



**COMMONWEALTH of VIRGINIA
Department of Education**

DATE: May 4, 2018
TO: Division Superintendents
FROM: Steven M. Constantino, Ed.D., Acting Superintendent of Public Instruction
SUBJECT: **Market Basket Analysis When Procuring Program Goods**

The purpose of this memo is to clarify the practice of evaluating bids/proposals to a solicitation for awarding contracts when using the “market basket” analysis in the National School Lunch Programs, School Breakfast Programs and Summer Food Service Programs (collectively referred to in this memo as “Programs”). Market Basket analysis awards contracts based on the evaluation of the lowest price vendor based on a representative sample of goods local education agencies (LEAs) or office Program sponsors wish to procure. Program regulations at 7 CFR 210.21, 215.14a, 220.16, 225.17, 226.22, and 250.4(d) direct Program operators to comply with procurement requirements as outlined in those parts. In addition, all procurements should be undertaken consistent with state and local requirements.

Program operators must also comply with the requirements of 2 CFR Part 200, which include procurement standards required for all federal awards to non-federal entities. Evaluating the price on all goods, either as an aggregate (bottom line or total cost) or by line item, is the preferred method of awarding a contract. Consistent with 2 CFR 200.320, all contracts must be awarded to responsive and responsible contractor(s), price must be the primary factor when evaluating bids and proposals, and contracts must be awarded to the lowest bid or proposal most advantageous to the Programs.

Price analysis can be simplified and a valid price analysis can still be achieved when only the bottom line costs of major items are totaled to determine lowest price between bidders. In addition, program operators may need to purchase additional items after a competitive solicitation was published and the contract was awarded. The following guidance provided in the two sections below as well as the attached questions and answers document (Attachment A) address these practices.

Market Basket Analysis – Evaluation and Scoring for Contract Award

In order to use market basket analysis, the published solicitation must include language that allows for this type of evaluation. Sample language is included in Q.4 in the attached document. Market basket analysis allows a Program operator to review bids using an established, representative sample of goods. The representative sample of goods should include an aggregate value of 75 percent or more of the estimated value of the contract to be awarded. Once this subset of prices is determined, it can be used to award the contract. Market basket analysis cannot be used for awarding equipment or service contracts, such as pest control.

When using a market basket analysis, the Program operator must obtain prices for the remaining goods not included in the analysis prior to the final award of the contract. The pricing of these goods must be reasonable. Federal regulation 2 CFR 200.404 discusses factors to consider when determining whether the cost is reasonable, including whether the cost is “ordinary and necessary,” and the “market prices for comparable goods...for the geographic area.”

Modifications of Contracted Product Lists to Acquire Additional Goods or Increase Quantities of Listed Goods

There are occasions when Program operators need to purchase goods not included in the existing contract. For example, a new food is introduced by the supplier that may benefit the Program. These purchases should be made using applicable procurement methods such as micro purchases, small purchase procedures, sealed bids, or competitive proposals depending on the value of the purchase. If the purchases are needed on an ongoing basis, they may be added to the contract if the following conditions are met:

- The option to add goods must be included in the original solicitation and contract.
- The total value of all additional goods purchased may not exceed 10 percent of the estimated value of the contract. If the value of the additional goods exceeds 10 percent, a separate procurement procedure for those goods must be conducted or these purchases will be considered an unallowable cost.
- If the contract allows a renewal option and the renewal is approved as established in the original contract, then upon renewal, any goods added to the contract must be included in a contract amendment.
- For each year of a renewed contract, a new basis for contract value, *including the actual expenditures for the previous year, plus the value of the additional items*, must be established. Likewise, actual expenditures that fall below the initial value of the contract could result in a lower contract value in subsequent contract years.
- Program operators must maintain records of all additional goods purchased to ensure that the value of additional goods purchased does not exceed 10 percent of the estimated value of the contract.

