/Suspension Certificate or statement included in contract or copy of Excluded Parties List System (EPLS).
 - Statement regarding institution/sponsor may apply geographic preference when procuring unprocessed locally grown or locally raised agriculture products.
 - Bonding requirements as outlined in 225.15(5-7) (SFSP only) and 200.325 (CACFP/SFSP).
- Specifications and estimated quantities of products and services prepared by the institution and provided to potential contractors desiring to submit bids/proposals for the products or services requested.
- If any potential vendor is in doubt as to the true meaning of specifications or purchase conditions, interpretation will be provided in writing to all potential bidders by (Title of person/position) and date specified.
- The (Title of person/position) will be responsible for securing all bids or proposals.
- The (Title of person/position) will be responsible to ensure all SFA procurements are conducted in compliance with applicable Federal, State, and local procurement regulations.
- The following criteria will be used in awarding contracts as a result of bids/proposals.
- i. Price
 - ii. _____ (Ex.: quality, delivery, service, etc.)
 - iii. _____
- Only Request for Proposals have a set of award criteria in the form of a weighted evaluation sheet will be provided to each bidder in the initial bid document materials. Price alone is not the sole basis for award, but remains the primary consideration when awarding a contract. Following evaluation and negotiations, a firm fixed price or cost reimbursable contract is awarded.
- The contracts will be awarded to the responsible bidder/proposer whose bid or proposal is responsive to the invitation and is most advantageous to the institution/sponsor's price, and other factors considered. Any and all bids or proposals may be rejected in accordance with law.
- (Title of person/position) is required to sign on the bid tabulation of competitive sealed bids or the evaluation criterion score sheet of competitive proposals signifying a review and approval of the selections.
- (Title of person/position) is responsible for reviewing the procurement system to ensure compliance with applicable laws.
- (Title of person/position) is responsible for documentation the actual product specified is received.
- Any time an accepted item is not available, the (Title of person/position) will select the acceptable alternate. The contractor must inform (Title of person/position) (time/by when) a product is not available. In the event a non-domestic agricultural product is to be provided to the institution/sponsor, the contractor must obtain, in advance, the written approval of the product.
- Full documentation as to the reason an accepted item was unavailable, and to the procedure used in determining acceptable alternates, will be available for audit and review. The person responsible for this documentation is (Title of person/position).

- The (Title of person/position) responsible for maintaining all procurement documentation.
- The (Title of person/position) **will monitor contractor performance to make sure the institution/sponsor:**
 - Receives the quantity and quality of the goods and services requested;
 - Receives the goods and services on time; and
 - Is charged correct prices as bid and within budget.

NON-COMPETITIVE PROCUREMENT

Procurement by a noncompetitive proposal is procurement through solicitation of a proposal from only one source, or a sole source, thus limiting full an open completion. Sole (single) source procurement requires prior written approval by GA DECAL and the United States Department of Agriculture (USDA) Food and Nutrition Services Regional Office (FNSRO).

Noncompetitive proposals may be used only when one or more of the following circumstances apply:

- The item is available only from a sole (single) source, meaning only one responsible source is available and no other supplies or services will satisfy the solicitors requirements (Requires approval from GA DECAL and USDA) ;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- USDA or DECAL expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity;
- For National security purposes or public interest; or
- After solicitation of a number of sources, competition is determined inadequate.

A detailed checklist for completing the non-competitive proposal process can be found on <http://www.theicn.org/ResourceOverview.aspx?ID=70> (Page 30)

USING NON-COMPETITIVE PROCUREMENT

If items are available **only** from a single source *when the award of a contract is not feasible under small purchase, sealed bid or competitive negotiation*, the institution/sponsor will use the following **NON-COMPETITIVE PROPOSAL** (non-competitive negotiation) procedures:

- Written specifications will be prepared and provided to the vendor.
- The (Title of person/position) will be responsible for the documentation of records to fully explain the decision to use the non-competitive negotiation. The records will be available for audit and review.
- The (Title of person/position) will be responsible for documentation (i.e., sole-source justification form, etc.) that the actual product or service specified was received.
- The (Title of person/position) will be responsible for reviewing the procedures to be certain all requirements for using single source or non-competitive proposals are met.
- Non-competitive proposals shall be used for one-time purchases of a new food item in order to determine food acceptance by students and for samples for testing purposes. A record of non-competitive proposal purchase shall be maintained by the institution/sponsor. The record of non-competitive purchases shall include, at a minimum, the following: item name, dollar amount, vendor, and reason for non-competitive procurement

- A member or representative of the institution/sponsor Governing Board and DECAL will approve, in advance, all procurements that result from non-competitive proposals.

