

Solving the Procurement Puzzle



Tools & Tips from SNA to Help Improve Procurement Practices

Procurement Dos and Don'ts for Operators

Recommendations for a fair, open and competitive procurement



DOs

For Operators:

February 2019

DO...Understand the Fundamental Principles of Ethical Procurement

There are three basic principles in K-12 school nutrition procurement—it must be *fair, open* and *competitive*. The details to support these principles can be found in federal law, specifically in Title 2 of the Code of Federal Regulations, Section 200. This is an easily understood section of law and key decision-makers should make a point to read it. Keep in mind that procurement must adhere to both federal and state laws.

DO...Have a Written Code of Conduct and/or Ethics

One of the most essential elements of any K-12 school nutrition operation is a clearly written set of policies regarding what is and is not acceptable in procurement procedures. Such policies are required by federal law, and they comprise a code of ethics or conduct designed to ensure that everyone involved in purchasing understands their individual responsibilities and expectations. This encompasses staff members who solicit and award contracts, those who buy goods and services, team members who oversee ordering and receiving and so on. Each employee should acknowledge receipt, in writing, of a copy of the Code and any updates, so that if a breach of ethics *does* occur, there is clear evidence of employee awareness of the district and department's policies. Ignorance will not be accepted as an excuse.

DO...Have Written Procurement Procedures

School food authorities (SFAs) are required by law to have written procurement procedures covering all types of purchasing. Federal law

allows for five different methods of school nutrition procurement:

- micro-purchasing (<\$10,000);
- informal/small procurements (<\$250,000 in federal law, although state or local limits may be less);
- Invitation for Bids (also known as formal bidding);
- competitive proposals (more popularly referred to as RFPs); and
- non-competitive contracts (also known as sole-source contracting).

The written procurement procedures should state the specific circumstances (when and how) each of these approaches may be used in the SFA. In writing procurement procedures, remember that states may have rules that are more restrictive than the federal laws, and districts may, in fact, have even more limitations.

DO...Think Before You Act

All procurement activities and interactions with vendors should be *intentional and thoughtfully considered*. Since school meal programs primarily use public funds—federal, state and local—the standards for behavior are even higher than for non-public entities. Often, the mere appearance of wrongdoing carries as much, if not more, weight than actually breaking the law. To avoid the perception of an ethical breach, always be mindful about how your actions would be viewed by an outsider.

An additional fourth tenet to the three fundamentals of procurement (fair, open and competitive) is that it should be *transparent*. All activities related to purchasing must be able to withstand public scrutiny, and all documentation related to a purchase decision should be readily accessible for such scrutiny. The law allows vendors and buyers to shield proprietary

information, but these are limited situations. Price, for example, is not considered protected, proprietary information.

DO...Always Use One of the Approved Procurement Methods

There may be an occasional opportunity to make a special purchase, say, at a different time of year than your standard procurement. If your SFA's written procedures allow for such purchases, follow those steps, but remember that you must *always* adhere to the law. Perhaps you're attending a food show and have just discovered a new item you want to try right away. Does it fall within the micro-purchasing guidelines (<\$10,000)? If so, then using this approach at this unusual time is likely to be fine. But if the purchase amount is greater than that threshold, you should consider conducting an informal procurement.

After all, it might turn out that another distributor's price is actually lower than the "show special" price that's being promoted by the vendor.

Should a vendor suggest that they are the only supplier of a good or service, even offering a letter to that effect, you must remember that all "sole source" contracts require pre-approval by your state agency.

DO...Make Each Procurement Unique

Many school districts simply update an existing document to use for a new bid or RFP; after all, relying on past information for both the general requirements and the specifications and quantities is a way to save valuable time. But doing so can undermine a good procurement.

Every time your team seeks goods and services, you should reassess *all* aspects of your requirements. This means going beyond the list of goods, and reviewing the specific terms and conditions, as well. Tightly crafted, unique solicitations help ensure the best value to the district.

DO...Forecast Your Needs

One of the most common frustrations of vendors working in the K-12 school foodservice segment is that too many districts do a poor job of forecasting their real needs. To write an effective solicitation, the SFA should have a reasonable estimate of how much it will need of every item on the bid/RFP. Simply carrying forward a previous quantity is not acceptable. Use the menu for the period that will be covered by the procurement solicitation and review different metrics to project participation. These steps will allow you

to estimate quantities with a fair amount of accuracy. Furthermore, if you can, guarantee a minimum purchase quantity of each item to add assurance to vendors and increase the likelihood you will receive the best pricing/value responses.

