



06/09/20

Procurement Q&A

Background

- This document aims to answer questions from registered participants of the School Nutrition Association (SNA) Back to School (BTS) Series in June 2020.
- The questions arose during the Procurement section and the United States Department of Agriculture (USDA) Foods section of the BTS Series.
- SNA thanks Barry Sackin, Sarah Smith-Holmes and the USDA-FNS team for their contributions to this document.

Q&A

Q: Small purchasing is less than \$250,000 but what is the minimum purchase amount for which documentation would be needed?

A: Documentation is required for all procurements. The level of detail required is less for the informal procurement methods of Micro Purchasing (threshold of \$10,000) and Small Procurements (threshold of \$250,000 at the Federal level—state or local limits that are less than \$250,000 apply). For micro purchases, keeping receipts that show purchases were made from a variety of vendors should be sufficient. If, as the example during the presentation showed, there is one store that has consistently lower prices on a particularly item and, therefore, the only one being used, periodically checking prices and keeping a record would be a good idea. For example, “on October 12, the price of a gallon of milk at Store A was \$2.75, \$2.25 at Store B, \$2.30 at Store C, and \$3.25 at Store D.” This is an example of a small purchase procedure.

Q: Thoughts about Food Service Management Company (FSMC) where the service method, participation levels, menus may change depending on how the school chooses to operate.

A: USDA explicitly offered a waiver on FSMC contracts. If a new contract is needed due to previously unanticipated changes, the Program operator may perform a noncompetitive procurement to contract with a FSMC for the 2020-2021 school year. Please note that any FSMC contract that results from a noncompetitive procurement will not be eligible for extension past the 2020-2021 school year (or June 30, 2021). Districts needing to amend contracts to accommodate changes in all facets of meal service need to obtain price/cost estimates for contracts exceeding \$250,000 prior to contract modification. School Food Authority (SFA) may also equitably distribute the purchase of goods and services, to the

maximum extent possible, among qualified sources using the micro-purchase method in 2 CFR 200.320(a) as long as the SFA considers the price reasonable, or they may use non-competitive proposals in 2 CFR 200.320(f) to obtain the additional goods and services from qualified sources.

Q: For SFAs that were bid with FSMC for 20-21, are they required to use the RFP 21-day cycle menu for startup?

A: USDA waivers for FSMC contracts allow the suspension of the 21-day cycle menu. That is a local decision subject to the mutual agreement of the parties.

Q: Is the Child and Adult Care Food program (CACFP) FSMC RFP contract ready for the 2020-2021 school year?

A: We are unable to determine what contract is in question here. CACFP only allows for an Invitation for Bid (IFB) when contracting for a FSMC. See 7 CFR 226.21(a)(1)-(7).

Q: We were going out to bid for FSMC but due to COVID we decided to renew for our last allowable year. Can we still submit for a waiver to extend out 1 more year?

A: No waiver is required for SY2020-2021 if one additional renewal year option is available. For contracts expiring by June 30, 2020, FNS issued a nationwide waiver of the FSMC contract duration in 7 CFR 210.16(d) and 225.6(h)(7) allowing Program operators to extend FSMC contracts for the 2020-2021 school year.

If the question is to extend one additional year for SY2021-2022, no – the waiver FNS provided was for SY2020-2021 only.

Q: What was that section quotation again on adding items? Missed it.

A: Policy memo *Market Basket Analysis when Procuring Program Goods and Modifying Contracted-For Product Lists*, FD-144, SP 04-2018, SFSP 01-2018, CACFP 04-2018, published January, 18, 2018. <https://www.fns.usda.gov/usda-fis/market-basket-analysis-when-procuring-program-goods-and-modifying-contracted-product-lists>

Q: Please elaborate on the SFA's ability to make substitutions vs contract amendments. Are you saying that the SFA may order a product not on their list of items bid?

A: The policy memo referenced above establishes the ability for a district to amend an existing contract within certain limits to add items as long as the district include their intention to do this in the original solicitation. If the Program operator did not this include language in the initial

solicitation, during the emergency the district may obtain the additional goods and services needed by using the micro-purchase method in 2 CFR 200.320(a) or non-competitive proposal method in 2 CFR 200.320(f).

Adding new items is different from a substitution. The best example of a substitution is when a processor changes a product formulation or eliminates an item from their catalog and offers an alternative item. However, the district might also require a substitution to accommodate the changes in service models. The example given was a bid for bulk bean and cheese burritos. When the district now needs a pre-packaged bean and cheese burrito, the district might request the substitution of the same burrito individually wrapped, if the product is available.

Q: Contract Product List: does this include a catalogue submitted with the Request for proposal (RFP)?

