

5P-2.003 Procurement Standards.

(1) Contracts. All Sponsor contracts for goods or services for the School Nutrition Programs must be procured and executed in compliance with the procurement standards outlined in 7 CFR 210.21, 7 CFR 220.16 and 2 CFR 200, incorporated in Rule 5P-2.001, F.A.C.

(a) Pursuant to 7 CFR 210.21(c)(1) and 7 CFR 220.16(c)(1), the Department will conduct a pre-issuance review of each Sponsor's proposed solicitations and proposed contracts for the procurement of goods and services for a School Nutrition Program, if:

1. The Sponsor is contracting with a food service management company; or
2. The Sponsor has a proposed solicitation or proposed contract that exceeds \$50,000 for public and charter school Sponsors or the simplified acquisition threshold identified in 2 CFR 200.88 for all other Sponsors.

(b) In lieu of requesting a competitive solicitation, a Sponsor may make purchases at or below the specified prices from contracts awarded by other Sponsors when the Sponsor that awarded the contract and the Contractor mutually permit purchases by a Sponsor at the same terms, conditions, and prices (or below such prices) awarded in such contract.

1. The purchasing Sponsor must submit the awarded and proposed contracts and written authorization from the Contractor and the Sponsor holding the awarded contract to the Department online at <https://fans.FDACS.gov>, or by mail to 600 S. Calhoun Street (H2), Tallahassee, FL 32399, at least seven (7) calendar days prior to execution.

2. Sponsors must conduct a separate procurement to obtain goods and services if the proposed contract results in a material change to the awarding Sponsor's contract. A change is material if it would cause the Contractor to bid differently, if the prospective change had existed during the original solicitation process, or if the total cost of the change exceeds the thresholds referenced in subparagraph 5P-2.003(1)(a)2., F.A.C.

(c) Noncompetitive Procurement. Noncompetitive procurement of goods and services can only be awarded by a Sponsor if the circumstances in 2 CFR 200.320(c) apply. Noncompetitive agreements shall not be permitted as the underlying agreement in the implementation of the procurement practice described in paragraph 5P-2.003(1)(b), F.A.C. Sponsors desiring to award noncompetitively procured contracts must obtain approval from the Department prior to entering into the agreement. The Department will approve noncompetitively procured contracts under the following circumstances:

1. Emergency Procurement. Noncompetitive procurement may be utilized when a public exigency or emergency will not permit delay resulting from a competitive procurement. The resulting contract may not exceed 12 months in duration and must be non-renewable. When the public exigency or emergency no longer exists, the Sponsor must utilize competitive procurement procedures to establish its contracts.

2. Inadequate Competition. If, after solicitation of a number of sources, competition is determined inadequate, the Sponsor may award a contract by noncompetitive procurement. In such instances, the Sponsor must maintain documentation of its efforts to solicit bids.

(2) Donations. Sponsors may obtain and use donated food items to meet the meal service requirements outlined in 7 CFR 210.10 and 7 CFR 220.8, incorporated in Rule 5P-2.001, F.A.C., for meal service. Documentation required for the use of donated food items must include:

- (a) The Sponsor's name and Sponsor number;
- (b) The name of the person or organization donating food items;
- (c) The donor's physical address;
- (d) The donor's phone number;
- (e) The donor's email address;
- (f) The food item(s) being donated, including the quantity and size;
- (g) The estimated value of donation; and
- (h) A statement certifying that:
 1. All information provided in the documentation is true;
 2. All donated items listed have been received, without compensation, and meet proper sanitation and health standards which conform with all applicable state and local public health requirements;
 3. The Sponsor understands the Department may verify the information and request additional documentation such as invoices and receipts of the actual purchases from the donor and that the donor has been informed of such conditions; and
 4. The Sponsor understands that if false information regarding donations is purposely provided, the Sponsor will be deemed

Seriously Deficient and subject to termination, pursuant to paragraph 5P-1.004(1)(a), F.A.C.

(3) Training. All food service management companies must complete the online food service management company training found at <http://FDACS.gov/trainFNW> with eighty (80) percent accuracy or higher or attend an in-person food service management company training conducted by the Department prior to entering into an agreement for food services with a Sponsor. Opportunities to complete the online food service management company trainings are offered year-round.

(4) Conflicts of Interest. Sponsors must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts and other procurement actions. Sponsors must disclose in writing any potential conflicts of interest to the Department.

(a) No employee, officer, or agent of the Sponsor may participate in the selection, award, or administration of a contract or purchase supported by School Nutrition Program funds if he or she has a real or apparent conflict of interest.

(b) Such a conflict of interest would arise when the Sponsor's employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs, or is about to employ, any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

(c) The officers, employees, and agents of the Sponsor may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

(d) The Sponsor's standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Sponsor.

(e) If the Sponsor has a parent, affiliate, or subsidiary organization that is not a local government or Indian tribe, the Sponsor must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the Sponsor is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(f) The Sponsor may not award any contract or make any purchase supported by School Nutrition Program funds where the Sponsor or an employee, officer, or agent of the Sponsor has a real, apparent, or organizational conflict of interest.

(g) All costs resulting from purchases or contracts selected or awarded in contradiction of this rule are unallowable nonprofit school food service account expenses.

(h) The Sponsor will be deemed Seriously Deficient and subject to termination, pursuant to paragraph 5P-1.004(1)(a), F.A.C., for failure to make required disclosures of any potential conflicts of interest. Identification of any real or apparent conflicts of interest or organizational conflicts of interest by the Department is cause for termination pursuant to subparagraph 5P-1.004(1)(b)5., F.A.C.

Rulemaking Authority 570.07(23), 595.404(4), 595.404(10) FS. Law Implemented 595.404 FS. History—New 8-9-23.