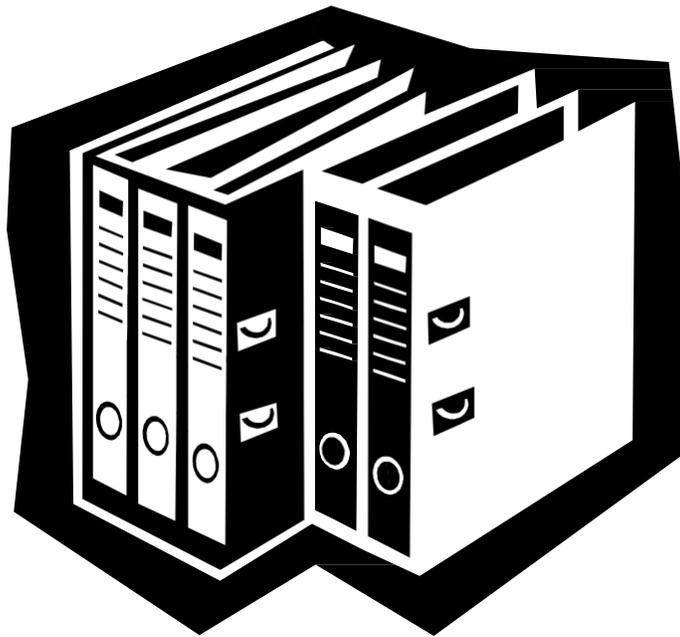




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PROCUREMENT GUIDANCE MANUAL



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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;
- 7 C.F.R. 3018, New Restrictions on Lobbying;
- 7 C.F.R. 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations;
- 7 Code of Federal Regulations (C.F.R.) Part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments;
- Office of Management and Budget (OMB) Super Circular 200 – 2 CFR Part 200 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
- Administrative Guidance for Sponsor (SFSP)
- Bright from the Start Budget Guidance
- 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 basic acquisition process begins with acquisition planning and ends with contract award, administration, and closeout.

Acquisition Planning

- 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

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

Award of Contract

Lowest Price

Lowest Price must be computed using the factors specified in the Invitation for Bid (IFB). The computation cannot include factors not identified in the IFB, 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

All bids totaling \$50,000 or more 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

All bids totaling \$150,000 or more 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 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	GENERAL MANAGEMENT RULES	PROCUREMENT RULES	PROCUREMENT CODE OPTIONS	ALLOWABLE COST RULES
Public Schools	Parts 225, 226	Part 3016	Sections 3016.36(b) – (i), 3016.60 2/, 3	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 200 Subpart E
Public Institutions (Local governments)	Parts 225, 226	Part 3016	Sections 3016.36(b) – (i), 3016.60 2/, 3	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 200 Subpart E, FNS Inst. 796-2
Private Non-profit Institutions	Parts 225, 226	Part 3019	Section 3019.40-48	May follow own procedures that are compliant with Federal Procurement Rules.	2 CFR Part 200 Subpart E FNS Inst. 796-2
For-Profit Institutions	Parts 226	Parts 226	Section 226.22	Must follow procurement rules listed in Part 226.22	Federal Acquisition Regulation (48 C.F.R. Part 31), FNS Inst. 796-2

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 procurements 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. 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.

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 \$150,000
For-Profit Institutions	Simplified Acquisition Threshold is \$150,000

The three commonly used procurement methods are:

- Simplified Acquisition/Micro–purchase/Small Purchases
- Full and Open Competition (FOC)
- Other than full and open competition (OFOC)

SIMPLIFIED ACQUISITION/MICRO-PURCHASE/SMALL PURCHASE:

Simplified acquisitions procedures are the procurement methods used for acquisitions of supplies, services, or property, the aggregate of which, do not exceed \$150,000 small purchase threshold. Simplified acquisitions also includes micro-purchases of supplies or services whose individual or aggregate cost, that fall below the micro-purchase threshold of \$3,000. 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, the aggregate dollar amount of which does not exceed the micro-purchase threshold of \$3000. Purchases must, to the extent practical, be equitably distributed among qualified suppliers and 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.

SMALL PURCHASE

Small purchases procedures are those relatively simple and informal for securing supplies, services, or other property whose individual or aggregate cost does not exceed the Simplified Acquisition Threshold of \$150,000. Price or rate quotations must be obtained from an adequate number of qualified 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 \$3,000 to \$149,000. Institutions should attach any required documentation to this form for recordkeeping purposes. The submission of the Small Purchase Item Documentation form 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.
- 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 of the goods or services needed, including quantity, required certification, licensing, etc.
 - 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 a condition, the organization has not met the responsibility of comparing price quotes from a minimum number of suppliers.

