

**DELAWARE SUMMER FOOD SERVICE PROGRAM
PROCUREMENT STANDARDS
REFERENCES: 7 CFR §225.15, 7 CFR §225.17, 2 CFR §200**

Instructions: This document details the Procurement Standards for the Delaware Summer Food Service Program (SFSP). SFSP Sponsors must follow the USDA procurement regulations set forth in 7 CFR §225.15, 7 CFR §225.17, and 2 CFR §200. The Delaware Department of Education (DDOE) Nutrition Programs Office has issued documents titled *Child Nutrition Programs Procurement Manual* and *Template Procurement Procedures and Code of Conduct* to assist Sponsors with procurement compliance. Any changes in approved procurement procedures and/or contracts must be submitted to the DDOE Nutrition Programs Office for approval prior to implementation.

I. Purpose of Procurement Procedures

- a. This document provides standards for use by recipients in establishing procedures for the procurement of supplies, equipment, construction and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and executive orders. No additional procurement standards or requirements shall be imposed by the Federal sponsoring agencies upon recipients unless specifically required by Federal statute or executive orders.
- b. The standards contained in this document do not relieve the recipient of the contractual responsibilities arising under its contracts. The recipient is the responsible authority, without recourse to the Federal sponsoring agency regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction.
- c. Recipients may use their own procurement policies and procedures. However, all Sponsors shall adhere to the standards set forth in 7 CFR §225.15, 7 CFR §225.17, and 2 CFR §200.

II. Code of Conduct

- a. The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may

neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

III. Procurement Procedures

- a. All procurement transactions shall be conducted in a manner which provides, to the maximum extent practical, open and free competition. The recipient should be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids and/or requests for proposals must be excluded from competing for such procurements. Awards shall be made to the bidder/offeror whose bid/offer is responsive to solicitations and shall clearly set forth all requirements that the bidder/offeror must fulfill in order for his or her bid/offer to be evaluated by the recipient. Any and all bids/offers may be rejected when it is in the recipient's interest to do so.
- b. All recipients shall establish written procurement procedures that provide for, at a minimum, the following procedural requirements (note: Sponsors should refer to *Template Procurement Procedures and Code of Conduct* for sample language and detailed requirements):
 - i. Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase, alternatives to determine which would be the most economical, practical procurement.
 1. Solicitations for goods and services shall be based upon:
 - a. A clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition.
 - b. Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
 - c. A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
 - d. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of procurement, and when so used the specific features of the named brand which must be met by bidders/offerors shall be clearly specified.

- e. The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
 - f. Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
- ii. Positive efforts shall be made by the recipients to utilize small business, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal:
 - 1. Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
 - 2. Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
 - 3. Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
 - 4. Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
 - 5. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms, and women's business enterprises.
- iii. The type of procuring instruments used, e.g., fixed price contracts, costs reimbursable contracts, purchase orders, incentive contracts, shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.
- iv. Comply with regulation that all proposed Food Service Management Company (FSMC) contracts are publicly announced at least once, not less than 14 calendar days prior to the opening of bids, and the announcement includes the time and place of the bid opening. In addition, the State Agency (SA) must be notified by the Sponsor at least 14 calendar days prior to the opening of the bids, of the time and place of the bid opening;
- v. All requirements in which offerors must fulfill, in addition to all other factors which will be used in the evaluation of bids or proposals, must be identified.
- vi. The SFA/Sponsor will perform a cost or price analysis in connection with every formal procurement, including contract modifications. The Sponsor

should make independent price/cost estimates before soliciting for and receiving bids or proposals.

- vii. Competitive bid protest procedures consistent with regulations established in 48 CFR 33.103, *Protests to the agency*, must be listed in the Sponsor's procurement procedures along with the actions that the SFSP Sponsor will take related to the bid protest procedures.
- viii. The Sponsor must ensure that all required contract provisions, per 2 CFR §200, are included in bid language.

IV. Selection Procedures

- a. Contracts shall be made only with responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.
- b. All proposed sole source contracts or where only one bid or proposal is received shall be subject to prior approval at the discretion of the SA.
- c. Some form of price or cost analysis must be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

V. Procurement Records

Procurement records must be maintained by the Sponsor for a period of three years plus the current year.

