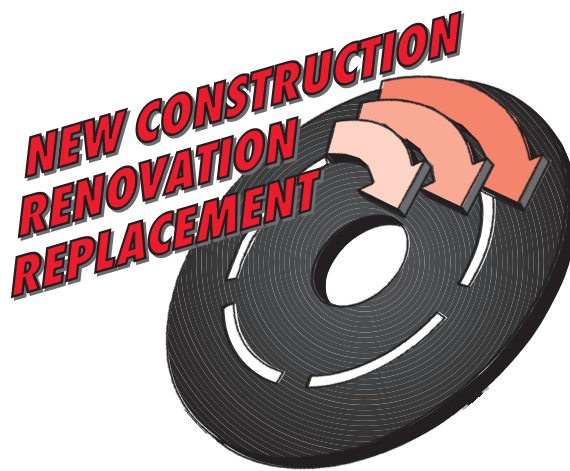


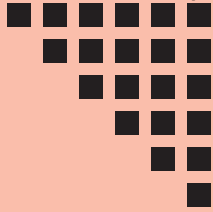
OVERVIEW

The big job of specification development is underway. Chapter 8 focuses on the bid process which is a means of acquisition. The ultimate goal of the bid process is to ensure open and free competition. Federal regulations govern the bid process for CNPs because they receive federal funds. In addition, each school district must follow its state and local procurement plans if they are more restrictive than Federal requirements. Chapter 8 outlines the process step-by-step from developing the bidders' list to evaluating and awarding the bids. The scope of the foodservice equipment purchase will determine the procurement method used and who will be responsible for providing the bid documents.

The bid process is one of the most important and exciting events of your journey. It is this process that allows vendors the opportunity to respond to your specifications. The ultimate goal of the bid process is to provide a purchasing system that ensures open and free competition. It's true that competition may have some flaws. "However, when competition is maximized to its fullest practical extent, and when ethically followed, it is the only proven purchasing technique that guarantees full and equal opportunity to all qualified, interested bidders" (National Institute of Governmental Purchasing, 1977, p. 1-7).



Traveler's Tip



You will need to check local, state, and federal procurement policy. It is your responsibility to follow all regulations and laws. Penalties do exist for noncompliance.

Child Nutrition Purchasing Regulations

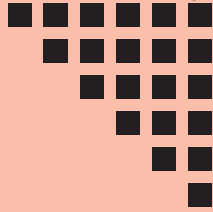
Federal rules establish certain minimum procurement procedures that must be followed when Federal funds are to be used to pay for all or some part of the purchase. These rules also apply to any purchase funded from the nonprofit school foodservice account. It is essential for the CNP director to understand and comply with the Federal and state laws and local guidelines. Currently, the regulations governing the use of Child Nutrition Program funds are contained in USDA Regulation 7 CFR Part 3015. This regulation incorporates the requirements of Office of Management and Budget (OMB) Circular A-102, Attachment O, dated January 1981. For future reference (post 1998), the procurement requirements will be contained in USDA 7 CFR Part 3016 which will incorporate the most recent OMB Circular requirements.

Understanding the Bid Process and Competition

The bid process and bid documents are the same whether the purchase is for new construction, renovation, addition, or replacement. In new construction projects, the bid documents are provided by the architect, foodservice equipment consultant, or general contractor. The CNP director is responsible for communicating preferences and expectations to assist in establishing equipment specifications. In renovation, addition, and replacement projects, the CNP director is often expected to provide the bid documents. Part 210.14(a) states that "...such revenues [nonprofit SFS account] shall not be used to purchase land or buildings unless otherwise approved by FNS or to construct buildings."



Traveler's Tip



Be sure to contact your State Office of Child Nutrition to find out acceptable use of funds and obtain prior approval when necessary. Your state agency must approve use of nonprofit school foodservice funds to purchase equipment that costs more than \$5,000 per unit.

One of the underlying principles is that all purchases be made under conditions that foster substantial competition among a sufficient number of companies. In the purchasing of foodservice equipment, there are three basic methods used:

- competitive bidding using sealed bids
- competitive negotiation using a request for proposal
- small purchase procedures

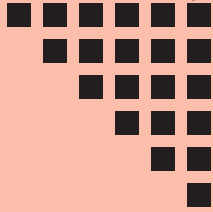
Table 8.1 describes the advantages and disadvantages for each type of bidding.

