



*** CDPHE-CACFP PROCEDURE MEMO CENTERS #17-01 ***

*** CDPHE-CACFP PROCEDURE MEMO FDCH #17-01 ***

*** CDPHE-CACFP PROCEDURE MEMO ADC #17-01 ***

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SUBJECT: Purchasing requirements when using CACFP funds
TO: All CACFP institutions

On December 14, 2015, the Colorado Department of Public Health and Environment, Child and Adult Care Food Program ("CACFP State Agency") issued policy memorandum, *CENTERS #16-07, FDCH #16-07, and ADC #16-06*, which formally released USDA policies pertaining to Federal requirements governing how purchases for goods and services are made with Federal funds.

The Federal requirements ensure CACFP institutions make purchases using CACFP funds in a manner that achieves full and open competition among potential vendors or suppliers. Full and open competition is achieved when vendors and suppliers interested in delivering goods and services receive all necessary information to respond and compete for a CACFP institution's business.

The CACFP State Agency provides this memorandum to clarify Federal requirements in an understandable way. Due to new requirements described in *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200.317-326*, the CACFP State Agency must also follow new rules to ensure CACFP institutions meet requirements for purchasing goods and services with Federal funds. This memorandum also describes the CACFP State Agency's new processes and several actions CACFP institutions must take to comply with the new rules. **Please review instructions carefully in the last section of this document. Action is required of all institutions.**

Purchasing methods requirements

Depending upon the expected cost of the goods or services per transaction or life of a contract with a vendor or supplier, Federal rules require specific methods to select the vendor or supplier. These methods are described in this section.

Some organizations that participate in the CACFP may have cost guidelines and limits that are stricter than the Federal rules. For example, some organizations have policies that require formal purchasing methods when the value of the transaction or full life of a contract is \$100,000 rather than \$150,000. In cases when organizational



rules are stricter than Federal rules described below, organizations must follow their own purchasing procedures and cost guidelines.

Purchasing methods required by Federal rules include the following:

Micro-purchase method: When the total dollar amount of the transaction or full life of a contract for the purchase of supplies or services is less than or equal to \$3,500, institutions may use micro-purchase methods to buy the goods and services. To the greatest extent possible, institutions must equitably choose among qualified suppliers and vendors for these types of purchases. This means the institution must not always select the same vendor and supplier because the vendor or supplier is a favorite. If other qualified vendors and suppliers exist with reasonable prices for the goods and services, the institution must equitably distribute its purchases among these vendors and suppliers. Institutions can make these purchases without obtaining price quotes or conducting formal purchasing processes.

A transaction is an event during which two or more entities exchange goods, services, or money between or among them under an agreement formed for their mutual benefit. The following examples illustrate transactions that are suitable for micro-purchase methods:

An institution purchases fresh produce, frozen vegetables, paper towels, and cleaning fluids from the same supplier at the same time. This is considered a single transaction. If the total cost of these items is less than \$3,500, the transaction is suitable for the micro-purchasing method.

An institution purchases the following items on the same day at two separate locations: milk and bread at a grocery store and paper plates and napkins at a different retail store. The dollar amount spent at each store is less than \$3,500. Each purchase is a separate transaction made with different suppliers. These transactions are micro-purchases and the institution has appropriately distributed purchases among different qualified suppliers.

Small-purchase method: This method is required for purchases for goods or services valued above \$3,500 and *at or below* \$150,000 per transaction or full life of a contract. This threshold requirement is the same in both Federal and State of Colorado rules. This method is also called the “documented quotes” process or the “three quotes and a buy” process.

To make purchases valued within this range, institutions must obtain price or rate quotes from at least three vendors, suppliers, or contractors. If the institution determines three quotes is not adequate, the institution must obtain more than three quotes from qualified sources. The institution must keep documentation of the quotes received from vendors, contractors, or suppliers and certain information about the selection process. The required information to document is reflected in the enclosed form, entitled, *Small Purchase Procurement Log*, which is available for institutions to document small-purchase methods. The CACFP State Agency strongly encourages institutions to use this form to document information about small purchases.



Alternate forms may be used, but at a minimum, must contain the information in the form developed by the CACFP State Agency.

Formal purchasing methods: These methods are required for purchases valued *above* \$150,000 per transaction or full life of a contract. This threshold requirement is the same in both Federal and State of Colorado rules. Formal purchasing methods are also called “the bid process”.