This policy is effective immediately and the market basket procurement methods used by Program operators will be subject to monitoring during upcoming procurement reviews. If you have any questions about this memo, please contact the specialist assigned to your region or you can email SNPPolicy@doe.virginia.gov ✉.

SMC/SCC/db

QUESTIONS AND ANSWERS

Market Basket Analysis

Q. 1: How do I create the list of all goods to be purchased when developing a solicitation?

A. 1: Program operators should have a forecasting plan/process for determining the type and quantity of goods needed. Forecasting is normally based on menus, Program participation, and prior orders. Basing procurements on menus and Program participation is a best practice and prior orders/contracts should be used to assist with forecasting. In addition, suppliers often provide velocity reports to notify Program operators of the volume of goods purchased and may contain the number and total value of goods purchased for the prior year through an awarded contract. Thus, a velocity/usage report could be used when developing a list of all goods anticipated for purchase in a solicitation. Best practices would be to include a provision in the solicitation and contract documents that suppliers will provide velocity reports as requested.

Forecasting resources include: Institute of Child Nutrition's (ICN's) [*Forecasting the Procurement of Foods*](#) ➡; and FNS's [Menu Planning webpage](#) ➡, [Food Buying Guide](#) ➡, and [Procuring Local Foods for Child Nutrition Programs](#) ➡.

Q. 2: Do I need to estimate quantities when using a market basket analysis?

A. 2: Yes. All solicitations, regardless of the process for contract award, must include reasonable estimates of usage for every item to be included in the solicitation. This includes solicitations for processed end products containing USDA foods purchased using any value pass through system. The estimated usage quantity is essential for evaluation of the contract award.

FNS understands there is considerable concern about effective forecasting by Program operators, specifically whether they will procure what they forecasted and in the quantities that are included in the solicitation and contract. Forecasted quantities represent an estimate of usage and actual purchases may be more or less than the estimated quantity. However, the forecasted quantity must be a reasonable expectation of the actual quantity to be purchased and the Program operators should make every effort to purchase the estimated quantities. If the actual quantities purchased exceed the estimated quantities listed in the contract, the net increase is subject to the limit on increases in the total contract value for that contract period.

Q. 3: In my solicitation, do I have to list all goods I will procure under the contract (whether or not a market basket evaluation method is used)?

A. 3: Yes. However, some goods might be overlooked at the time the solicitation's list of goods is drawn up. Additional goods may be added if allowed under the original solicitation and contract. The requirement to list all anticipated goods is in keeping with the requirement that all procurement transactions be conducted in a manner providing full and open competition as required by 2 CFR 200.319(a).

Likewise, clear and accurate descriptions and estimated quantities are required for all goods and services listed in the solicitation per 2 CFR 200.319(c)(1).

Q. 4: Do I need written procurement procedures for how I conduct my market basket analysis to award a contract?

A. 4: Yes. All Program operators must use their own documented procurement procedures which conform to state, local, and tribal laws and regulations, and which conform to applicable Federal law in 2 CFR Part 200. All cost analysis procedures must be part of these written procurement procedures, including a market basket analysis, if used. If using a market basket analysis, you must include the percentage of the estimated total purchase value used to determine the representative sample. Program operators can refer to the sample language provided immediately below, and modify for their specific needs. NS recommends a sample size of at least 75 percent of the value of the contract.

Sample Language for the Written Procurement Procedures

"The Market Basket Analysis sample is established to represent 75 percent of the total estimated value of the contract to be awarded. The most recent velocity/sales report from our current supplier(s) was used to project the balance of the year and adjusted for any estimated change in menu and participation for the following year. As a result, the list of [100] goods to be purchased under the solicitation includes the top [60] goods purchased by dollar volume representing the 75 percent threshold. Prices for the remaining [40] goods listed in the solicitation should also be included, though they will not be a part of the market basket analysis."