II. MISCELLANEOUS PROVISIONS (If, Applicable)

- New product evaluation procedures will include:
 - _____
 - _____
 - _____
- The institution/sponsor agrees that the reviewing official of each transaction will be the (Title of person/position).
- Payment will be made to the vendor when the contract has been met and verified and has met the [Name of Institution's] procedures for payment. (If prompt payment is made, discounts, etc. are accepted.)
- Specifications will be updated as need.
- If product is not as specified, the following procedure will take place:
 - _____
 - _____
 - _____

III. RETAINING PURCHASE ACQUISITION RECORDS for CACFP and SFSP

The institution/sponsor shall agree to retain all books, records and other documents relative to the award of the contract for three (3) years after final payment. Specifically they shall maintain, at a minimum, the following documents:

- Written rationale for the method of procurement;
- A copy of the original solicitation;
- The selection of contract type;
- The bidding and negotiation history and working papers;
- The basis for contractor selection;
- Approval from the State agency to support a lack of competition when competitive bids or offers are not obtained;
- The basis for award cost or price;
- The terms and conditions of the contract;
- Any changes to the contract and negotiation history;
- Billing and payment records;
- A history of any contractor claims; and
- A history of any contractor breaches.

References:

IV. IMPLEMENTING CODES OF CONDUCT AND PERFORMANCE OF EMPLOYEES ENGAGED IN AWARD AND ADMINISTRATION OF CONTRACTS

The institution/sponsor shall ensure all persons who are engaged in the awarding and administration of contracts supported by CACFP and SFSP Funds follow the written standards of conduct as outlined in 2 CFR §200.318(c). DECAL Policy Memorandum, *Written Codes of Conduct and Performance of Employees Engaged in Award and Administration of Contracts (revised), August 30, 2015*. In accordance with regulations and state policy:

- No employee, officer or agent of the institution/sponsor shall participate in the selection or in the award or administration of a contract supported by program funds if a conflict of interest, real or apparent, would be involved.

Conflicts of interest arise when one of the following has a financial or other interest in the vendor selected for the award:

- The employee, officer or agent;
 - Any member of the immediate family;
 - His or her partner;
 - An organization which employs or is about to employ one of the above.
- The institution/sponsor employees, officers or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
 - Penalties for violation of the standards of code of conduct of the institution/sponsor the institution/sponsor CACFP and SFSP shall be:
 - Reprimand by institution/sponsor;
 - Dismissal by institution/sponsor;
 - Any legal action necessary.

Other State or local procurement requirements that may be required.

Appendix A: Food Service Management Company (FSMC) Contracts Checklist

The FSMC Contract Checklist is used for Institutions/sponsors that will be using their own contract template. Ensure that your contract includes all of the following elements in accordance with CACFP 7 CFR 226.6(i), 226.21, and/or SFSP 7 CFR 225.6(h)(2), and 2 CFR Part 200.317 - 200.326.

Identify the location of the required element by indicating the page number in your contract where the information can be found.

Submit this completed checklist with your compliant Invitation for Bid or Request for Proposal Package.

Standard FSMC Contract Form Checklist		Official DECAL Use Only	
Page #		YES	NO
	a. The institution shall provide the FSMC with a list of the SA approved child care centers, daycare homes, adult day care centers, outside-school hours care centers, and/or sites to be furnished meals by the FSMC, and the number of meals by type, to be delivered to each location.		
	b. The Institution/sponsor ordering meals must include sample menu(s) to be ordered. Include quantity, meal type, meal components, etc.		
	c. The FSMC shall maintain such records (supported by invoices, receipts or other evidence) as the institution will need to meet its responsibilities under this part, and shall promptly submit invoices and delivery reports to the institution no less frequently than monthly.		
	d. The FSMC shall have Federal, State, or local health certification(s) for the location(s) in which it proposes to prepare meals for use in the Program, and it shall ensure that health and sanitation requirements are met at all times.		
	e. The meals served under the contract shall conform to the cycle menus upon which the bid was based, and to menu changes agreed upon by the institution and FSMC.		
	f. The books and records of the FSMC pertaining to the Institution's food service operation shall be available for inspection and audit by representatives of the SA, of the Department, and the U.S. General Accounting Office at any reasonable time and place, for a period of 3 years from the date of receipt of final payment under the contract, or in cases where an audit requested by the SA, or the Department remains unsolved, until such time as the audit is resolved.		
	g. The FSMC shall operate in accordance with current Program regulations 7 CFR 225.17 and/or 226.22		
	h. The FSMC shall not be paid for meals which are delivered outside of the agreed upon delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements contained in the contract.		
	i. Meals shall be delivered in accordance with a delivery schedule prescribed in the contract.		
	j. Increases and decreases in the number of meal orders may be made by the Institution, as needed, within a prior notice period mutually agreed upon in the contract.		