Table 8.1 Types of Bids

Types of Bids	Advantages	Disadvantages
Competitive bidding using sealed bids	<ul style="list-style-type: none"> ■ Advance preparation ■ Easier identification of expenses ■ No negotiation responsibilities ■ Simplified monitoring 	<ul style="list-style-type: none"> ■ Demands precise identification of needs ■ May limit competition
Request for proposal	<ul style="list-style-type: none"> ■ Flexibility in assigning responsibilities ■ SFAs benefit during periods of falling prices ■ Greater flexibility in awarding the bid 	<ul style="list-style-type: none"> ■ Complex monitoring ■ Unbudgeted costs during periods of rising prices ■ Potential reopening of negotiations ■ Essential skill and experience required
Small purchase procedures	<ul style="list-style-type: none"> ■ Simple 	<ul style="list-style-type: none"> ■ Currently limited to no more than \$10,000.



Traveler's Tip



Bid awards can be a line item award or a bottom line award.

Most school districts require formal, advertised, sealed bidding procedures for purchases equaling or exceeding established monetary limits set by the school district. Under Federal rules, small purchase procedures can be used for aggregate purchases under \$10,000. The small purchase threshold may change in the future.

The competitive bid purchasing process entails four essential functions regardless of the method. The four functions are:

1. Developing the bidders' list
2. Compiling standard general terms and conditions and/or *boilerplate* standard agreement into an invitation-for-bid (IFB) package
3. Inviting, advertising, opening, and tabulating the bids
4. Evaluating and analyzing the bids and making the award

Measuring Bidder Responsibility

Before you develop your bidder's list it is essential that the Invitation for Bid (IFB) must identify how the bidder will demonstrate responsibility. The CNP director should consider bidder integrity, compliance with public policy, record of past performance, and financial and technical resources. The IFB should describe the minimum standards expected of a responsible bidder in measurable terms. The measurement of the standards must be Pass/Fail and not provide for negotiation or evaluation. The following standards are examples of measuring bidder responsibility.

Example 1:

Standard: Record of past performance

Minimum requirements: Bidder must have performed successfully on all contracts in excess of \$10,000 in aggregate executed during the past three years.



Required bid documentation to meet standard: Bidder must complete Attachment to the bid by listing all contracts exceeding \$50,000 in aggregate executed during the past three years and whether the bidder is in default on each contract. Bidder will not meet the standard if the bidder has been determined to be in default on any contract by a court of competent jurisdiction or recognized administrative appeal or hearings board, whether or not monetary damages were awarded.

Attachment

Contract (Name or other identifier)	Value (Aggregate initial contact and extentions)	Date Executed	Is Bidder in Default on Contract (Y/N)

Example 2:

Note: Here is the same standard but with a measurement that is unacceptable in the underlined text.

Standard: Record of successful past performance.

Minimum requirements: Bidder must have performed successfully on all contracts in excess of \$1,000 in aggregate during the past ten years.

Required documentation to meet standard: Bidder must complete Attachment ___ to the bid by listing all contracts exceeding \$1,000 in aggregate executed during the past ten years and the status of each contract. Bidder will not meet the standard if the bidder has not completed all contracts on time or if bidder is behind schedule on any current contract.

A bidder who has not demonstrated responsibility in the past should not be considered for future contracts.



Developing the Bidders List

The bidders' list is a shopping list of equipment dealers and distributors from whom you plan to directly solicit bids. A complete list generates competition, so take the time to uncover a variety of sources.

It is essential to include all possible sources of bids to ensure competitive pricing. All bidders must have the opportunity to be placed on the list. All potential bidders need to be notified of your school district's bid.

If this is your first experience in purchasing foodservice equipment, you can use the following resources to develop a bidders list:

- trade journals
- recommendations from other CNP directors
- trade shows
- visits by sales people
- World Wide Web

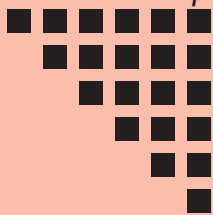
Your goal is to invite potential bidders who pre-qualify to submit a bid for your project. In the Federal regulations are standards for implementing a procurement system for school districts or individual schools.