DO...Honor Your Contracts and Commitments

When you award a contract, it is only fair and reasonable to follow through with your commitments. For example, if you award a contract for beef patties to one processor, you should buy that patty from the awarded vendor, even if you later find a new product from another processor that you like better. There are times when you want or need to make a change—and contracts are not binding in perpetuity—but the specific criteria for revoking an award should have been part of your solicitation.

Honoring contract commitments is of particular concern when processing USDA Foods. Once the SFA has diverted a particular commodity, it should purchase products that completely use the item. While USDA allows transfer of commodities from one district to another, and from one processor to another, this action presents an ethical question about fulfilling your commitments. Remember, the processor has based its pricing and production on the volume that you identified in your contract. Changing vendors or products undermines the customer-vendor relationship.

DO...Include Any and All Expectations in the Solicitation

Everything a district expects from a vendor should be included in the solicitation, so that all vendors have an equal opportunity to offer it in their response. For example, if you anticipate that a processor will offer special discounts throughout the year or has a marketing program you want to apply in your operation, include language to this effect in your solicitation. It may be difficult to assign specific values to the responses, but how you will *weight* such responses should be clearly stated in the solicitation documents.

A rewards/points program offered by a vendor is an example of the types of expectations that should be spelled out in your solicitation. This can be tricky to include in a bid document, however, which is one reason more SFAs have chosen to use RFPs. In an RFP, you *can* include the opportunity for vendor respondents to indicate the availability of such programs, but you must identify how your SFA will evaluate and weight this criteria in determining the contract award.



DON'Ts

For Operators:

DON'T...Do Anything You'd Be Embarrassed to Read in the Local Paper

This may seem obvious and simplistic, but reflecting on every action you take through this particular lens can save you from making ethical and procurement missteps. What would a school board member think if they saw you dining out with a vendor at an expensive restaurant? What would parents think if they came to your office and found high-end office furniture? Perceptions have lasting consequences, even if they don't necessarily reflect the full picture.

DON'T...Accept Gifts Above the Limit Established in Your Code of Conduct and/or Ethics

The federal government allows employees, Members of Congress, staff, etc., to accept gifts of minimal value, usually less than \$50. In your own SFA, establish an acceptable limit, make sure that all employees understand the policy and then adhere to it. Remember that gifts can be defined as merchandise, trips, meals and the like.

If your Code of Conduct allows you to join a vendor for a meal, make sure the cost of the meal is less than any gift limit you have established. Some policies do not allow acceptance of *any* meals, so you should be prepared to pay your fair share when dining out together; keep the receipt, should you need to defend this activity later.

There is generally an exception for what are called "widely attended events." Perhaps a vendor has sponsored an event at a conference that is open to a large number of school nutrition professionals. Even if the cost of your participation likely exceeds the established limit, attendance is usually acceptable. If you're not sure, ask your supervisor. If your attendance is questioned later, you've covered yourself by going through the proper channels.

DON'T...Solicit Gifts or Donations

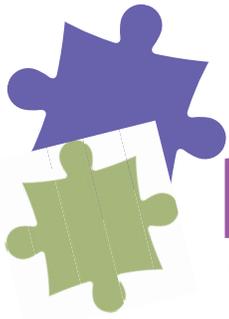
It's nice to organize a holiday or year-end party for your staff, but the expenses related to such an event—including food and door prizes—should be built into your budget. Asking your vendors to help with such events is unethical.

Similarly, a school or district administrator outside of the school nutrition department might ask you to solicit gifts or food for another school staff event. While it is difficult to refuse such a request, it is important to do so. This is an example of the value of having a written code of conduct. If it clearly states that you cannot and will not do this, you are supported by policy and your refusal is not personal.

DON'T...Accept "Prizes" That Are for Personal Use

Vendors frequently offer prizes and drawings during food shows. Some of these are well above a \$50 value, including iPads, trips and gift cards. Accepting these for personal use is rarely deemed acceptable by a school district. If the prize can be used in your cafeteria marketing plan and will be given to a student or student group, it might be acceptable.

Again, be mindful of outside perceptions. Although you might feel that accepting such a gift does not have any influence on your procurement decisions, be aware of how this action might be perceived by others.