Standard FSMC Contract Form Checklist (Page 2)		Official DECAL Use Only	
Page #		YES	NO
	k. All meals served under the Program shall meet the requirements of 7 CFR 226.20 and/or 225.16.		
	l. All breakfasts, lunches, and suppers delivered for service in outside-school-hours care centers shall be unitized, with or without milk, or juice unless the SA determines that unitization would impair the effectiveness of food service operations. For meals delivered to child care centers and day care homes, the SA may require unitization, with or without milk, or juice of all breakfasts, lunches, and suppers only if the SA has evidence which indicates that this is necessary to ensure compliance with (226.20).		
	m. The FSMC entering into a contract with a sponsor will not subcontract for the total Meal or the assembly of the meal.		
	n. The sponsor for all meals delivered in accordance with the contract and the regulations, will pay the FSMC. Neither USDA nor the SA assumes any liability for payment or differences between the number of meals delivered and the number of meals served.		
	o. In cases of nonperformance or noncompliance on the part of the FSMC, it shall pay the sponsor for any excess costs, which the sponsor may incur by obtaining meals from another source.		
	p. The FSMC shall comply with appropriate bonding requirements as set forth in 7 CFR 225.15 (m)(5-7); Appendix II of 2 CFR 200.326		
	q. The Institution/sponsor shall include the contract term and any applicable renewals. Full contract term including renewals shall not exceed five (5) years.		

Appendix B: ADVERTISEMENT CHECKLIST

PUBLIC RELEASE BID-ANNOUNCEMENT	
<input type="checkbox"/>	For Vended Meals, School Food Service 1 st first right of Refusal Letter
<input type="checkbox"/>	Bid is publicly open
<input type="checkbox"/>	Bid is publicized 14 calendar days <u>prior</u> to bid opening date
<input type="checkbox"/>	DECAL's Procurement and Purchasing Compliance Officer is notified 14 calendar days <u>prior</u> to bid opening date
<input type="checkbox"/>	Name & Address of Institution
<input type="checkbox"/>	Location, Date, and Time of Pre-bid (if applicable) and/or Bid Opening
<input type="checkbox"/>	Procurement Method (examples: Invitation for Bid (IFB) or Request for Proposals (RFP))
<input type="checkbox"/>	Vendor Type (examples: Food Service Management Company, individual food items, etc.)
<input type="checkbox"/>	Service Area of Vendors (City/County)
<input type="checkbox"/>	Name, Title/Position of person to receive bids
<input type="checkbox"/>	Date, Time, & Location to submit bids
<input type="checkbox"/>	Information on how bid specifications can be obtained including name and contact number
<input type="checkbox"/>	Description of CACFP/ SFSP (purpose, eligible recipients, etc.)
Meal Service	
<input type="checkbox"/>	Number of meals
<input type="checkbox"/>	Meal types
<input type="checkbox"/>	Meal service areas
<input type="checkbox"/>	Proposed CACFP/SFSP operating days (ex. Monday – Friday)
<input type="checkbox"/>	Begin & end dates of SFSP operation/CACFP contract period
<input type="checkbox"/>	USDA Non-discrimination statement
<input type="checkbox"/>	Contracts are reviewed by Bright from the Start
Please submit the following attachments for DECAL's review	
<input type="checkbox"/>	Media outlets used to publish release
<input type="checkbox"/>	Date of Request for publication(s)
<input type="checkbox"/>	Procurement Policy and Written Codes of Conduct

Appendix C: Agreement to Furnish Food Service for the Child and Adult Care Food Program

This agreement is made and entered into between _____ and _____
Vendor or FSMC
 _____, WHEREAS the _____ agrees to provide daily
CACFP Institution Vendor or FSMC
 unitized meals (inclusive/exclusive) of milk to _____ for the rates herein listed:
Circle one option CACFP Institution

Price Per Meal	Meal Type	X	# Meals Needed Per Day	X	# of Operating Days for Contract Period *	=	Estimated Total Cost of Food Service Contract
\$	Breakfast	X		X		=	\$
\$	AM Snack	X		X		=	\$
\$	Lunch	X		X		=	\$
\$	PM Snack	X		X		=	\$
\$	Supper	X		X		=	\$
\$	Evening Snack	X		X		=	\$
Total Estimated Cost of Food Service for Contract Period							\$

*The contract period should not extend beyond one year. Therefore, the number of operating days should equal the total number of days the center will be open and provide food service for the year.

