Welcome and thank you for joining the January 28th edition of: Crash Course with CANS. I’m Quanna Keyser and with me is Andrea Thielen who will be the Zoom Room monitor. Andrea will keep an eye on the chat box, so if you have questions during the webinar, type them in and she will make sure they are addressed.

This presentation will be recorded and posted on the CANS website under the Crash Course with CANS drop down menu. A 30-minute training certificate can be printed, and we encourage you to complete the evaluation of the presentation via Survey Monkey. Andrea will post the link in the chat box.

Today, we’ll chat about Contracts and Agreements in the procurement process.

For all the changes and adjustments in the School Nutrition Program lately it is good to know the procurement procedures have pretty much stayed the same. Now, your purchasing requirements may have changed drastically, so you might be using different methods, but the rules surrounding those methods haven’t changed.

First let’s review the basics and the most common types of agreements and contracts that may be awarded. Then we will discuss inter-agency agreements. If your purchasing needs have changed, you can focus on the best method for your new situation. Please jot down
questions as we go – Andrea will alert us to questions.

A disclaimer:
The CANS office program specialists are not contract lawyers – this information is provided as an illustration of terms rather than instructions for your purchasing contracts. Your legal team, should always be consulted if specific questions need to be answered.

With that said – the following slides describe some situations regarding agreements and contracts associated with the levels of procurement.
<table>
<thead>
<tr>
<th>Basis for Comparison</th>
<th>Agreement</th>
<th>Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meaning</td>
<td>When a proposal is accepted by the person to whom it is made, with requisite consideration, it is an agreement.</td>
<td>When an agreement is enforceable by law, it becomes a contract.</td>
</tr>
<tr>
<td>Elements</td>
<td>Offer and Acceptance</td>
<td>Agreement and Enforceability</td>
</tr>
<tr>
<td>In writing</td>
<td>Not necessarily</td>
<td>Written and signed by authority to ensure conditions are met.</td>
</tr>
<tr>
<td>Legal obligation</td>
<td>Does not creates legal obligation Rather a ‘meeting of the minds’</td>
<td>Creates legal obligation</td>
</tr>
</tbody>
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Not all agreements are contracts, but all contracts are agreements. The contract has legal obligations whereas an agreement is more of a meeting of the minds as to how a transaction will occur. Contracts and agreements are the basis for most business relationships. Of course, the vendor is a business, but remember, your food service program is a business too. If agreements and contracts are created and managed well, the business relationships will flourish. If they are not, the consequences can be financial loss (for either party), relationship harm and damaged reputations.
One Reg to rule them all - we wish

- Regulations surrounding the procurement
  - Free open competition
  - Transparency
  - Documentation
  - Allowability of costs

Requirements might differ depending on the type of agencies and thresholds of procurement, but common to all categories of procurement are the requirements for:

Free and open competition, allowability of costs, and documentation of procurement activities
To be allowable, the costs will:
Be necessary and reasonable for proper and efficient administration of the program(s)
Be allocable to federal awards applicable to the administration of the program(s)
Be authorized and not prohibited under state and local law.
Here is a quick review on the purchasing thresholds –

Micro-purchase – is one of the small purchase methods
It is intended for infrequent purchases, items that are difficult to include in a large order, or emergencies so, it does not require a price comparison, but the price must be reasonable and allowable.
Each purchase is under $10,000, more than one qualified vendor will be selected, and purchases will alternate between these vendors to “spread the wealth”.
Even if each purchase is under $10,000 from a vendor, the micro purchase method should not be used if, over the year, the amount expected to be spent on those items could have been bid at a lower price.

Another Small Purchase method is the Simple/Informal Procurement
This process allows for flexibility because you can contact vendors without having to formally advertise. It’s still a very competitive process so the final result will be competitive prices.
Also described as “Three bids and a buy” this threshold is for total purchases less than $250,000 for food or less than $25,000 for goods and services.

The last method shown here is the Formal Procurement which may use Competitive Proposals or Sealed Bids.

<table>
<thead>
<tr>
<th>Micro-Purchase</th>
<th>Small Purchase Procedures or Simple/Informal Procurement</th>
<th>Formal Procurement: Sealed Bids or Competitive Proposals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Each purchase is under $10,000</td>
<td>Purchases less than $250,000 for food or $25,000 for goods and services</td>
<td>Competitive Proposal or Request for Proposal (RFP)</td>
</tr>
<tr>
<td>No price comparison</td>
<td>“spread the wealth”</td>
<td>Sealed Bids or Invitation for Bid (IFB)</td>
</tr>
</tbody>
</table>
Why a contract

Serve as a record of commitments for both parties
▶ Mitigate risk
   ▶ Interests are protected – both the agency and the vendor
▶ Prevent conflicts
▶ Helps your agency maintain compliance

Why award a contract instead of an agreement?
Risks may be kept to a minimum when commitments are recorded, and parties have a legal obligation to their original agreement terms.
Conflicts may be prevented because detailed specifications were solicited, and terms and conditions were negotiated and agreed upon in writing.