Q. 5: How do I determine a representative sample for my market basket analysis?

A. 5: FNS recommends using a representative sample that reflects 75 percent or more of the estimated contract value. For example, suppliers often provide velocity reports to notify Program operators of the value and volume of goods purchased for the prior year through an awarded contract. The Program operator's written procurement procedures state they will use a sample representing 80 percent of the value of goods when using the market basket analysis. When looking at the products purchased from the prior school year, the Program operator determined that [35] goods represented 80 percent of the value of total purchases during that year. These [35] goods then become the representative sample for the market basket analysis. Program operators need to consider forecasted changes and usage for the upcoming contract period in determining the representative sample and value of total purchases. It should be noted that the number of goods in the sample will vary depending on purchase needs, purchase price, product quantities and total contract value.

A best practice is to include a provision in the solicitation and contract documents that suppliers will provide velocity reports as requested.

Q. 6: What documentation of procurement must I maintain and make available during a review in order to support my evaluation process of price/cost analysis?

A. 6: All procurements must be documented including those using market basket analysis. This would include related documents/spreadsheets listing prices/costs and estimated quantities of goods, and any other supporting documentation used for developing and analyzing the market basket. Additional procurement records should include an evaluation matrix used to evaluate bid/proposal costs, copy of solicitation documents used to award a contract, bids/proposals received, any communications with potential respondents, and any bid/proposal disputes received as a result of the awarded contract.

Modifications to the Contracted List

Q. 7: Am I allowed to add goods to an existing contract?

A. 7: Yes. Additions must be consistent with this guidance and the solicitation and the contract must contain language allowing such additions. Contract monitoring by the Program operator is the best approach for ensuring compliance with this limitation.

When additional goods under an existing contract are needed, the addition is limited to a total value established at the beginning of that contract period and at the beginning of renewal years and must be specified in the solicitation document and resulting contract.

Sample Solicitation and Contract Language

“During the term(s) of a contract awarded under this solicitation, additional purchases not included in this solicitation list and resulting awarded contract may become necessary and benefit the Program. Both parties agree that the aggregate value of added purchases during each year of the contract, if renewable, shall not exceed 10 percent of the estimated total value of the contract. The total value of the contract must be agreed upon and the dollar value listed in every contract and contract renewal. Such additions may be included in the awarded contract list during the contract renewal through a contract amendment, and the total contract value adjusted accordingly. For each contract renewal, the total actual value of the contract in the preceding year and the additions made during the contract term will be the basis for determining the maximum dollar amount (not to exceed 10 percent) of additional goods that will be allowed during the next contract renewal year.”

Q. 8: What goods should I list in a solicitation and contract?

A. 8: All foods and supplies necessary for reimbursable and non-Program meals and foods served in Program operations should be listed in the solicitation and ensuing contract including processed end products containing USDA foods purchased using any value pass through method.

Q. 9: What is considered an addition to the list of goods in a solicitation and contract?

A. 9: Any food or supply that was not part of the original solicitation or contract list is considered an addition. An example would be a new food available for purchase on the market. An occasional, approved substitution a contractor may make to fulfil an order is not considered an added product.

Q. 10: How should I monitor my contracts so they do not exceed the limit the contract allows?

A. 10: Program operators must maintain records of their solicitation, contract (which includes the list of goods to be purchased), and the list of goods added, including prices and the value of added purchases. This documentation must be available during reviews. Further, they must, on a regular basis, analyze the value of the added goods against the total estimated value of the contract established at the beginning of the contract period to ensure they do not exceed the limit allowed by the contract.

Q. 11: What do I have to do in order to amend a contract in order to include additional goods?

A. 11: Program operators may issue an amendment to the contract that incorporates the added goods as part of the ongoing contract list, subject to the allowed limitation. When the option to renew a contract is present in the solicitation and contract, and when the optional renewal is agreed upon by both parties, a new base calculation of the value of the contract is to be established for the purpose of resetting the allowable limit on added goods during the new contract renewal period.