- 4) Written 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 orally must be confirmed in writing from the supplier, 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.

The use of the Small Purchase Item Documentation form does not fulfill the requirement of obtaining quotes in writing.

- 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, e-mails and faxes soliciting price or rate quotations;
- Trip reports identifying suppliers contacted in person;
- Copies of price or rate quotations received, including telephone quote confirmations;
- Small Purchase Item Documentation form;
- Notification to the successful supplier; and
- Purchase documents, such as invoices, bills of lading and canceled checks.

FORMAL PROCUREMENT AND FULL AND OPEN COMPETITION (FOC)

Institutions securing supplies, services, or other property whose individual or aggregate cost does exceed the Simplified Acquisition Threshold of \$150,000 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:

- Sealed bidding
- Negotiated procurement
- Two-step sealed bidding

Sealed Bidding

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). 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

Sealed bids are normally solicited if:

- Time permits the solicitation, submission, and evaluation of sealed bids;
- The award will be made on the basis of price 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.

Negotiated Procurement (Competitive Proposals)

**** 7 C.F.R. Part 225 (SFSP regulations) do not allow Competitive Negotiation. Part 225.15(g) requires that SFSP sponsors used the sealed bidding method of procurement.**

Negotiated Procurement (Competitive Proposals) 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).

This process involves the following steps:

- Preparation of Request for Proposals
- 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

Competitive 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

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.

OTHER THAN FULL AND OPEN COMPETITION (OFOC)

Other than full and open competition 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. OFOC cannot be justified because of a failure to plan in advance or concerns about the availability of related funds or budget.

Sole source is an example of non-competitive procurement or purchase process accomplished after soliciting and negotiating with only one source, so-called sole source, thus limiting full and open competition. All sole source procurements require prior written approval by 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

GENERAL PROCUREMENT REQUIREMENTS

Standards and 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

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.

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 of contract types is available to institutions in order to provide needed flexibility in 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.

Part I - Contract Terms and Conditions	Part II—Contract Clauses
Solicitation/contract form	Contract clauses
Supplies or services and prices	Part III—List of Documents, Exhibits, and Other Attachments
Description/specifications	List of documents, exhibits, and other attachments
Packaging and marking	Part IV—Representations and Instructions
Inspection and acceptance	Representations, certifications, and other statements of bidders
Deliveries or performance	Instructions, conditions, and notices to bidders
Contract administration data	Evaluation factors for award
Special contract requirements	

Solicitation/Advertising

All proposed contracts must be publicly announced at least 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.

Minimum Requirement 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 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
- 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 this State Agency** to use the contract.

The method of procurement will determine when contracts are prepared.

- Sealed bids (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.
- Competitive proposals (Request of Proposal (RFP)) - the nonnegotiable 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 guarantees, performance bond and payment bond

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 brief description or specifications required to permit full and open competition.

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.

C.F.R. Part 3018, 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 of 7 C.F.R. 3018.

 *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."

 *USDA Rights In Data, Reporting Discoveries And Inventions And Copyrights* 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, Part 3015.175, 3016.34, and 3019.36 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.

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, see information on breach of contract remedies listed below;

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 Guarantee

A contracting officer shall not require a bid guarantee unless a performance bond or a performance and payment bond is also required. If a FMSC'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 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 a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, 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.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 valued over \$150,000 for the aggregate of all SFSP contracts taken with the sponsor by the food service management company or its subsidiaries, the food service management company 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 the BFTS.

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>

Payment Bond

A “payment bond” is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

Surety Bonds

Under the SFSP, FSMCs that submit bids over \$150,000 and that enter into a food service contract for over \$150,000 must obtain bid and performance bonds. The 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 sponsors are expected to receive more than \$150,000 in Program payments. 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 requirements 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 line 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.

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.

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.

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 allowability for costs charged to the nonprofit food service.

For contracts that do exceed the Simplified Acquisition threshold, the following information must be available upon request for review and approval, prior to the solicitation of bids or proposals.

- Procurement Policy
- Written Codes of Conduct
- Advertisement
- Invitation to Bid and Contract
- Request for Proposal
- Evaluation Procedures and results

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

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.

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

- Meal ordering;
- 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 to undertake any other tasks that may have been identified as management functions that may not be delegated.