Institutions must maintain all documentation pertaining to every phase of any formal purchasing process. The CACFP State Agency developed template forms (enclosed with this memorandum) for institutions to use during the process, which are suitable for the sealed bids and competitive proposals methods. These forms include an “Invitation for Bid” template and a “Request for Proposals” template. Institutions can use two types of formal purchasing methods: sealed bids and competitive proposals. This section also describes noncompetitive proposals methods, which are rarely allowed.

Sealed bids (using an Invitation for Bid): When an institution is ready to make a purchase of goods or services that exceed \$150,000, the institution must publicly announce the opportunity for vendors, contractors, or suppliers to submit bids, or offers of price. The institution makes this announcement through an invitation for bid (IFB). After bids are received according to the timelines in the invitation for bid, the institution chooses a responsible bidder, whose offer meets the terms and conditions in the invitation for bid and whose bid is the lowest in price. Once the selection is made, the institution and the bidder enter into a firm-fixed-price contract (lump sum or price per unit) for the goods or services. A firm fixed-price contract is not subject to any price adjustment relating to the contractor’s actual cost in performing the contract.

During the sealed bids process, the following conditions must be met:

- A complete, adequate, and realistic specification or description of what the institution intends to purchase is available.
- Two or more responsible bidders are willing and able to compete effectively for the institution’s business.
- The purchase is suitable for a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

The following requirements apply to the sealed bids process:

- The invitation for bids will be publicly advertised and bids shall be obtained from an adequate number of known vendors, contractors, or suppliers.
- Sufficient time must be available for potential bidders to become aware of the invitation prior to the date set for opening the bids.
- The invitation for bids, which will include any specifications and related information, shall define the items or services adequately for bidders to properly respond.
- All bids must be publicly opened at the time and place indicated in the invitation for bids.



- A firm fixed-price contract will be created in writing with the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. For example, if a bidder proposes a discount, the discounted cost must be taken into consideration when selecting the vendor if the discount will actually be applied once the vendor is selected. Any or all bids may be rejected if there is a sound documented reason.

Competitive proposals (using a Request for Proposal): This formal method is used for purchases of goods and services that exceed \$150,000. This method is normally used when more than one vendor will likely submit an offer. After the vendor is selected, the parties enter into either a fixed-price contract (an agreed upon price per meal or snack) or cost-reimbursement type contract (payment is based on the vendor's actual cost of the goods or services, which may include a fee). The total costs may not exceed an agreed upon amount. The competitive proposals method is generally used when price is not the main factor for selecting the vendor. For example, competitive proposal methods would be used if an institution wants the vendor to propose how the vendor would manage delivery at multiple locations, or achieve other requirements. This method involves announcing an invitation for contractors, suppliers, or vendors to submit proposals describing how they will meet the desired services or provide the desired goods described in the request for proposal.

The following requirements apply:

- Requests for proposals will be publicly announced. The request for proposal identifies criteria that will be used to evaluate the proposals and their level of importance.
- Any submitted proposals or responses to the request for proposal must be honored to the maximum extent practical.
- Proposals must be solicited from an adequate number of qualified vendors, suppliers, or contractors.
- The institution must have a method for evaluating the proposals submitted and a method for selecting the vendor, supplier, or contractor.
- The institution must select the vendor, supplier, or contractor whose proposal is most advantageous to the institution, with price and other factors considered, but with the lowest price as the primary factor.

Noncompetitive proposals: This purchasing method for goods and services that exceed \$150,000 in value involves the invitation for one vendor, bidder, or contractor to submit a proposal. This method may only be used when one or more of the following applies:

- The item is available only from a single vendor, supplier, or contractor.
- The public emergency or public urgent situation related to the purchase does not allow time for a more competitive process.



- The State agency clearly approves and provides written documentation of approval for a request by the institution to use the noncompetitive proposal method.
- After inviting a number of vendors, suppliers, or contractors to submit proposals, competition is determined inadequate.

Important!! Required action for all CACFP institutions

Action #1: Submit purchasing procedures to the CACFP State Agency

The Federal regulation, 2 CFR Part 200.318 requires participating institutions to have written purchasing procedures to follow when using Federal funds to buy goods and services. Institutions must follow these procedures and update them if typical purchasing methods change. The CACFP State Agency created a purchasing procedures template entitled, *Colorado CACFP Purchasing Procedures*, which is enclosed with this memorandum. This template can be used by institution representatives to indicate which purchasing methods the institution will use on a regular basis, for certain types of purchases.

