



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

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SUBJECT: Procurement Questions – Child and Adult Care Food Program
(CACFP)

TO: Regional Directors
Child Nutrition Programs

Recently, we received a series of procurement questions involving situations that have developed in the CACFP. Since the situations may exist in other Regions, we are sharing the questions and our responses with you. Please provide this information to your State agencies. If you have any questions, please contact Terry Hallberg at (703)305-2590.

A handwritten signature in purple ink, which appears to read "Stanley C. Garnett", is positioned above the typed name.

STANLEY C. GARNETT
Director
Child Nutrition Programs

Attachment

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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Purchased and vended meal questions:

Question 1: CACFP center A does not have on-site kitchen facilities. It wants to buy meals from another CACFP institution, center B, which operates a central kitchen. Can center A buy meals from center B without conducting a procurement?

Answer: Not unless center B is operating as part of a school food authority. In all other cases, center A must conduct a procurement.

Question 2: Center A, a nonprofit Head Start grantee, leases space from CACFP institution, center B. Center B's space includes an on-site kitchen. Center A's lease does not include access to center B's kitchen; however center B sells meals to center A. Centers A and B have separate agreements with the State agency to operate the CACFP and each center claims the meals it serves to its own enrolled children. Center A does not believe it would be cost effective to obtain meals from another source and center A does not want its children, located in the same space as center B's children, to receive different meals. Can center A purchase the meals from center B without conducting a procurement?

Answer: No. The best solution is for center A to conduct a new procurement that includes meal service in its procurement of rental space. This procurement should be conducted as soon as possible. Until this new procurement occurs, the State agency can permit center A to enter into a noncompetitive negotiation with center B to purchase meals.

Another solution would be for center B to sponsor center A. In this arrangement, center B would provide meals to all children (no selling of meals to center A), claim reimbursement for the meals served to all of the children, recover its food service operating costs for these meals from the reimbursement and retain up to 15 percent for its administrative costs. Any remaining earnings would be provided to center A.

Question 3: A hospital operates a child care center. The hospital's food service provides meals to the center on an actual cost per meal basis. Since the center is paying for these meals, must the center conduct a procurement to obtain meals?

Answer: No. Even though the hospital is billing the center for meals, the center and the hospital are the same organization. The center is considered to have a self-operated, not vended, food service in this situation.

Question 4: A state university operates a child care center within, or nearby, its campus. The university's food service is provided under a contract with a commercial food service company. This food service company provides meals to the center as part of its university food service. Does the center need to conduct a separate procurement or ensure the university's procurement included the center's meals?

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Answer: No. The center is part of a public organization, the state university. Consistent with the principles of Federalism, a public organization is considered to be in compliance with applicable procurement requirements, unless there is information to the contrary. However, the center must ensure that the meals provided through the university's food service meet regulatory requirements.

Question 5: An adult day care center is part of a larger nonprofit nursing home/assisted living facility. The nursing home uses a commercial food service and the nursing home provides meals to the center. Is the center required to meet the procurement requirements?

Answer: No. As in the previous question, the center and the nursing home are the same organization. The nursing home, not the center, is required to comply with the procurement requirements. The nursing home, as a nonprofit organization, can use its own procurement procedures as long as those procedures comply with the minimum Federal requirements found in 7 CFR Parts 3019 and 226.

Question 6: A nonprofit organization (organization A) owns two child care centers and also owns and operates a commercial central kitchen. Organization A's commercial kitchen sells meals to organization B's centers. However, organization B is related to organization A (the officers and boards of directors are the same individuals). Must organization B conduct a procurement to obtain meals for the centers it owns?

Answer: The key factor in deciding whether a separate procurement is needed is determining the relationship of organization A to organization B. This is not a CACFP issue, but is one of State law. If, under the State's incorporation law, organization B is a separate legal entity from organization A, then organization B must conduct a procurement on behalf of its centers. On the other hand, if organization B is not a separate entity under applicable State laws, then organization A should be the CACFP agreement holder for organization B's centers. In this case, organization A would operate the food service for all of its centers, with no selling of meals between organizations A and B.

Question 7: A for-profit organization (corporation A) operates a catering business as well as sponsoring for-profit child care centers in the CACFP, some of which are owned by corporation (corporation B). However, the principal owners of corporation A and corporation B are the same. The catering business sells meals to the corporation B's centers, but provides the meals (does not sell the meals) to corporation A's centers. Can corporation B buy meals from corporation A's catering business without conducting a procurement?

Answer: This question poses two issues. First, since a for-profit organization can only sponsor centers that share its same corporate identity as defined by the State, the State agency can only approve corporation A to sponsor corporation B's centers if corporations A and B share the same corporate identity. If corporation A and B have the same corporate identity, there can be no selling of meals between corporation A's catering business and corporation B's centers. If corporations A and B do not share the same corporate identity, then corporation B must enter into a separate CACFP

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agreement with the State agency and conduct a procurement to obtain its meals. In this situation, due to the less-than-arms-length relationship between the principal owners of corporations A and B, the conflict of interest provisions would exclude corporation B from entering into a contract with corporation A's catering business because corporation B has a financial interest in corporation A. This prohibition applies to all contracts, including those which are less than the applicable small purchase threshold of \$10,000.

Contracting management function questions:

Question 8: A public organization (Federal, State, or local government) establishes a nonprofit organization to operate a child care center, primarily for the benefit of its employees. The majority, but not all, of the nonprofit organization's board of directors are employees of the public organization. The nonprofit organization is the CACFP agreement holder. The nonprofit organization's board plans to contract out some of the management of the child care center. If the nonprofit organization contracts out center management, can it continue to participate in the CACFP?

Answer: It will depend on the scope of the management duties that are contracted, not the composition of the center's board of directors. The prohibition at §226.15(c) regarding contracting out management of the CACFP is not intended to prevent the organization from using a contractual relationship to hire a manager or prevent the institution from obtaining needed services from contractors, for example, accounting, trash removal, etc. The determining factor is whether the nonprofit organization is maintaining administrative and financial management responsibility for the CACFP. For this reason, each situation must be reviewed on a case-by-case basis to determine whether the organization has actually contracted out program management.

Question 9: Using the same scenario from question 8, except the nonprofit board contracts out all operational and financial duties. Is the situation viewed differently when all of the center's employees and manager are employees of the contracted management firm and the management firm is responsible for both day-to-day and over-all operations?

Answer: Yes. In this case, the nonprofit organization has not maintained administrative or financial control of its center operations, but has instead, turned these duties over to a contractor. As a result, the center has contracted out management of the program and would not be eligible to participate in the CACFP.