Standards include:

- assurance of competition
- cost analysis
- adequate review procedure to determine comparability of bids
- avoiding conflicts of interest (use your local Code of Ethics)
- use of the appropriate procurement methods
- compliance with equal employment, anti-kickback, and prevailing wage regulations

The ultimate goal of the Federal procurement regulations is to assure maximum open and free competition.

Traveler's Tip



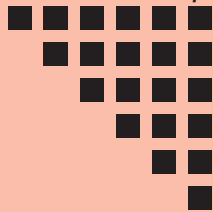
Put the burden of verification of dimensions and utilities on the part of the seller, not the buyer.

CNP Director's Responsibilities

There are school food authorities that oversee a sizable procurement plan. Many of these CNPs have a purchasing department which administers purchase orders, contracts, and other purchasing functions. For the school food authority not having such available assistance, the purchasing authority may be passed to the CNP director. Therefore, a general knowledge of the legal aspects of purchasing is key. Keep in mind that the legal staff of your school system is the best source to advise you on legal matters related to procurement purchases. In addition, you will want to be well informed on community and political issues. For example, a proposed or current bond may provide funds directly realized by your program.

The CNP director has a responsibility of demonstrating compliance with federal, state, and local regulations in the purchasing of foodservice equipment. The purchaser must provide all potential vendors with identical specifications and identical requests for bids.

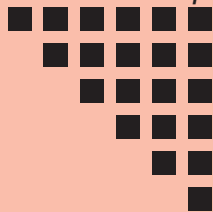
Traveler's Tip



It is important to look at how much the ongoing CNP needs to continue operating at its current level before tapping into these funds for equipment purchases. Depleting CNP funds will reduce the quality of the program designed to provide children with nutritious meals on a continuing basis. Prior approval by the state agency to use nonprofit school foodservice funds to acquire equipment costing more than \$5,000 per unit is required.

In addition, the CNP director and appropriate school district staff must complete a cost analysis of the bids received using the same set of specifications and conditions included in the IFB.

Traveler's Tip



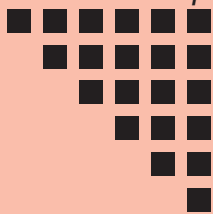
Carefully analyze the bids you receive. The lowest bid may not meet your specifications. A 102: "In competitive sealed bids (formal advertising), ... contract...is awarded to ...bid which is lowest in price." Bids which do not meet bid specifications are non-responsive and must be rejected.



During the bid process, the school district must maintain records to detail the significant aspects of their purchases. Record keeping required for purchases with nonprofit school foodservice funds includes:

- documents issued to solicit price bids
- public announcement soliciting bidders
- responses from vendors
- cost analysis
- signed award documents

Traveler's Tip



It is important you provide maximum open and free competition.

Examples of actions that restrict competition include:

- Placing unreasonable requirements on firms for them to qualify to do business;
- Noncompetitive practices between firms;
- Organizational conflict of interests;
- Unnecessary experience or unreasonable bonding requirements.

Price-Fixing and Bid-Rigging

As you continue on your journey, keep in mind that it pays to be a savvy consumer because not everyone in the industry shares your ethical standards. In spite of the Federal regulation's efforts to foster substantial competition among a significant number of companies, price-fixing and bid-rigging still occur. A working knowledge of the law will help you avoid falling victim to such practices.

Antitrust legislation has been enacted on the federal and state levels. The antitrust laws include the Sherman Act of 1890; the Clayton Act of 1914; the Federal Trade Commission Act of 1914; and the Robinson-Patman Act of 1936, an amendment to the Clayton Act. Table 8.2 describes the essence of each piece of legislation. When these laws are effectively and responsibly enforced, they can save school districts millions of dollars a year in illegal overcharges. Violations of antitrust laws often result in higher prices for inferior products and services.