It is further agreed that _____, pursuant to the provisions of the Child and Adult Care Food Program _____
Vendor/FSMC
 regulations, 7 CFR Part 226**, attached copy of which is part of this agreement, will assure that said meals/snacks meet the minimum meal pattern requirements, including creditable components and accurate portion sizes, and will maintain complete and accurate records that at a minimum include details regarding the preparation and delivery of meals/snacks ordered. Said records will be provided to _____ promptly by the last calendar day of each month to meet its responsibility.
CACFP Institution

It is further understood that the Institution and Vendor or FSMC are responsible for meeting accurate recordkeeping requirements; agrees to maintain all required records for three years, plus the current year, or longer until all reviews and/or audits are closed, and submission of all monthly claims for reimbursement in accordance with 7 CFR 226.

_____ acknowledges its responsibility to pay for all meals/snacks delivered in accordance with this Agreement and federal regulations. _____
CACFP Institution Vendor or FSMC
 understands that neither USDA, nor Bright from the Start assumes any liability for payment of meals/snacks delivered, or the differences between the number of meals/snacks delivered and the number of meals/snacks served or claimed for reimbursement; nor does Bright from the Start or USDA assume liability for the Institution's non-payment for meals.

This agreement shall be effective as of _____ through _____. It may be terminated by notice in writing
Date: MM/DD/YY **Date:** MM/DD/YY
 given by any party to the other party, at least 10 days prior to the date of termination.

IN WITNESS THEREOF, the parties hereto have executed this agreement as of the dates indicated below:

Signature and Title of Vendor or FSMC

Signature and Title of CACFP Institution

Date: MM/DD/YY

Date: MM/DD/YY

**A copy of the CACFP regulations and CACFP Food Crediting Guide should be provided to vendor along with agreement.
 This institution is an equal opportunity provider

Appendix D: SMALL PURCHASE DOCUMENTATION FORM

SMALL PURCHASE DOCUMENTATION FORM

Bright from the Start: Georgia Department of Early Care and Learning

Name of Individual Soliciting Information: _____

Instructions: Use this form to document small purchases. Individual or grouped transaction(s) that exceed \$10,000 for similar items must be documented below. Ensure at least two (2) quotes are used between qualified sources, (3) three are preferred. Attach additional supporting documentation to this form. Circle or note the vendor selected. Complete bottom section if the lowest bidder was not selected.

Vendor Name, Address, Telephone	Individual's Name and Position Providing Price Quote	Item Name/Description of the goods or services, including quantity, any other pertinent terms or conditions required by the organization and date of services	Date of Contact	Method of Contact	Discussion with Vendor	Price Quote and Duration	Final Negotiated Price
Vendor 1							
Vendor 2							
Vendor 3							

If the lowest bidder was not selected, document below the reasons the lowest bidder could not meet the specific contract terms sought.

Appendix E PROCUREMENT AND PURCHASING POLICY TEMPLATE

PROCUREMENT AND PURCHASING POLICY

The standards and guidelines set forth in this template outline criteria necessary for compliance of procurement standards established according to Federal Regulation 7 CFR 226.22 (Child and Adult Food Care Program), 7 CFR 225.17 (Summer Food Service Program) and those policies outlined in the Georgia DECAL Procurement Guidance Manual.

CACFP/SFSP Sponsor/Institution

Institution/Sponsor Address

Agreement No.

Organization Type

(Private For Profit, Private Non-Profit, Public Non-Profit Government, School)

I. Purpose

The purpose of this policy is to establish the procedures necessary to ensure all procurement measures undertaken by **Enter Contracting Institution/Sponsor Name** are completed in a full, fair and open market. The goal of this policy is to ensure goods and services are purchased in accordance to federal procurement regulations as participants of the Child and Adult Food Care Program and/or Summer Food Service Program. **Enter Contracting Institution/Sponsor Name** attests that the policies and procedures eliminate and avoid acquisition of unnecessary and duplicative items.

