



# Solving the Procurement Puzzle



Tools & Resources from SNA to Help Improve Procurement Practices

## Procurement Dos and Don'ts for Operators Recommendations for a Fair, Open and Competitive Procurement

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### DOs for Operators

#### **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 (IFB)/Invitation to Bid (ITB)," also known as formal bidding;
- competitive proposals, more popularly referred to as "Requests for Proposal (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.



## **DON'Ts for Operators**

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 weigh this criteria in determining the contract award.

### ***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.