Contract management will ensure the items received continue to maintain compliance in the Nutrition Programs.
Some types of contracts your agency might award are Fixed Price Contracts in which for the life of the contract the items may not increase in price.
If a contract allows a price increase, the price escalation method must be defined in the solicitation.
Your legal team will advise the types of contract which best suits your Agencies needs.

The State Agency will approve Food Service Management Company Requests for Proposal and the resulting contract, vended meals and interagency agreements.
There wouldn’t be an agreement or contract in Micro Purchase. The business relationship is the vendors have acceptable prices your agency agrees to pay and the agency is not purposely limiting the purchase to one vendor.
1. In the first example fresh unbaked dough is wanted for the agency’s monthly pizzeria day. The amount of dough needed is less than a minimum order available from the regular food vendor and can not be kept fresh until the following month.

   Their Procurement Plan describes the multiple micro purchase as:
   **Three sources of raw dough are available at an acceptable distance**
   **Each vendor offers the dough for a reasonable price and each purchase is less than $10,000**
   **The orders are rotated between the vendors to spread the wealth**

   A common follow up question in rural areas: What do you do if there is not more than one vendor near the agency? The regulations state “…to the extent practicable...”. If there are excessive costs to include other vendors like: additional travel, fuel, personnel time, maybe temperature control, then the procurement plan should document those reasons for choosing the vendor they use. It is important to be aware of new vendors coming into the area that would now be practicable to spread the wealth.

2. Another agency would like to expose students to fresh farm raised products

   **in this case fresh items are purchased from vendors who are willing to demo and
showcase an item on the menu. Each purchase is under $10,000, meets the agency’s requirement for fresh farm raised product, in person demonstration and spreads the wealth among different vendors.

That’s a couple examples for micro purchasing.
Informal Procurement is likely the area that agencies will use differently than they have in the past.

One reason may be an agency is required to submit a plan for reducing the excess fund balance of the nonprofit food service account.

Or more simply – they may have a Spend Down Plan. It’s required when their net cash resources exceed three month’s average operating costs.

There are several ways to spend down the excess funds that meet the requirements to improve program operations and meal quality.

They can

** Increased employee pay
** Increased benefit coverage
** Or hire additional employees if this will improve the program operations or meal quality

They can

**Host Promotional Events-
Like a week of free breakfasts to increase participation numbers or to test the feasibility of
introducing a Breakfast in the Classroom option.
Or stage Taste Testing Events to add different items to the menu

**Maybe upgrade food items to a better quality or purchase higher priced but labor-saving options like precut / preformed items

Or - the agency might choose to replace or add kitchen equipment.

All of these could be included in a spend down plan our fiscal program specialist would approve.
But - because the spending plan is approved does not mean the equipment purchase is automatically allowable and approved too. This takes an additional step. Maybe two. The agency is always required to perform the appropriate procurement for the dollar amount, but the purchase of equipment using food service funds must be approved by the CANS office.

**The CANS Memo 241-2 applies to all agencies and explains the rules for purchasing the equipment. This Memo is located on our web-site and Andrea is putting a link to that in the chat box. I think you can click on that to take a look. She is also showing how to get there from the web-site.

In the Memo is the South Dakota Child Nutrition Program Approved Equipment List.
If what the agency is looking to buy is on this list and is under $5000.00 additional approval is not required before the purchase. Remember, the informal procurement method must be followed.
If the item is NOT on the list or the cost is expected to be greater than $5000.00 then preapproval must be obtained from the CANS office to ensure the item is allowable to be purchased with school nutrition funds.
If that is the case, please contact the Program Specialist assigned to your agency - if you know who that is - or you can email me or the CANS office for a request form.
After approval, if the total for the items per vendor is under $25,000. then the Informal Procurement like Three Bids and a Buy can be used. This is common. However, if the total for the items per vendor is above $25,000, then the Formal Purchase Procedure must be used - such as an invitation for bid.

To Recap:
If a spend down plan includes equipment, the item must be on the Approved Equipment List found in Memo 241-2. If the item is not on the list or the item costs more that $5000.00, then approval from the CANS office must be obtained before the purchase. All purchases must follow the proper procurement method.
I’ll stop here for a minute to allow questions or to offer ideas. Feel free other Program Specialists on line to hop in with answers!
How might this work in the real world
1. An agency’s operating costs have exceeded the three month accumulation cap and have a spend down plan in place. The purchase of a freezer will bring the agency into net cash resource compliance and has been approved by the State Agency fiscal office. The solid door reach-in freezer is on the Approved Equipment List however the price will be above $5,000.00 and preapproval from the State Agency was obtained. The Memo reminds the agency to follow correct procurement methods. The cost did not exceed the $25,000 so the agency was able to use three bids and a buy.

Specifications for the freezer were provided to the
**local Everything you Need Store,**
**one of the current food vendors that also sells freezers** and they
**performed an internet search using the same specifications.**
The Everything you Need Store sent over a sales rep with a written bid offer. The Online Store has a web page with a printable quote sheet.
A food vendor offered a bid over the phone. This method is acceptable when all information is noted for documentation purposes, but you might agree written quotes could avoid conflicts later.