A food service management company may not subcontract for the total meal, with or without milk, or for the assembly of the meal

The duration of an agreement with an FSMC 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 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 contracts but does not compromise the integrity of SFSP.

FOOD SERVICE MANAGEMENT COMPANY (FSMC) REQUIREMENTS

Health Certification and Inspection

An FSMC must have State or local health certification for the facility(ies) used to prepare meals for the SFSP. 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 SBFTS 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 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 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 to realize that the contract is a private contract between the FSMC and the sponsor. Neither USDA nor the State agency has any jurisdiction in the payments made to the FSMC. Before contracting to provide meals for the program, the FSMC needs to assess the sponsor's capability to meet the terms of the contract and the sponsor's capability to pay them for all meals that are properly delivered. If applicable, the company should become familiar with the 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:

- Noncompetitively 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 3019; 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.

GLOSSARY

Aggregate is the total annual purchases of similar items that can be reasonably combined to conduct an efficient procurement action.

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 is the response submitted by a prospective contractor to an invitation for bid.

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

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).

Contracting agency 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.

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.

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 \$3,000 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 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.

Small Purchase Threshold is an amount under which simplified procurement procedures may be used. Currently, the Federal acquisition small purchase threshold is set at \$150,000, except for certain for profit CACFP institution acquisitions.

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 for the SFSP, means a supplier of meals

Contractor/Vendor for the CACFP, means a supplier of individual, un-cooked food components in bulk

ATTACHMENT R - STEP BY STEP PROCUREMENT CHECKLIST

Sponsor Name: _____

Agreement # _____

The following checklist should only be completed by those organizations that are contracting with a Food Service Management Company or a School Food Authority. Complete Section I and follow instructions for completing the rest of checklist. This checklist is completed to demonstrate if the procurement process was properly conducted.

Section I – Answer each question as applicable.

- 1) Indicate the type of organization the institution is using as a food service vendor for the upcoming year?
- School Food Authority Food Service Management Company or Other Vendor

If School Food Authority

- Submit a copy of the Agreement to Furnish Food;
 - Sign and date on page 2 of this checklist.
- 2) Was the organization required to conduct a formal procurement last year?
- YES If yes, answer #3.
 NO If no, complete the Step-by-Step Checklist in Section II below as it applies to your organization and the procurement process that was actually conducted. Do not proceed to question 3.
- 3) Is the contract for the upcoming year essentially the same as last year's contract and the contract being renewed?
- 4) YES If yes, submit the renewal contract and do not proceed with rest of checklist.
 NO If no, a new procurement is needed. Complete the checklist based on the new procurement that was conducted.

Section II

Use the STEP-BY-STEP guide in the procurement manual to work through the procurement process and complete the steps based on how the procurement was conducted.

Step 1: Check below the type of Institution that is purchasing services/meals from prospective vendors.

- Public School
 Public Institutions (local governments)
 Private Non-profit Institutions

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, the institution must choose whether to follow the institution's procurements codes or the Federal procurement codes. The institution must choose the appropriate code and use this code throughout the procurement process.

Public School

- State procurement codes
- Local procurement codes

***If using local procurement codes, submit a copy of the procurement guidelines with the contract.**

Public Institution

- State procurement codes
- Local procurement codes

***If using local procurement codes, submit a copy of the procurement guidelines with the agreement/contract.**

Private Non-profit

- Federal procurement codes
- Institutions own procurement codes

***If using institutions own codes, submit a copy of the procurement guidelines with the agreement/contract.**

Step 3: Determine the amount of the goods or services to be purchased for the year.

When purchases are to be made, the total amount of **annual** purchases of the item(s) should be determined. When vending for meals from a food service management company, the amount of the contract for the year would be considered. When a good or service that was 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 method

APPENDIX A: FOOD SERVICE MANAGEMENT COMPANY (FSMC) CONTRACTS CHECKLIST

Ensure that your contract includes all the following elements in accordance with CACFP 7 CFR 226.6(i) and 226.21, and/or SFSP 7 CFR 225.6(h) (2).

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 and Contract.

Page #	Standard FSMC Contract Form Checklist	Official Use Only (DECAL)	
		Yes	No
	a. The institution shall provide the FSMC with a list of the SA approved child care centers, day care 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 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.		
	c. The FSMC shall have Federal, State or local health certification for the location 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.		
	d. 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.		
	e. 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 of 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 unresolved, until such time as the audit is resolved.		
	f. The FSMC shall operate in accordance with current Program regulations 7 CFR 225.16. and/or 226.21		
	g. 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.		
	h. Meals shall be delivered in accordance with a delivery schedule prescribed in the contract.		
	i. 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.		
	j. All meals served under the Program shall meet the requirements of 7 CFR 226.20 and/or 225.16.		