Table 8.2 Federal Antitrust Legislation

Legislation	Date	Essence of Legislation
The Sherman Act	1890	This Act outlaws all contracts, combinations, and conspiracies that unreasonably restrain interstate trade. This includes agreements among competitors to fix prices, rig bids, and allocate consumers. The Sherman Act also makes it a crime to monopolize any part of interstate commerce. An unlawful monopoly is when only one firm provides a product or service and it has become the only supplier — not because its product or service is superior to others but by conduct that suppresses competition. The Act is not violated simply because one firm’s vigorous competition and lower prices take sales from its less efficient competitors. Sherman Act violations are punished as criminal felonies.
The Clayton Act	1914	The Clayton Act is a civil statute which carries no criminal penalties. It prohibits mergers or acquisitions that are likely to lessen competition. A key provision of the Clayton Act authorizes private parties to sue for triple damages when they have been harmed by violations of either the Sherman or Clayton Acts.
The Federal Trade Commission (FTC) Act	1914	This Act prohibits unfair methods of competition in interstate commerce but carries no criminal penalties. Even if a particular practice does not violate the Sherman, Clayton or Robinson-Patman Act, it may still violate the FTC Act. The FTC Act is used to prevent violations of both the specific antitrust laws and the public policy expressed in those laws.
The Robinson-Patman Act	1936	This is an amendment to the Clayton Act. It prohibits certain discriminatory prices, services, and allowances in dealings between merchants. Under certain circumstances, the Act prohibits a seller from granting lower prices to favored buyers, whether the price discrimination is instigated by the seller or forced upon the seller by the buyers. The Act does not make all price discrimination illegal. Certain defenses are provided (discounts to meet competitor’s lower prices, for example). The Act imposes criminal sanctions for certain practices and for sales at unreasonably low prices if the purpose is to destroy competition.



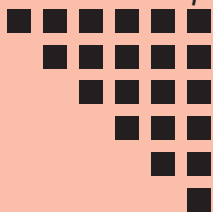
Indictments in the 1990s have alerted school purchasers to the importance of the antitrust laws. Price-fixing and bid-rigging conspiracies are, by their nature, secret and therefore difficult to detect. Law enforcement officials rely on complaints and information from consumers and competitors to identify violations.

Price-fixing and bid-rigging schemes generally occur where there is inadequate competition. More sellers means more competition and usually better prices. School purchasers should be alert to the warning signs of price-fixing and bid-rigging, as noted below.

Warning Signs of Price-fixing and Bid-rigging

- Evidence that two sellers of similar products have agreed to price their products a certain way, to sell only a certain amount of their product or to sell only in certain areas or to certain customers
- Large price changes involving more than one seller of similar products of different brands, particularly if the price changes are of equal amount and occur at the same time
- A seller stating, "We can't sell to you; according to our agreement, so-and-so (the seller's competitor) is the only firm that can sell to you"
- Fewer competitors than normal submitting bids on a project or product
- Competitors submitting identical bids
- The same company consistently coming in as the low bidder and getting contracts for a certain service or a particular area
- Bidders appearing to win bids on a fixed rotation
- An unusual and unexplainable large dollar difference between the winning bid and all other bids
- The same bidder substantially higher on some bids than on others, with no logical cost reason to explain the difference

Traveler's Tip



If you observe any of the warning signals indicating price-fixing or bid-rigging, consult the legal staff in your school district. Their job is to advise you in all legal areas and about concerns that relate to your purchases. Also, law enforcement officials rely on information from purchasers to identify potential violations of antitrust laws.

Solicitation of Bids

The first step in soliciting bids is to decide whether you will use an informal competitive procedure for small purchase procedures or formal method such as competitive sealed bidding or competitive negotiation. When you select a formal procedure, you will need to advertise.

To solicit sealed bids, post a public notice of the intended purchase on bulletin boards at the administrative offices of the school food authority and advertise in the newspaper. Public notice should include the following:

- name of the school district
- brief description of the equipment
- date and time of bid opening
- name of contact person
- where bid documents can be obtained
- legal authority

Next provide potential bidders with an invitation-for-bid (IFB) package Appendix, p. A.77. The IFB package is a complete set of instructions that should include:

- detailed product information including specifications and quantity required
- general terms and conditions for doing business with the school district
- special terms and conditions
- bonding requirements, bid sureties, etc. when required under state and local regulations
- pre-bid conference
- basis for contract award
- explanation of how bidders can demonstrate compliance with bid requirements
- service and warranty provisions
- delivery and installation instructions
- cost provisions
- non-collusion, anti-conflict of interest statement
- envelope to be used for submission of the sealed bid
- time and place for formal public opening and recording of bids
- certification regarding suspension, debarment and voluntary exclusion



Informal Bids

Competitive submission of the bids require the bidder to provide a written sealed bid to the potential purchaser. Written terms and pricing are required to ensure both parties understand each other's expectations. It is recommended that bidders using small purchase procedures provide a written quote to the potential purchaser. The next step is to establish a system of documenting your procurement process. Your permanent documentation files should include the following information for each informal bid submitted:

- name of the dealer quoting the price
- name of the individual quoting the price
- the manufacturer and model number of the equipment offered
- the unit price
- the payment terms
- the promised delivery date
- duration of the quote

A standard form is typically used to maintain consistency and ease of record keeping.

