

Glossary of Terms

For the purposes of this guidance, the term:

Bidder means the entity that responds to an Invitation for Bid for the purpose of providing a product or service.

Buy American means the “Buy American” provision (in section 12(n) of the National School Lunch Act) requires schools to purchase, to the maximum extent practicable, domestic commodities and products. A domestic commodity or product means an agricultural commodity that is processed in the United States, and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. Purchases made in accordance with the Buy American provision must still follow the applicable procurement rules calling for free and open competition. Any entity that purchases food or food products on behalf of the SFA must follow the same “Buy American” provisions that the SFA is required to follow.

Code of Federal Regulations (CFR) means the codification of the general and permanent rules published in the *Federal Register* by the Executive departments and agencies of the Federal government.

Competitive Proposals (previously known as Competitive Negotiation), i.e., a Request for Proposal, means a method of procurement whereby a technical proposal is solicited that explains how the prospective contractor will meet the objectives of the solicitation and a cost element that identifies the costs to accomplish the technical proposal. While price alone is not the sole basis for award, price remains the primary consideration when awarding a contract under the competitive proposal method.

Competitive Sealed Bids, i.e., and Invitation for Bid, means a formal method of procurement in which sealed bids are publicly solicited, i.e., through an Invitation for Bid, resulting in the award of a firm-fixed price contract to the responsible bidder whose bid is responsive to the IFB, conforms with all the material terms and conditions of the invitation for bids, and is lowest in price. In this case, the IFB must be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them with sufficient time to respond prior to the date set for opening the bids.

Contract means a formal, legally enforceable agreement between a buyer (client) and a seller (contractor) that establishes a legally binding

obligation for the seller to furnish goods and/or services and for the buyer to compensate the seller. A contract must clearly and accurately describe the goods and/or services to be delivered or performed and the terms and conditions of the agreement. In the case of school meals programs, a contract is executed by the authorized representatives of the SFA and the contractor that calls for the provision of services, materials, supplies or equipment by the contractor in accordance with all conditions and specifications in the bid/proposal documents, for a price to be paid by the SFA prior to execution.

Contract Documents means the bid specifications, requirements, the IFB or the RFP, and the contract, as applicable.

Cost Reimbursable Contract means a formal, legally enforceable contract that reimburses the contractor for costs incurred under the contract, but does not provide for any other payment to the contractor, with or without a fixed fee. In a cost reimbursable contract, allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor.

Donated Foods means foods donated, or available for donation, by the United States Department of Agriculture.

Equipment means tangible, non-expendable, personal property that has a useful life of more than one year and an acquisition cost of \$5,000 or more. State law or policy may set stricter capitalization thresholds for equipment than the one set by Federal standards. Any SFA may use its own definition of equipment if its definition would at least include all items of equipment as defined here.

Execution of Contracts means to complete and formally sign the legal document. For school meals purposes, it is the official signing of the contract by the School Food Authority and the contractor, which indicates that the contract has begun (or has been renewed). Before any contract or amendment to an existing food service management company contract is executed, a State agency must review and approve the contract terms and assure that the SFA has incorporated all State agency required changes into the contract or amendment.

FNS means the Food and Nutrition Service of the United States Department of Agriculture. FNS administers the nutrition assistance programs of USDA. The mission of FNS is to provide children and needy families with better access to food and a more healthful diet through its food assistance programs and comprehensive nutrition

education efforts.

Fixed-price means a price that is fixed at the inception of a contract and is guaranteed for a specific period of time.

Food Service Management Company (FSMC) means a commercial enterprise or a nonprofit organization that is or may be contracted with by the SFA to manage any aspect of the school food service. A FSMC is a company that is acting on behalf of a school food authority by actually being in charge of or directing any aspect of the food service, and must meet applicable program requirements.

Grantees and Sub-grantees means the government or other legal entity to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. A sub-grantee is the government or other legal entity to which a sub-grant is awarded and which is accountable to the grantee for the use of the funds provided.