II. Conflict of Interest

No employee, officer, or agent may participate in the selection, award, or administration of a contract with federal funds if a conflict of interest, real or apparent is present. Conflict of interest, real and/or apparent is present if the transaction is not at arms-length or one or more of the parties below has any financial gain, favor or personal tangible interest as a result of the award:

- o Officer, Agent or Employee
- o Any member of the immediate family
- o Spouse, Partner, Significant Other, etc.
- o The organization employs or is entering into a compensation agreement with awarded vendor.

III. Code of Conduct

Enter Contracting Institution/Sponsor Name's employees, agents and officers are prohibited from accepting gifts and/or gratuities of any kind in exchange for a contractual award. However, **Enter Contracting Institution/Sponsor Name** may set reasonable standards for the acceptance of gifts and gratuities which are not substantial in nature or an unsolicited item of nominal value. Violation of this code of conduct may result in the following:

- o Reprimand by **Enter Contracting Institution/Sponsor Name**
- o Dismissal by **Enter Contracting Institution/Sponsor Name**
- o Any necessary legal action

IV. Procurement Method

The methods for procuring goods and services as outlined in this policy must be approved by **Insert Program/Principal Contact Name** and/or **Insert Authorized Representative Name** responsible for purchasing activity. **Enter Contracting Institution/Sponsor Name** shall choose the procurement method most aligned with how goods and/or services are purchased according to the expected fiscal year budget for one or more of the categories below.

Please check applicable categories

- Unitized/Vended Meals
- Food Items
- Non-Food Items

The explicit methods listed below for procuring goods and services are in accordance to the policy and procedures established under the authority of DECAL along with federal regulations outlined in 7 CFR 225 (SFSP) and 7 CFR 226 (CACFP).

Please select applicable procurement method utilized by organization

- Formal Procurement: Purchase of goods and services which exceed the Simplified Acquisition Threshold of \$150,000
- Informal Procurement: Purchase of goods and services which do not exceed the Simplified Acquisition Threshold of \$150,000
 - Small Purchase Option: Transactions, purchases and aggregate category costs under \$150,000, but more than \$3,500.
Aggregate Cost Categories Include:
 - Milk and Dairy
 - Protein/Frozen Meats
 - Fresh Fruits and Vegetables
 - Frozen Foods
 - Bread, Pasta and Bakery Products
 - Grains and Dry Goods
 - Canned Fruits and Vegetables
 - Condiments and Spices
 - Kitchen Supplies/Disposables
 - Micro Purchase Option: Each Transaction and/or Aggregate Purchase \$3,500 or less.

****Informal Option: Small Purchases greater than \$3500 must adhere to these regulations:**

- o Specifications for products must be provided to vendors.
- o A minimum of 2 (preferably 3) quotes will be solicited from qualified sources to ensure competitiveness.
- o Adequate documentation showing selection of qualified sources (Small Purchases must utilize the Small Purchase Documentation Form)
 - Lowest qualified vendor chosen
 - If lowest vendor is not chosen, justification must be provided on Small Documentation Form
- o Name, title and signature of all authorized personnel responsible for approval and acceptance of vendor price quotes.

V. Bid/Proposal Evaluation

Bidders must acquire a bid/proposal package from Enter Contracting Institution/Sponsor Name Enter Location Address Bid/Proposal packages must be submitted by the date and time specified in the Request for Proposal (RFP) or Invitation for Bid (IFB). Any response submitted after this date will be deemed unresponsive and will not be considered. Bid/proposal responses missing required information will also be deemed unresponsive.

Public and open evaluation of all responsive bids/proposals will be held at Enter Location Address on the date specified on the advertisement and solicitation documents. Evaluations resulting in contract awards will be based on lowest total price as well as the ability to execute negotiated technical requirements specified (RFPs ONLY).

Scoring of bid/proposal responses will be evaluated using one of the methods below:

- Pass or Fail
- Market Basket Analysis: Contracts will be awarded based on the lowest price when using a representative sample of goods in solicitation. Representative sample must be at least 75% of estimated contract value to be awarded. This method will not be used when soliciting equipment and service contracts. The intent to use this evaluation method will be included within all solicitation and contract award documents.

(Please enter more specific evaluation/scoring criteria or if applicable, attach a copy of the evaluation tool to be used).

VI. Compliance/Non-Compliance

Contractor agrees to all Federal, State and Local laws in conjunction with terms outlined by **Enter Contracting Institution/Sponsor Name** in accordance to contract award.

