

## Methods of Procurement

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This information will provide detailed information on each of the four methods of procurement, and specific guidance on when each of these methods is appropriate.

“Negotiation,” as used in the following text, is a generic term that may be applied to small purchases, competitive sealed bidding, or a noncompetitive bid. Negotiation simply refers to the mutual discussion and arrangement of the terms of a transaction or agreement for the purpose of arriving at a common understanding of contract essentials (e.g., technical requirements, schedule, prices, and terms). The applicability of negotiation to the various methods of procurement will be discussed below.

### Small Purchases

When goods or services are less than \$150,000 (public, non-profit or for-profit institutions) or in aggregate value, small purchase methods may be utilized. The purchasing agent should contact at least three (3) known suppliers of the product or service and obtain competitive price quotations from them. Unlike sealed bidding, where bid prices must be considered firm and final, negotiation of prices and terms with one or more of the suppliers contacted is permitted. **Whether written or telephone contact is made, all information and prices discussed should be documented in the purchasing agent’s files.** All suppliers must receive the same information about the purchasing agency’s files. Finally, small purchase methods are not appropriate when a purchasing agency divides a unified contract requirement into smaller purchases in order to bring each individual purchase less than \$150,000.

### Competitive Sealed Bidding

When procurement is expected to be more than \$150,000 (public, non-profit or for-profit institutions) in aggregate value and (a) the product or service can be completely described in the agency’s bid specifications, and (b) the award of a contract can be made primarily on the basis of price alone, this method of procurement should be utilized.

The following steps should be taken in conducting a competitive sealed bid:

**Preparation of Bid Specifications:** The first important step in the competitive bidding process is the preparation of an Invitation for Bid (IFB) which communicates uniform information regarding the organization’s specific contracting requirements (with minimum essential characteristics of the product or service to be procured) to all prospective bidders. **The IFB must be approved by the State Agency prior to publication.**

The product or service to be procured must be described as clearly and completely as possible in the IFB. Such descriptions should not, however, include information that could serve in any way to restrict competition. Information, which could be considered restrictive of competition, might include the specification of brand name products or the inclusion of non-essential product characteristics. Furthermore, all prospective bidders must be informed of any amendments or changes to the IFB. In addition to providing functional product specifications, the IFB must also state clearly where and when bids must be submitted. The IFB must, at a minimum, allow 14 days between the public advertisement of and IFB and the deadline for submission of bids.

- I. Publicizing the Procurement: After the IFB has been prepared, it must be sent to the suppliers of the product or service procured. Since it is difficult to send IFB's to all suppliers of certain products or services, it is acceptable to rotate through a list of suppliers on a predetermined basis, and to include any new supplier who requests to be added to the bidder list.

In addition to mailing the IFB's, a contracting agency must also formally advertise the proposed procurement to other potential vendors by advertising in the legal notices of area newspapers and/or in newspapers of general circulation in the state. The cost of both mailing IFB's and mailing newspaper advertisements are allowable and may be charged to the Child and Adult Care Food Program.

The formal advertisement must include: (1) the name, address, and telephone number of the contracting agency; (2) how to obtain the IFB; (3) a brief and general description of the contracting requirements; (4) the deadline for receipt of bids; and (5) the date, time, and place of the public bid opening.

2. Bid Opening and Contract Award: Any bids received prior to the final deadline for bid submission must be kept unopened in a secure place. Bids received after the deadline should be returned unopened to the bidders.

After the deadline, bids must be publicly opened and read aloud. Then the official responsible for the opening of the bids should state, "The lowest bid appears to be . . . we will award a contract to the lowest responsive and responsible bidder." A contract should not be announced until the contracting agency has had time to examine the low bid for responsiveness to the IFB and to ascertain that the low bidder is a responsible firm.

For a bid to be considered responsive, it should offer a product that does not substantively deviate from the requirements of the IFB. All terms of the IFB, including price, expected quantities, delivery schedule, and quality must be considered minimum requirements, and not attempt to modify these minimum requirements (e.g., for the bidder to offer twice a week delivery rather than the daily delivery required in the IFB) that would make the bid nonresponsive.

Furthermore, any attempt to make the bid price conditional or contingent upon other factors would make the bid nonresponsive unless contingent bids had been authorized in the IFB.

In a competitive bid situation, the low bidder must be awarded the contract unless the bidder is found to be nonresponsive or not responsible. Such a finding must be well documented since a low bidder may bring suit if not awarded the contract. If only one bid is received after competitive solicitation, approval must be obtained from the Department prior to awarding the contract.

### Noncompetitive Negotiation

This method of procurement is appropriate when: (1) a public agency such as a natural disaster prevents or delays publicizing procurement; (2) only one source of the product or service exists; or (3) after competitive solicitation, only one bid or proposal is received.

To obtain approval of funding for noncompetitive procurement, an institution must submit documentation of its attempts to solicit competition in an appropriate manner. Such documentation should include: (1) a copy of the public advertisement; (2) a copy of the IFB or RFB; (3) copies of all letters received from prospective bidders or respondents, including letters indicating a prospective bidder's lack of interest in competing for the contract; and (4) any other materials which would serve to justify the institution's use of noncompetitive procurement.

All contracts more than \$150,000 (public, non-profit or for-profit institutions) using noncompetitive negotiation must have the approval of the Department prior to awarding the contract.

### Competitive Negotiation

Competitive negotiation is appropriate when procurement is expected to be more than \$150,000 (public, non-profit or for-profit institutions) but (a) are such a complex and technical nature (e.g., consulting, research and development, etc.) that they cannot be fully described in bid specifications and (b) the award of the contract must be based on factors other than price alone. Please note that evaluation factors other than price can only be used when they are clearly identified in the agency's bid specification which, in the case of competitive negotiation, is called a Request for Proposal (RFP).

In a competitive negotiation, a contracting agency requests the respondents to detail how the objective can best be attained. Therefore, in addition to a cost proposal, a respondent to an RFP also submits a technical proposal that describes the methods the respondent will employ in carrying out the project described in the RFP. It also relates these methods back to their underlying costs, as described in the respondent's cost proposal.

Unlike competitive sealed bidding, a contracting agency may negotiate price and methodology with respondents to the RFP after receiving their proposal. After negotiating with one or more of the respondents, the agency would then award a contract.

The steps in the process of actually conducting a competitive negotiation are:

1. A RFP is prepared which states the contracting agency's requirements and objectives **(The RFP must be approved by the State Agency prior to advertising)**;
2. The procurement is formally advertised and the RFP's are sent to known suppliers of the product or service. Two to six weeks after the publication of the RFP (depending on the complexity of the procurement), a deadline for receipt of proposals is set;
3. After two to six weeks of evaluation and negotiation, a contract is awarded to that respondent whose overall cost and technical proposal are most advantageous to the contracting agency.

For additional information regarding Procurement for CACFP, please contact??