Invitation for Bid (IFB) means a type of solicitation document used in competitive sealed bidding, where the primary consideration is cost and the expectation is that competitive bids will be received and an acceptance (award) will be made to the responsive and responsible bidder whose bid is lowest in price. An IFB is a formal method of procurement that uses sealed bidding and results in a fixed price contract with or without adjustment factors. The IFB must be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them with sufficient time to respond prior to the date set for opening the bids. Also, the IFB should describe the minimum standards expected of a responsible bidder in measurable terms.

Noncompetitive Negotiation means a procurement method used when competition is deemed inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

- (A) The item is available only from a single source;
- (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (C) The awarding agency authorizes noncompetitive proposals; or
- (D) After solicitation of a number of sources, competition is determined inadequate. Negotiations must include both price and terms using the same procedures that would be followed for competitive proposals.

Nonprofit School Food Service means the restricted account in which all of the revenue from the food service operations conducted by the school food authority principally for the benefit of school children is retained. This account is used only for the operation or improvement of the nonprofit school food service. Any money earned from the operation of the food service can be used only to operate or improve the food service.

Offeror means the entity that responds to a Request for Proposal for the purpose of providing a product or service.

OMB Circular No. A-102, Attachment O means the Federal standards governing procurements made by SAs, SFAs and other local program operators under Federal open-ended entitlement programs. Such programs include the National School Lunch Program, the School Breakfast Program and the Special Milk Program for Children; accordingly, these standards apply to SFAs operating these programs.

Processor means any commercial facility which processes or repackages donated foods. However, commercial enterprises that handle, prepare and/or serve products or meals containing donated foods on-site solely for the individual recipient agency under contract are exempt under this definition. For further information see the definition in 7 CFR 250.3.

Procurement means the process of obtaining goods and/or services in accordance with applicable rules and regulations.

Request for Proposal (RFP) means a type of solicitation document used for the formal procurement method of competitive proposals. The RFP identifies the goods and services needed and all significant evaluation factors. The RFP is publicized and is used to solicit proposals from a number of sources. Negotiations are conducted with more than one of the sources submitting proposals, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive proposals may be used if conditions are not appropriate for the use of competitive sealed bids.

Respondent means the entity that responds to either an IFB or RFP for the purpose of providing a product or service.

Responsible Bidder/Offeror means a bidder/offeror capable of performing successfully under the terms and conditions of the contract.

Responsive Bidder/Offeror means a bidder/offeror whose bid/offer conforms to all material terms and conditions of the solicitation.

School Food Authorities (SFAs) means the governing body which is responsible for the administration of one or more schools, and has legal authority to operate the National School Lunch Program or School Breakfast Program therein *or* be otherwise approved by FNS to operate the program. The school system superintendent is typically the person authorized by the governing body to sign legal documents for the SFA.

Small Purchase Procedures are those relatively simple and informal procurement methods for securing services, supplies, or property that may be used when the anticipated acquisition will fall below the acquisition threshold. The Federal threshold for small purchase procedures is fixed at 41 U.S.C. 403(11) currently set at \$100,000. However, State and local regulations often set lower small purchase thresholds which are more restrictive than the Federal level. In applying the small purchase threshold, the SFA must adhere to the most restrictive, lowest limit set. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

Sole Source Procurement in the Child Nutrition Programs occurs only when the goods or services are available from only one manufacturer through only one distributor or supplier. Sole source describes a condition of the procurement environment. In a true sole source situation, conducting a traditional solicitation (sealed bid, competitive negotiation or small purchase) is a meaningless act, because the element of competition will not exist. When faced with an actual sole source situation, an SFA must first obtain State agency approval, and then go directly to the one source of supply to negotiate terms, conditions and prices.

Solicitation means a document used by the SFA to acquire goods and/or services. Solicitations must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Solicitations must also identify all the requirements which the offerors must fulfill and all other factors to be used in evaluating the bids or proposals.

Vendor means a merchandiser of complete meals, meal components, or raw materials.