Standard FSMC Contract Form Checklist		Official Use Only (DECAL)	
Page #		Yes	No
	k. 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 requirement is necessary to ensure compliance with [226.20].		
	l. The FSMC entering into a contract with a sponsor will not subcontract for the total Meal or the assembly of the meal.		
	m. The sponsor for all meals delivered in accordance with the contract and the regulations, will pay the FSMC. Neither USDA nor the State agency assumes any liability for payment or differences between the number of meals delivered and the number of meals served.		
	n. 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.		
	o. The FSMC shall comply with appropriate bonding requirements as set forth in 7 CFR 225.15(m)(5-7).		

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 days prior to bid opening date	
<input type="checkbox"/>	DECAL notified 14 days prior to bid opening date	
<input type="checkbox"/>	Name & address of Institution	
<input type="checkbox"/>	Location, date, & time of bid opening	
<input type="checkbox"/>	Method of procurement	
<input type="checkbox"/>	Type of vendor (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"/>	Non-discrimination statement	
<input type="checkbox"/>	Contracts are reviewed by Bright from the Start	
Attachments		
<input type="checkbox"/>	Media outlets used to publish release – Please disclose	
<input type="checkbox"/>	Date of request for publication(s) – Please disclose	
<input type="checkbox"/>	Procurement Policy and Written Codes of Conduct – Please Submit	

See 7 CFR 226.22, 7 CFR 225.15, Procurement Manual Rev-3/2015, Application Training Materials and Administrative Guidance

APPENDIX C: AGREEMENT TO FURNISH FOOD (CACFP)

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 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. 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 it's responsibility to pay for all meals/snacks delivered in accordance with this Agreement and federal regulations. _____ 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 given by any party to the other party, at least 10 days prior to the date of termination.
Date: MM/DD/YY Date: MM/DD/YY

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.

APPENDIX C: AGREEMENT TO FURNISH FOOD (SFSP)

This agreement is made and entered into between _____ and _____
Name of FSMC Providing Meals
 _____ . WHEREAS the _____ agrees to provide daily
Name of SFSP Organization Name of FSMC Providing Meals

unitized meals/snacks (inclusive/exclusive) of milk/juice to _____ for the rates herein listed:
Circle one option Name of SFSP Organization

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		=	\$	
							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 site(s) will be open for food service during the summer.

It is further agreed that _____, pursuant to the provisions of the SFSP Federal regulations, 7 CFR
Name of FSMC

Part 225 and Food Crediting Guide, attached copies of which are part of this agreement, will ensure that 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 meal/snacks ordered. Said records will be provided to _____ promptly by the last calendar day of

Sponsoring Organization
 each month to meet its responsibility. It is further understood that the **Sponsor** is ultimately responsible for meeting accurate record keeping requirements and submission of all monthly claims for reimbursement in accordance with 7 CFR 225.

_____ acknowledges its responsibility to pay for all meals/snacks delivered in accordance
Name of Sponsoring Organization
 with this Agreement and federal regulations. _____ understands that neither
Name of FSMC

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 Sponsor's non-payment for meals.

_____ agrees to retain all required records under the preceding clause for a period
Name of FSMC
 of three (3) years, plus the current year, from the date of receipt of final payment under this agreement (or longer, if an audit is in progress); and upon request, to make all accounts and records pertaining to the SFSP available to Bright From the Start, Georgia Department of Early Care and Learning, USDA, any of its Agents, and the General Accounting Office for audit or administrative review immediately upon request.

This agreement shall be effective as of _____ through _____. The Agreement may be terminated by
Date: MM/DD/YY Date: MM/DD/YY
 written notice given by either 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 FSMC

 Signature and Title of SFSP Organization

 Date: MM/DD/YY

 Date: MM/DD/YY

****A copy of the SFSP Regulations and USDA Food Crediting Guide should be provided to vendor along with agreement.**

USDA is an equal opportunity provider and employer.

APPENDIX D: SMALL PURCHASE

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

Name of Individual Soliciting Information: _____

Instructions: Use this form to document the small purchase procedures. Individual and aggregate amounts that exceed \$3,000 must be documented below. 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.