By December 30, 2016, all institutions must submit a copy of the institution's purchasing procedures to the CACFP State Agency. Institutions must maintain an electronic or hard copy of the purchasing procedures for future review purposes. Please complete the enclosed document entitled, *Colorado CACFP Purchasing Procedures*. This is an electronic document that can be completed electronically, saved, attached to an email and/or printed after it is complete. The CACFP State Agency will accept the form in any format (handwritten, hard copy, or electronic). The CACFP State Agency will also accept other procurement procedures documents in any other format, which contain the information requested in the template provided.

Please note: Institutions administering the Summer Food Service Program at facilities that also participate in the CACFP may submit procurement procedures already prepared to meet Summer Food Service Program requirements for the Colorado Department of Education. No separate procedures for CACFP are required.

Please submit the procedures using any of the following methods:

- 1) By email: Please attach the completed procurement procedure to an email and send it to the institution's CACFP Nutrition Consultant or the general CACFP email address:
cdphe.pscacfp@state.co.us
- 2) By fax, to the attention of CACFP: 303-756-9926
- 3) By mail to:
Colorado Child and Adult Care Food Program
Colorado Dept. of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246



Action #2 (if applicable): New process for submitting Food Service Management Contracts

Institutions that hold Food Service Management Contracts with vendors may enter into a contract with a vendor for a maximum total of five years, if this term was included and agreed upon in the original purchasing process. However, institutions must renew the contract with the vendor annually and submit the renewal to the CACFP State Agency. When the full life of the contract is over, institutions must complete the full purchasing process to select a vendor and create a new contract.

The CACFP State Agency revised the Food Service Management Contract template to reflect some of the new rules. This template is enclosed for your reference. One change is the addition of a checkbox to indicate whether the contract is a new contract or an annual renewal. This information will inform the CACFP State Agency if a review of purchasing process documentation is needed.

At least annually, if a Food Service Management Contract has been renewed as part of a longer-term contract with a vendor, the institution must submit a copy of the renewed Food Service Management Contract to the CACFP State Agency and update the expiration date in the site application in CHEARS. The CACFP State Agency will review and approve the renewed contract.

If a Food Service Management Contract is newly created (not a contract renewal), resulting from the recent selection of a vendor using the appropriate purchasing method, the institution must submit the contract to the CACFP State Agency with copies of documentation of the procurement process prior to the execution date of the contract. Institutions must also update the Food Service Management Contract information in the site application in CHEARS. The CACFP State Agency will review the contract and the procurement process documentation, and approve the contract. The following table describes the type of documentation institutions must submit with a newly established Food Service Management Contract:

Required purchasing process records for Food Service Management Contracts

Small-purchase method: purchases valued above \$3,500 and <i>at or below</i> \$150,000	Formal purchase method: purchases valued <i>above</i> \$150,000
<ul style="list-style-type: none">• Food Service Management Contract• Documented Quote Log	<ul style="list-style-type: none">• Food Service Management Contract• Copy of public bid announcement• Invitation for Bid or Request for Proposal• Documentation of bids• Final vendor selection and criteria upon which the award was based.

Action #3 (if applicable): Review of existing contracts

The CACFP State Agency strongly encourages institutions to review current purchasing arrangements to ensure methods used meet the requirements described in this memorandum. Specifically, the CACFP State Agency encourages institutions to ensure



documentation is available related to the purchasing process resulting in the contracts. Review the documentation for evidence of unallowable cost provisions, such as kick-backs or incentives that may have informed the evaluation of bids or offers, and ensure cost was the primary evaluation criteria among factors considered. If unallowable cost provisions are identified in contracts, institutions must amend the contracts immediately to remove these provisions. For contracts with vendors, suppliers, or contractors selected without cost as the primary factor, institutions must begin the rebidding process as soon as possible to allow for a new, compliant contract to be in place.

The CACFP State Agency team is available to answer questions and provide guidance regarding these complex requirements. Please contact the CACFP State Agency office at (303) 692-2330 for assistance if needed.

Enclosures:

Colorado CACFP Purchasing Procedures Template
New Food Service Management Contract Template
Small Purchase Procurement Log
Invitation for Bid Template
Request for Proposal Template

USDA Nondiscrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA. Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English. To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at:

http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) Fax: (202) 690-7442; or (3) Email: program.intake@usda.gov. This institution is an equal opportunity provider.