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Procurement Dos and Don'ts for Industry & Vendors

Recommendations for a fair, open and competitive procurement



For Industry:

March 2018

DOs

DO...Understand the Laws Governing School Procurement

The K-12 school foodservice segment has so many complex federal, state and local regulations and policies, it's common for vendors to rely on their school customer to take the lead in compliance. But just as vendors strive to be of service to their K-12 customers by being familiar with menu planning, nutrition and food safety requirements, procurement law is no less important to understand. Knowing federal requirements in this area, which are easily accessible and understandable, allows you to support your customer by ensuring that all of your interactions comport with the law. However, remember that states may have rules that are more restrictive than the federal laws and districts may, in fact, have even more limitations. If you are uncertain about a specific question, you might ask the state SNA or State Agency for help.

DO...Have a Written Code of Conduct/Ethics

One of the easiest and most effective ways to navigate the world of procurement ethics is to have a written Code that everyone on the team knows, understands and follows. Company policy for acceptable behavior helps eliminate the gray areas of personal interpretation. A formal Code also can allow you to deflect certain customer requests that push the limits of acceptability without alienating that customer by your refusal. For example, if a customer asks you to provide gift cards as prizes for a staff event, your sales rep can decline and point to the company's policy prohibiting such action, instead of being seen as arbitrary or unhelpful.

Written codes can and should include detailed expectations. What is a reasonable price to pay for a meal? Does the company allow the distribution of gift cards or prizes? Is there one set

of guidelines for individuals and a different one for your support of associations (national, state affiliates and local chapters)? What latitude is given to each sales rep in making such decisions?

Any area that could create an ethical dilemma or the perception of wrongdoing should be included in the policy. SNA can provide a sample policy that vendors can adapt.

DO...Act in a Professional, Ethical Manner

Every individual interacting with school foodservice customers should behave in ways that are completely above reproach and cannot be misconstrued or misinterpreted. The K-12 segment is, if not unique, quite different than most other foodservice segments. In general, it is more friendly and collegial, which can lead to relationships and activities that are more personal. Nonetheless, these are business relationships and that awareness should guide your interactions.

DO...Be Honest in All Your Dealings

School nutrition veterans can cite many examples of unethical behaviors among vendors, from mispricing to "salting" samples to misrepresenting information about products. Don't ever put yourself in a position of being perceived as a representative of your company who is less than honest and ethical.

DO...Consider a "Reasonableness" Test When Planning Booth Prizes

It is common for exhibitors to offer a variety of incentives and prizes at food shows. But giveaways should be for the benefit of the *program*, not the individual. The value of such prizes and incentives should be proportional to the business expectation.



For Industry:

DON'Ts

DON'T...Put You or Your Customer at Risk

Don't extend invitations, organize activities or make offers that might be construed as unethical. Taking a customer to lunch or dinner is a reasonable activity. Taking that customer to a five-star restaurant and buying expensive wine may push the envelope.

Inviting a customer to visit your plant can be a good way to promote your company and its products, while providing an educational experience. Underwriting reasonable costs for the trip might be deemed acceptable. But if the trip involves a plane ride or hotel stay, you should consider how it would be perceived by the customer's district administrators or the public. While the school district should have its own policies in accepting such a trip, it's better to think through the offer or activity from the perspective of outsiders and what they would consider appropriate.

A good rule to follow is never to offer anything for a customer's personal use. Incentives for students and programs are usually acceptable, but trips, tickets and similar goods for use by an individual school nutrition employee rarely are appropriate.

DON'T...Poach Your Competitors' Business

The golden rule applies here. If a district has an existing contract with another vendor, allow them to honor and fulfill their obligations under that contract. A good example is in the world of commodity processing. If District ABC has pounds of product sitting at a competitor's plant, it is unfair to sweep in with a more attractive product or price and ask that district to transfer those pounds to your plant. What would such a practice mean for your business if a competitor did this to you?

DON'T...Be Dishonest in Any Your Dealings

Deliver what you are contracted to deliver. Bidding one item only to substitute another is unethical. The district should have included language in its solicitation governing substitutions, but that is intended to apply to *unforeseen circumstances*; substitutions should never be a part of your business plan.

Similarly, be prepared to use the district's commodities in processing and subsequently deliver goods that have been purchased under a commodity processing agreement. Maintain good records of balances and usage of USDA Foods and communicate these regularly to your customers.

Bill your customers at the agreed-upon price for the agreed-upon quantities. Pricing "errors," even if undiscovered by the customer, are *never* acceptable, ethical business practices.

Don't misstate anything when presenting your products or company. For example, telling a customer that you are the only source (sole source) for what you are offering when that is not the case could put them and your sale at risk. And, by the way, all sole source contracts require pre-approval by the state agency.