- a. Recipients shall, upon request, make available to the Federal awarding agency, pre-award review and procurement documents, such as Request for Proposal (RFPs) or Invitations to Bid (IFBs), independent cost estimates, etc., when any of the following conditions apply:
 - i. A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this part.
 - ii. The procurement is expected to exceed the small purchase threshold of \$49,999 and is to be awarded without competition or only one bid or offer is received in response to solicitation.
 - iii. The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.
 - iv. The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.
 - v. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

VI. Contract Procedures

A system for contract administration shall be maintained to ensure contractor conformance with terms; conditions and specifications of the contract, and to ensure adequate and timely follow-up of all purchases.

VII. Procurement Types and Purchasing Thresholds:

- a. Micro-Purchase – Purchases made where the annual cumulative total does not exceed \$10,000. Micro-purchases may be awarded without soliciting competitive quotations if the price is considered to be reasonable and purchases must be equitably distributed among qualified suppliers.
- b. Small Purchase – For purchases between \$10,001 and \$49,999. Price quotations must be obtained from at least three qualified sources. Documentation of price quotations must be maintained by the Sponsor (date, vendors contacted, quotes received).
- c. Formal Bid – For purchases of \$50,000 and over.
 - i. Invitation for Bid (IFB) – Competitive sealed bids which are publicly solicited, resulting in a firm, fixed-price contract. The contract is awarded to the lowest-priced responsive and responsible bidder.
 - ii. Request for Proposal (RFP) – Competitive negotiation procurement method with price being the primary consideration when awarding a contract. With this type of procurement, the procurement must be publicized, the procurement must be solicited from an adequate number of qualified sources, the Sponsor must have a written method for conducting technical evaluations of the proposals received and for selecting the recipient, and contracts must be awarded to the proposal that is most advantageous to the program (with price and other factors considered).

VIII. Vended Meals (Meals procured from a FSMC)

- a. Bid award and procedures
 - i. Before a Sponsor can go out to bid, they must have clearance from the SA.
 - ii. Sponsor must notify the SA in writing at least 21 days prior to the requested bid opening date. They must also submit the bid documents for review and approval. The SA will approve bid opening documents and bid opening date in writing via email. Any changes in the approved bid opening date must be approved in advance by the SA.
 - iii. At least 14 days prior to the bid opening date, the Sponsor must publicly advertise the bid (publishing notice for one day meets the Federal requirement). Sponsor must immediately submit a copy of the published ad to the SA.
 - iv. Effective the date the ad appears in the newspaper, the Sponsor must make available to any FSMC the IFB package which includes:
 1. The SA standard contract;
 2. Completed IFB with the attached menu and site listing, including SA approved serving times;
 3. Certification of Independent Price Determination; and
 4. Food Product Specifications.

- v. All bids must be at the bid opening at the designated time for the opening of the bids.
- vi. Once the first bid is opened, no additional bids will be accepted and no bids will be opened before the designated time.
- vii. Any FSMC that submits a bid over \$150,000 must submit a bid bond with the bid package in an amount equal to 10 percent of the value of the contract for which the bid is made. The bid bond must be from a company listed in the current United States Department of Treasury Circular 570 certified to do business in Delaware. No other type of bid bond is acceptable. A copy of the bid bond shall accompany each bid. If applicable, the decision to waive the requirement of a bid bond must be clearly stated in the bid special provisions.

b. Award

- i. Sponsors will need written authorization from the SA before awarding any bid which:
 - 1. Totals \$150,000 or more;
 - 2. Exceeds the total of the lowest bid tendered; or
 - 3. Is a sole source bid.

Note: The SA has five working days to review materials and advise the Sponsor regarding the award of contract.

- ii. Copies of all bids including bid and performance bonds, when required, must be sent to the SA with cover "Bid Sheet" identifying which bid will be accepted, along with the Sponsor's reason for choosing the successful bidder.
- iii. Performance Bond - For contracts over \$150,000, a performance bond equal to 100 percent of the value of the winning contract must be obtained by the contractor. The performance bond must be from a company listed in the current United States Department of Treasury Circular 570 certified to do business in Delaware. Sponsors may not accept cash, letter of credit, trust account, land or any other form of guarantee in lieu of the performance bond. The contractor must furnish a copy of the bond to the Sponsor within 10 days of the contract's award. The performance bond must include the entire period that the Sponsor will operate the SFSP. If applicable, a reduction or waiver of the performance bond shall be stated in the bid specifications.
- iv. Copies of all contracts between Sponsors and FSMCs must be submitted to the SA prior to the beginning of program operations.

c. Acceptable Bids

- i. Each Food Service Management Company bid must contain:
 - 1. Copy of the required health certification and inspection;
 - 2. The bid on the required form; and
 - 3. Bid bond, if applicable.

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.

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- (1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: program.intake@usda.gov.

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