**The Everything you Need store offered the lowest price for the specified items. No contract was awarded – the items were simply purchased at the bid price and all documentation pertaining to the purchase kept on file.**
The second example:

2. An agency solicits for a year long contract and provides a specification list of all food items for the year’s menu, excluding meat, to three vendors. The most responsive and responsible vendor who submits the lowest price for those items is awarded the contract for all items on the list.

3. An agency solicits for a year long contract and provides a specification list of all meat products for the year’s menu to three vendors. The agency will award a contract based on price per line item. Two contracts are awarded to responsible and responsive vendors.

And the Formal Procurement method always results in a legally binding contract.
Vended Meal Agreements

Vendors are companies that prepare meals for purchase.

<table>
<thead>
<tr>
<th>Meals:</th>
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<tbody>
<tr>
<td>• Meet federal meal pattern requirements</td>
</tr>
<tr>
<td>• Ready for service to students – bulk or unitized</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vendors must:</th>
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</thead>
<tbody>
<tr>
<td>• Create production records and keep food labels</td>
</tr>
<tr>
<td>• Maintain standardized recipes</td>
</tr>
<tr>
<td>• Record the number of meals ordered and delivered</td>
</tr>
<tr>
<td>• Buy American for School Nutrition Programs</td>
</tr>
</tbody>
</table>

Complete vended meals - must be procured as well. The formal or informal procurement method depends on the contract amount and the type of agency. Please contact me or the DOE School Lunch and we will provide you with the prototype vended meal form. Because revisions may be made, please complete a new document each year.

**When must the Formal Procurement Method be used?**
When the estimated dollar value of the contract meets one of the following criteria:
| • Public Schools – FSMC – greater than $25,000 |
| • Public Schools – Vended – greater than $250,000 |
| • Non-Public Schools – Vended – greater than $250,000 and FSMC – greater than $25,000 |
Non-competitive vended meals agreements may be established in certain situations

**Agency A would like to operate a Nutrition Program but does not have on-site kitchen facilities. It wants to buy meals from
** B, which operates a central kitchen. Can agency A buy meals from  B without bidding competitively?
**Yes - IF  B is also an Agency operating a Child Nutrition Program. This is an interagency agreement. In all other cases, center A must conduct a competitive procurement.

OK. Now, what if
**Agency B is operated by a Food Service Management Company? The FSMC sells meals to Agency B using their kitchen.

**Can Agency A purchase meals from the Food Service Management Company preparing meals in Agency B’s kitchen with a non-competitive agreement?

No
The Food Service Management Company may not sell vended meals to Agency A. using Agency B’s kitchen.
So
If a meal is sold by a commercial vendor directly to an agency operating a school nutrition program, there must be a competitively procured contract awarded.

But in some communities, there aren’t many options. Agency A really really wants to purchase meals from Agency B even though it is operated by an FSMC. How can this be accomplished?
An Interagency Agreement may be implemented if Agency A’s meals are purchased from Agency B - not the Food Service Management Company. This means Agency B will purchase more meals from the Company to sell to Agency A. This is a possibility but should be carefully considered. Agency B’s legal team will determine if the increased number of meals will constitute a material change to their original contract if additions like this were not addressed in the Request for Proposal. A new Request for Proposal and Contract may need to be. Agency B should speak with their legal team. Resource management for the School Nutrition Fund is also considered.
Agency A operates their own foodservice program and contracts with Agency B to provide meals only.

**This is similar to a vended meal contract though it doesn’t require a competitive bid and only meals are provided from one SFA to another SFA (or other USDA Child Nutrition Program). The responsibility of operation of the program remains with the Agency receiving meals.**
Interagency Agreement

• Agency B operates multiple school foodservice programs under the same NSLP/SBP agreement.

PROGRAM RESPONSIBILITIES

• SFA operates multiple school foodservice programs under the same NSLP/SBP agreement

Caution: The undersigned SFA assumes full regulatory responsibility for the operation of the program in all schools under their agreement

Agency B will operate multiple school foodservice programs under the same NSLP/SBP agreement. Agency A will be listed as a separate site on Agency B’s application, and meals
shall be reported separately on the claim in the same manner as other sites on Agency B’s application. Agency B understands it assumes full regulatory liability responsibility for the operation of the program in all agencies under the agreement. This includes compliance with all applicable Child Nutrition Program regulations, particularly those concerning correctly approved applications for free/reduced price meals, verification of applications, meal pattern compliance, and accurate meal counts. Any disallowances or overclaims resulting from audits or reviews will be the responsibility of Agency B.
If you have questions as you consider what procurement processes you will use, or would like to know more about the interagency agreements, please let me know. Solicitation for next year’s contracts is either being prepared now or will be soon and if allowed, contract renewals too.

I will be sending out the Food Service Management Company renewal packets as well as the vended meal contracts/agreements.

Don’t be shy – you can always say ‘Asking for a friend’.

Andrea – any questions or tips to share from the chat box?
Thank you for your time - we are happy to see folks join us for the Crash Course series and encourage you to complete the Survey Monkey evaluation. We appreciate your input to help us improve the information and presentations to best help you operate the Nutrition Programs successfully.