Enter Contracting Institution/Sponsor Name reserves the right to terminate the contract when the Contractor is deemed incapable of fulfilling the requirements outlined in the contract. **Enter Contracting Institution/Sponsor Name** must give adequate notice to the Contractor of their decision to terminate the contract in (**insert No. of Days:** _____) days. Notification must also be given in writing to the Contractor and Surety Company of the termination date along with circumstances of termination beyond the control of the **Enter Contracting Institution/Sponsor Name** in writing.

The contract may be terminated for convenience and the terminating party is not be required to provide any reason for terminating the contract other than for its own convenience. The terminating party must provide the other contract party with (**insert No. of Days:** _____) days written notice in order to terminate the contract for convenience.

VII. Subcontractors

The Contractor shall not subcontract for the total meal or for the assembly of the meal; and shall not assign, without the advance written consent of **Enter Contracting Institution/Sponsor Name**. In the event of any assignment, the Contractor shall remain liable to **Enter Contracting Institution/Sponsor Name** as principal for the performance of all obligations under this contract (FSMC Only).

VIII. Advertising and Public Relations

In order to ensure full and open competition, Requests for Proposals (RFP) and Invitations for Bid (IFB) will be publicized. Publications will be released to newspapers, media outlets and all other applicable internet sources. Electronic solicitations may be advertised via social media outlets and/or e-procurement sites. **Enter Contracting Institution/Sponsor Name** shall notify the Procurement and Purchasing Compliance Officer with Bright from the Start of the advertisement no later than (14) days prior to posting. Unless otherwise required by law, **Enter Contracting Institution/Sponsor Name** will not disclose contents of RFP or IFB prior to date of public release.

IX. Geographic Preference/Non-discrimination

Enter Contracting Institution/Sponsor Name will not give geographic preference to any potential bidder due to locale. However geographic preference may be instituted when procuring locally grown and produced agricultural products (local area desiring to procure products must be specified).

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:

Mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;

Fax: (202) 690-7442; or
Email: program.intake@usda.gov
This institution is an equal opportunity provider

X. Bond Requirements

Bid bond guarantees will be required when contracting with a Food Service Management Company (FSMC) in the Summer Food Service Program (SFSP). **Enter Contracting Institution/Sponsor Name** shall not require a bid guarantee unless a performance bond is also required. If a FSMC's bid is over \$150,000, they must submit a bid bond in an amount not less than 5 percent and no more than 10 percent of the value of the contract for which the bid is made, as determined by **Enter Sponsor Name** and specified in the IFB.

A "performance bond" will be executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. Whenever a FSMC contracts for food services valued over \$150,000 for the aggregate of all SFSP contracts taken with the sponsor by the FSMC or its subsidiaries, the FSMC shall obtain a performance bond and furnish a copy of it to the sponsor within 10 days of awarding the contract. The performance bond shall be in an amount ranging from a minimum of 10 percent to a maximum of 25 percent of the total value of the contracts. The percentage level shall be determined by DECAL (SFSP ONLY).

XI. Record Keeping

Enter Contracting Institution/Sponsor Name agrees to ensure all goods and services are properly procured and maintain all records relating to the purchase of goods and services and the procurement process.

The contractor shall maintain records supported by delivery tickets, invoices, receipts, purchase orders, production records for this contract, or other evidence for inspection and reference, to support payments and claims, and shall submit required reports to sponsor promptly at the end of each month, unless more frequent reports are required by the sponsor.

The books and records of the contractor pertaining to any procurement measures shall be available for a period of three years from the date of submission of **Enter Contracting Institution/Sponsor Name** final claim for reimbursement, or until the final resolution of any audits, for inspection and audit by representatives of the State agency, representative of the U.S. Department of Agriculture, the Sponsor and the U.S. General Accounting Office at any reasonable time and place.

XII. Small Business/Minority, Women Owned Business

Affirmative steps shall be taken to ensure Small, Minority and Women Owned Businesses/Enterprises are utilized when possible. Affirmative actions include but are not limited to:

- o Including qualified small, minority and women owned businesses on solicitation lists.
- o When economically feasible, dividing total costs into smaller amounts to allow participation among small, minority and women owned businesses.
- o Utilizing the assistance of the Small Business Administration and Minority Business Enterprise of Department of Commerce to publicize and solicit bid/proposal opportunities.

XIII. Procurement Policy Agreement

Principal/Program Contact as well as all Authorized Representative(s) of **Enter Contracting Institution/Sponsor Name** agree to implement and enforce the terms specified in this Procurement Procedure as noted by the signatures below.

_____	_____	_____
Principal/Program Contact Name	Signature	Date
_____	_____	_____
Authorized Purchasing Representative	Signature	Date