A: This is a more complex question. The first part of the above referenced policy memo dealt with “market basket” awards where the district awards a contract based on a subset of the items on the solicitation. Once awarded, the successful vendor must provide fixed pricing for the other items on the solicitation. A “catalog” of items including items not on the solicitation does not qualify. What does that mean? A district cannot request an open list of products, but must develop a list of required items. Items in the catalog that were not part of the solicitation are not considered approved as part of the contract. As stated above, additional items may be procured using the micro-purchase or non-competitive proposal methods, as applicable.

Q: Given that the federally declared public emergency ends on June 30th, do the flexibilities around emergency procurement end as well?

A: There is confusion around the June 30 date. This was the date originally included in the waivers given by USDA not related to any declared emergency. The waivers related to Seamless Summer Options (SSO) and Summer Food Service Programs (SFSP) have been extended through August 31, and the Department is evaluating the need for additional extensions.

2CFR 200.320(f) does not state who is responsible for declaring an emergency. As the current situation varies significantly by local, state, and region, there is no broad definition or declaration of an emergency. Districts should ask their State agency if it considers the conditions at the local level to constitute an emergency and, therefore, apply the non-competitive proposal method to purchase goods and services.

Q: Can districts serve 3 meals at one time—breakfast, lunch and snacks under the SSO or SFSP guidelines?

A: No, that exceeds the limits of two meals, or one meal and a snack, for open and closed enrolled sites under SFSP and SSO. In addition, Program regulations do not allow lunch and

supper to be served at the same site. The only types of SSO/SFSP sites that can serve three meals a day are camps and sites serving children of migrant workers.

However, if the site is operating SSO/SFSP and also the CACFP At-Risk Afterschool Program, then breakfast and lunch may be served under SSO/SFSP and a supper and/or a snack may be served under At-Risk. Under the current waivers, all meals may be provided at one time to participants, as long as each Program keeps accurate meal counts and claims only the meals served for that specific Program. It should be noted that At-Risk programs can only operate during the school year, which nationwide in 2020 ends on June 30.

Q: Can you provide an example of a cost analysis model, form, process?

A: Please reach out your State agency for assistance in obtaining this.

Q: On micro-purchases, is it \$10,000 per vendor/store, or category, i.e.: produce or milk? Or is it a total of ALL micro-purchases?

A: The micro-purchase limit is per individual transaction. It is not broken down by category and is not a total of all micro-purchases made in a year. As a reminder, Federal regulations require micro-purchases to be equitably distributed among qualified suppliers. Additionally, the micro-purchase method does not require soliciting competitive quotes if the Program operator considers the cost of goods or services to be reasonable, and the aggregate dollar amount does not exceed the Federal micro-purchase threshold currently set at \$10,000.

Q: What authority at the Federal level is procurement with?

A: 2CFR 200 applies across the federal government. As “subgrantees”¹ of federal funds, it applies to all child nutrition programs. Oversight of school nutrition programs falls to the United States Department of Agriculture and, in most states, to the State Department of Education.

¹ The federal government has an agreement with each state, and the states have agreements with local school districts. Funding flows from the federal government to the states, which then distribute the funds to local districts, making the local district a subgrantee.

Q: So does the non-competitive procurement mean you can roll a bid that was due this year to give another year, if it is not a Food Service Management Company Contract.

A: FNS has no authority over contract duration periods except FSMC contracts. Other supplier contracts with a stated termination date or around June 30, 2020, may be extended subject to the procurement authority establishing the contract duration period. Contact your State or local procurement authority for information on extending these contracts.

Q: What is needed to document the purchase was made under the Noncompetitive Emergency Purchase for auditors?

A: The non-competitive proposal method is similar to a competitive solicitation method and uses all applicable required contract provisions. The exception is the proposal is negotiated from one source. The documentation is the same, the solicitation document to obtain proposals and prices, vendor response, any documentation related to the final contract negotiation, executed contract, invoices of purchases, etc.

Q: Please repeat Sarah's info about what to have on hand for an auditor

A: The district should keep a written copy of 2CFR 200.320(f)(2) and a copy of the FNS memo COVID-19: Child Nutrition Response #19, *Nationwide Waiver of Food Service Management Contract Duration in the National School Lunch Program and Summer Food Service Program*, dated April 24, 2020, in its files as a reference for any audit. Program operators should maintain communication records, purchase requests, the specifications requested, a list of the vendors from whom quotations were requested (if more than one), the quotations received, and copies of any purchase orders and contracts.

Q: Under the noncompetitive emergency procurement, do we have the authority to purchase something over the micro-purchase threshold, but is a one-time purchase (won't need a contract), such as pre-packed meals directly delivered to a district warehouse? For example, several pallets of a meal kit that is about \$12,000? Not part of a current contract or an item that we've never purchased. Again, one-time purchase from a vendor, directly delivered to our warehouse.

A: Yes. The non-competitive proposal method, allowable pursuant to 2 CFR 200.320(f), may be used to obtain a proposal from one source. Alternatively, a Program operator could follow small purchase procedures for this purchase.