

PROCUREMENT

The requirements as set forth in USDA regulations for each program are similar in scope. The parameters of all programs revolve around 7 CFR Parts 3016 & 3019. The program regulations that outline the basic requirements for procurement are: 7 CFR Part 210.16(b) & (c); 7 CFR Part 210.21. Part 210.21 will refer you to 3015; however, you will use 3016 (for public sponsors) or 3019 (for private-not-for-profit sponsors).

These standards do not relieve the grantee of any contractual responsibilities under its contracts. Grantees shall use their own procurement procedures which reflect State and local laws as they conform to USDA regulations (ref. 3016 or 3019).

- "Grantees shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees, or agents engaged in the award and administration of contracts supported by federal funds."

No one affiliated with the grantee (i.e. employee, officer, or agent) can take part in the selection or award of a contract supported by federal funds. **(A potential contractor cannot prepare and/or develop any procurement or contract documents. Part 3016.36(b)(3)(1-5) & 3019.42).**

- "The grantee shall establish procurement procedures which provide that proposed procurement shall be reviewed by grantee officials to avoid the purchase of unnecessary or duplicate items". (3016.36(b)(4))

Part 3016 stresses anticompetitive practices as implemented in Public Law 105-336. A potential contractor may provide specific information. However, a potential contractor cannot prepare procurement or contract documents (specifications, invitation to bid, statement of work, RFP, etc.) (3016.60(b)).

The grantee shall in its evaluation consider alternatives to ensure an economical purchase is made. Alternatives are, but not limited to; 1) breakout of different items so as not to limit competition; 2) or consolidate to achieve a more equitable price and /or fee; 3) and consider lease instead of purchase.

- "All procurement transactions regardless of whether by sealed bids or by negotiations, and without regard to dollar value, shall be conducted in a manner that provides maximum open and fair competition consistent with regulations. Procurement procedures shall not restrict or eliminate competition."

Awarding of a contract should only go to the contractor who can successfully carryout the terms and conditions of the proposal. Consideration should be given to integrity, past performance, and financial stability.

a) **Small purchases** - Simple and informal for procurement of services, and supplies whose cost in aggregate is less than \$150,000. If this procedure is used: "Price or rate quotations shall be obtained from an adequate number of qualified sources." Grantee shall comply with State and local small purchase limits under \$150,000.

b) **Competitive sealed bids** - Procurement of service, and/or supplies whose cost in aggregate is more than \$150,000, where formal advertising is used to solicit potential vendors: "Sealed bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming with all the material items and conditions of the invitation for bid, is the lowest in price." Under formal advertising the following requirements are a must.

- 1) A complete specification or purchase description is available from the grantor.
- 2) Bid proposals shall be solicited from an adequate number of suppliers willing and able to compete. This

is done by making sure you advertise in as many media outlets available.

3) A sufficient time frame shall be established between the first day of advertising and the date bids are actually opened (at least 14 days, 21 days when soliciting Food Service Management Companies).

4) Bid proposals shall be opened publicly at a pre-designated place and time.

5) The award of the firm fixed price contract shall be made known to the successful bidder by written notice (3016.36(d)(2), 3019.44).

NOTE: Any information requested under “Evaluation Criteria” will be used only to establish that a bidder is responsive and responsible. (Example: financial statements, nutritional data-for end products, etc.)

c) **Noncompetitive negotiation** - Procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources where competition is determined to be inadequate, should be a last resort when all other methods are not feasible. Conditions for which other methods are infeasible are limited to the following:

- 1) The item or service is available from only one source.
- 2) An emergency situation exists that will not permit competitive solicitation.
- 3) Authorization from the state grantor agency. (3016.36(d)(4))

USDA Regulations and Other Resources:

- **7 CFR 210: (210.16 and 210.21)** <http://www.ecfr.gov/cgi-bin/text-idx?SID=3398a51348b3f4d2ace0dcfcdf474bb&node=7:4.1.1.1.1&rgn=div5>
- **7 CFR 250: (250.12 and 250.30)** <http://www.ecfr.gov/cgi-bin/text-idx?SID=3398a51348b3f4d2ace0dcfcdf474bb&node=7:4.1.1.2.14&rgn=div5>
- **7 CFR 3016: (Public Schools)** <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=fdb2ef881af44d1966c998077badd57f&h=Lf=t07.sgm&r=PART&n=7y15.1.8.2.4&ty=HTML>
- **7 CFR 3019: (Non-Public Schools)** <http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=fdb2ef881af44d1966c998077badd57f&h=Lf=t07.sgm&r=PART&n=7y15.1.8.2.6&ty=HTML>
- **USDA - Commodity Processing:** <http://www.fns.usda.gov/fdd/processing/> and <http://www.commodityfoods.usda.gov/processing.htm>
- **IDOE/SCNP:** <http://www.doe.in.gov/nutrition/scn-procurement>
- **ACDA:** <http://www.commodityfoods.org/>
- **National Food Service Management Institute:** First Choice – A Purchasing Systems Manual for School Food Service 2nd Edition: (This document may be downloaded by chapter from the National Food Service Management Institutes website.) <http://nfsmi-web01.nfsmi.olemiss.edu/DocumentSearch.aspx> You will need to type “First Choice” in the “Title” box and then search.