The general terms and conditions for doing business with the school district, or *boilerplate* Appendix, p. A.93 is of utmost importance to the potential bidder. The boilerplate delineates the school district's expectations for the procurement project and is standard for all formal purchases made by the district. Bidders must consider those expectations carefully before investing the resources to bid the project. The boilerplate is standard for all bids.

In addition to the general terms and conditions, the IFB includes special terms and conditions unique to the equipment being purchased. Areas addressed under special terms and conditions may include:

- delivery and installation instructions
- training or demonstrations for all operators
- special servicing requirements



Receipt of Bids

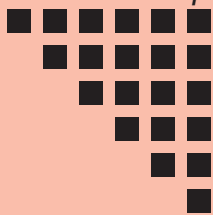
When bids are received, each one must be time-stamped and dated upon receipt. Bids are then deposited in a secure box, safe, or file until the designated opening time. Unsealed bids or bids received after the designated time and date of bid opening are not accepted.

Each bid is opened publicly and recorded in the presence of interested parties. The following information is read aloud for each bid:

- name of bidder
- price
- equipment offered
- payment terms
- FOB point
- delivery date

After opening all bids, each one must be evaluated using the criteria established in the IFB. Federal regulations require that the award be made to the lowest price responsible bidder whose bid conforms to the bid document. Competitive negotiation, in which an RFP is generated, considers price and other factors. Normal policy and legal guidelines provide that bids shall be awarded to the lowest price responsible bidder who submits the responsive bid. Evaluation of the bids must compare the equipment offered with those requested by the specification.

Traveler's Tip



As the CNP director, you have the authority and the obligation to take certain steps which protect the integrity of your procurement process. Part of this obligation requires that you reject bids that:

- Do not meet IFB requirements;
- Are submitted unsealed in sealed bid situations;
- Are for items of equipment that do not meet IFB specifications;
- Changes to the terms and conditions of the IFB;
- Bids from suppliers that are not responsible bidders.



Evaluating the Bids

Bid comparison is an analytical process that requires careful consideration. Each bid must be carefully reviewed to ensure your satisfaction that the school district accepts the most advantageous bid.

Phase 1 Determine the Lowest Bidder's Responsiveness and Responsibility

The first step is to determine if the bidder responded to all of the material terms and conditions of the IFB. This is known as bidder responsiveness. Any deviation from the IFB indicates a non-responsive bidder and the bid may not be considered for the award. Examples of unresponsive bidders:

- delivery schedules that vary from the bid requirements
- bidder makes the school district responsible for determining that alternates conform to the specifications
- bidder who fails to furnish bid bonding requirements, bid sureties
- bidder fails to complete required certification or attachment

Phase 2 Establish the Lowest Bidder's Price

To establish the true lowest bidder price, follow these steps:

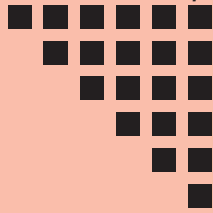
- Step 1 Compare prices.
- Step 2 Check for clerical errors.
- Step 3 Calculate prompt-payment discount offers (if applicable).
- Step 4 Determine any additional shipping costs.
- Step 5 Calculate the lowest net cost.

Using these figures, determine if it will be advantageous to make a multiple award or an aggregate award. In other words, your bid award can be a line item award or a bottom line award just like food purchases are awarded. This decision should be made known to all bidders in the IFB.



This chapter and the bid process are an important aspect of the equipment purchase process. If you have any questions at this juncture, you may want to contact a professional colleague, your State Office of Child Nutrition, Food and Nutrition Service of USDA or a district procurement expert for guidance and support.

Traveler's Tip



Be sure the bid does not include tax. Most child nutrition programs are tax-exempt.



References for Chapter 8

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