

**§ 226.21**

**7 CFR Ch. II (1-1-10 Edition)**

and School Breakfast Programs to substitute the meal pattern requirements of the regulations governing those Programs (7 CFR part 210 and 7 CFR part 220, respectively) for the meal pattern requirements contained in this section.

(p) *Family-style meal service.* Meals may be served in a family-style setting.

(q) *Offer versus serve.* (1) Each adult day care center shall *offer* its adult participants all of the required food servings as set forth in paragraph (c)(1), (c)(2) and (c)(3) of this section. However, at the discretion of the adult day care center, adult participants may be permitted to *decline*:

(i) *One of the four* food items (one serving of milk, one serving of vegetable and/or fruit, and two servings of bread or bread alternate) required at breakfast;

(ii) *Two of the six* food items (one serving of milk, two servings of vegetable and/or fruit, two servings of bread or bread alternate, and one serving of meat or meat alternate) required at lunch;

(iii) *Two of the five* food items (two servings of vegetables and/or fruit, two servings of bread or bread alternate, and one serving of meat or meat alternate) required at supper.

(2) The price of a reimbursable meal shall not be affected if an adult participant declines a food item.

[47 FR 36527, Aug. 20, 1982; 48 FR 40197, Sept. 16, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 226.20, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

**§ 226.21 Food service management companies.**

(a) Any institution may contract with a food service management company. An institution which contracts with a food service management company shall remain responsible for ensuring that the food service operation conforms to its agreement with the State agency. All procurements of meals from food service management companies shall adhere to the procurement standards set forth in § 226.22. Public institutions shall follow applicable State or local laws governing bid

procedures. In the absence of any applicable State or local laws, and in addition to the procurement provisions set forth in § 226.22, the State agency may mandate that each institution with Program meal contracts of an aggregate value in excess of \$10,000 formally advertise such contracts and comply with the following procedures intended to prevent fraud, waste, and Program abuse:

(1) All proposed contracts shall be publicly announced at least once 14 calendar days prior to the opening of bids. The announcement shall include the time and place of the bid opening;

(2) The institution shall notify the State agency at least 14 calendar days prior to the opening of the bids of the time and place of the bid opening;

(3) The invitation to bid shall not provide for loans or any other monetary benefit or terms or conditions to be made to institutions by food service management companies;

(4) Nonfood items shall be excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(5) The invitation to bid shall not specify special meal requirements to meet ethnic or religious needs unless special requirements are necessary to meet the needs of the participants to be served;

(6) The bid shall be publicly opened;

(7) All bids totaling \$50,000 or more shall be submitted to the State agency for approval before acceptance. All bids shall be submitted to the State agency for approval before accepting a bid which exceeds the lowest bid. State agencies shall respond to any request for approval within 10 working days of receipt;

(8) The institutions shall inform the State agency of the reason for selecting the food service management company chosen. State agencies may require institutions to submit copies of all bids submitted under this section.

(b) The institution and the food service management company shall enter into a standard contract as required by § 226.6(i). However, public institutions may, with the approval of the State agency, use their customary form of contract if it incorporates the provisions of § 226.6(i).

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(c) A copy of the contract between each institution and food service management company shall be submitted to the State agency prior to the beginning of Program operations under the subject contract.

(d) Each proposed additional provision to the standard form of contract shall be submitted to the State agency for approval.

(e) A food service management company may not subcontract for the total meal, with or without milk, or for the assembly of the meal.

[47 FR 36527, Aug. 20, 1982, as amended at 53 FR 52594, Dec. 28, 1988]

### § 226.22 Procurement standards.

(a) This section establishes standards and guidelines for the procurement of foods, supplies, equipment, and other goods and services. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and Executive orders.

(b) These standards shall not relieve the institution of any contractual responsibilities under its contracts. The institution is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of the Program. These include, but are not limited to: source evaluation, protests of award, disputes, and claims. Violations of the law shall be referred to the local, State, or Federal authority having proper jurisdiction.

(c) Institutions may use their own procedures for procurement with Program funds to the extent that:

(1) Procurements by public institutions comply with applicable State or local laws and standards set forth in 7 CFR part 3016;

(2) Procurements by private non-profit institutions comply with standards set forth in 7 CFR part 3019; and

(3) All procurements comply with the procurement requirements in paragraphs (d) through (m) of this section.

(d) Institutions shall maintain a written code of standards of conduct which shall govern the performance of their officers, employees or agents en-

gaged in the award and administration of contracts supported by Program payments. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(1) The employee, officer or agent;

(2) Any member of his immediate family;

(3) His or her partner; or

(4) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The institution's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Institutions may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the institution's officers, employees, or agents, or by contractors or their agents.

(e) The institution shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by institution officials to avoid the purchase of unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical.

(f) Affirmative steps shall be taken to assure that small and minority businesses are utilized when possible. Affirmative steps shall include the following:

(1) Including qualified small and minority businesses on solicitation lists;

(2) Assuring that small and minority businesses are solicited whenever they are potential sources;

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit