

CHAPTER 7-PROCUREMENT

State agencies and public local education authorities shall comply with the requirements of 7 CFR part 3016 concerning the procurement of supplies, food, equipment and other services with Program funds. Private nonprofit entities must follow the requirements set forth in 7 CFR 3019. These requirements ensure that such materials and services are obtained for the Program efficiently and economically and comply with applicable laws and executive orders. The State agency or local education authority may use its own procurement procedures which reflect applicable State and local laws and regulations, **provided that** procurements made with Program funds adhere to the standards set forth in 7 CFR part 3016 or & CFR part 3019, as it applies to each entity.

The primary purpose of procurement is to assure that open and free competition exists to the maximum extent possible. The procurement procedures practiced by a SFA must not restrict or eliminate competition. For example, descriptions of goods, equipment, or services considered for procurement should not contain features that unduly restrict competition. In the School Nutrition Programs, procuring products is obtained through competition. Competition allows schools to compare goods, equipment, and services in an effort to obtain products at the lowest possible cost. SFAs must take steps to ensure that open and free competition exists when purchases are made using the school food service account. The actual type of procurement method used is of secondary importance.

Purchases made for individuals through the school food service account are not allowable. Allowing individual purchases can place the tax-exempt status of the school district in jeopardy. In addition, food cannot be purchased for individuals through a vendor, even if the individual is paying the appropriate sales tax and the full price for the item. This would be receiving a favor from the vendor and would violate the code of conduct established by the school district.

The following information establishes and delineates the purchasing methods to be followed by schools participating in the ARDHS School Nutrition Programs.

PROCUREMENT PLAN

Each SFA must have a written procurement plan on file. The plan must specify procurements procedures used by the SFA. **All procedures must adhere to the federal requirements** for procurement. A school may adopt state and local procedures only if the procedures comply with federal requirements set forth in 7 CFR part 3016 or & CFR part 3019, as it applies to each entity. The procurement plan identifies the school's purchasing periods for the goods, equipment, and services related to the School Nutrition Programs and the various methods procurement being practiced.

The procurement plan provides an explanation for using certain procurement methods to obtain an items used in the school food service program. The school district can determine the extent of the plan. An SFA may implement a plan that applies to all schools under its jurisdiction, or allow each school to implement an individual plan. A new procurement plan does not need to be developed every year. However, a review of an approved plan will assist schools in maintaining compliance. On page 14 of this chapter is an example of a procurement plan that may be adopted by the SFAs.

1. Allowable Procurement Practices

In the procurement process, schools must obtain product information and prices from various vendors. SFAs should develop production specifications that comply with federal regulations regarding debarment and suspension, lobbying and Buy American requirements and supply all vendors with the same product specifications. Products should be compared for price, quality, and Child Nutrition Labels or product analysis sheets prior to selecting a vendor.

2. Procurement Practices Requiring Prior State Approval

Equipment and Capital Expenditures Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5000 or more have the prior approval of the State Agency. Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency. When purchasing kitchen equipment for the food service program, SFAs must follow the proper procurement method. Prior to purchasing the equipment, the SFA must contact the State Agency for approval. Once approved, the SFA may continue with the purchase of such equipment.

For Equipment and other Capital expenditures, the following definitions apply:

- a. "Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the non-profit organization's regular accounting practices. The cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with
- b. "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-profit organization for financial statement purposes, or \$5000.
- c. "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.
- d. "General purpose equipment" means equipment, which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

Unallowable Procurement Practices

According to federal regulations, SFAs cannot implement a procurement process that does not demonstrate an open and free competitive process. The following practices are not allowable: When approved as a direct charge pursuant to paragraph 15.b.(1), (2), and (3) above, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate by and negotiated with the awarding agency.

- a. Allowing a potential contractor to write the bid or proposal terms, product specifications, procurement procedures, or contract terms.
- b. Allowing a potential contractor to evaluate bids or proposals submitted by competitors.
- c. Delegating bid/proposal acceptance or recommendation for acceptance to a potential contractor competing on the procurement.
- d. Allowing a potential contractor access to sealed bid information before the bids are publicly opened.
- e. Disclosing the content of proposal offers submitted by others to a potential supplier prior to the supplier submitting an offer.
- f. Negotiating under the formal advertising method (sealed bid) of procurement.
- g. Accepting non-responsive bids or offers.
- h. Accepting bids due to geographic preferences except for purchases allowed by federal regulations (see page 9-10, Exceptions to Geographical Preferences).
- i. Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.
- j. Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.
- k. Equipment and other capital expenditures are unallowable as indirect costs. However, see Attachment B, paragraph 11., Depreciation and use allowance, for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see Attachment B, paragraph 43., Rental costs of buildings and equipment, for rules on the allowability of rental costs for land, buildings, and equipment.

CODE OF CONDUCT

The school food authority must maintain a written code or standard of conduct that governs the performance of its officers, employees, or agents who are engaged in the award and administration of contracts supported by program funds. Federal regulations requires schools to adhere to a written code of conduct to eliminate conflict of interests that may arise during the procurement process. Refer to the Forms and Instruction Manual for an example of the procurement plan and code of conduct agreement. SFAs may use the sample Code of Conduct on page 18 of this chapter.

METHODS OF PROCUREMENT

As part of the procurement process, SFAs will adopt methods of procurement also known as a procurement plan. A decision to adopt one method over another is based on local agency requirements; the aggregate amount of product and equipment purchased; and

needed types of services. The procurement methods that will be used by a school district to purchase the goods, equipment, and services required by the program are as follows:

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1. Procurement by **micro-purchase procedures**.

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is \$3,500 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.

2. Procurement by **small purchase procedures**.

Small purchase procedures are informal procurement methods for securing services, supplies, goods, or equipment that do not cost more than the simplified acquisition threshold set at \$150,000. If small purchase procedures are used, SFAs must obtain prices or rate quotations from an adequate number of qualified sources for each product or group of products. The aggregate amount for each product or group of products must not exceed \$150,000 in a program year. USDA defines three vendors as an adequate number to contact for each group of products. If SFAs have procurement procedures with a lower threshold, SFAs should follow those requirements. See sample letter and sample of product request sheet to send to vendors on page 20 and page 21.

A. When small purchase procedures are used, the following conditions, stipulation, and terms must be met:

1. The goods, equipment, or services to be purchased must be adequately and consistently described for each prospective supplier so that each one can provide price quotes on the same merchandise or service.
 - a. Each prospective supplier must be provided the same specifications. Specifications must be generic so that vendors have an opportunity to provide quotes. Do not request brand names. Instead of requesting brands you may take the brand and type of product or equivalent. Example Tyson breaded chicken patty or equivalent.
 - b. Each prospective supplier must be given the same timeline for responding.

- c. For processed food items, request CN labeled products or product formulation sheets or name of item as it is listed in food buying guide.
 - d. Include the Buy American Provision on you procurement list
 - e. Both written and verbal contacts must be documented. The Purchase Documentation Sheet on page 22 of this chapter may be used to document descriptions and price quotes. Vendor contacts are recorded on the Vendor Contact form on page 23. Many schools will have a computerized version that can be updated frequently.
2. Specifications must be sent (i.e., fax or e-mail) or communicated to (i.e., telephone) or in person to at least three vendors. Specifications must be documented.
 3. SFAs must purchase from vendors that quote the lowest aggregate price and conform to all the material terms and conditions listed in the specifications. If an SFA does not buy from the supplier with the lowest prices, justification must be documented for not going with the lowest price.
 4. Responses from vendors can be written or verbal form. Verbal quotes must be documented.
- B. All documentation gathered during the procurement process must be retained by the SFA with other program documentation and records for a period of three years after the end of the fiscal year to which they pertain or until the findings of audits are resolved.
- A. Small purchase procedures may be used in the purchase of fresh produce regardless of the aggregate amount.
3. Procurement by **sealed bids**
- Bids are formal procurement methods. Bids are publicly solicited and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Intent to Bid (ITB), is the lowest in price. SFAs are required to conduct this method when aggregate purchases for a group of products exceed \$150,000 for the program year, and competitive and noncompetitive negotiations are not applicable.
- A. To conduct the sealed bid method, the following conditions should be present:
1. A complete, adequate, and realistic specification or purchase description is available.
 2. Two or more responsible bidders are willing and able to compete effectively for the business.
 3. The procurement lends itself to a firm-fixed-price contract, and the selection of the successful bidder can be made principally on the basis of price.
- B. If sealed bids are used, the following requirements apply:

1. The ITB will be publicly advertised, and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids.
 2. The ITB, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.
 3. All bids will be publicly opened at the time and place prescribed in the ITB.
 4. A firm-fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
 5. Any or all bids may be rejected if there is a sound, documented reason.
4. Procurement by **competitive negotiation** can be used when competitive sealed bids are inappropriate, infeasible, or impossible. This method is used when more than one vendor submits an offer, and a fixed-price or cost-reimbursement-type contract is awarded. Competitive negotiation may be used when a contract cannot be awarded to a successful bidder based on price alone or when the acquisition of professional services is necessary. The document used to solicit bids is commonly referred to as a request for proposal (RFP).

When conducting competitive negotiation, SFAs must use the following conditions, stipulations, and terms:

- A. Proposals will be solicited from an adequate number of qualified sources to permit reasonable competition.
- B. The RFP will identify all significant evaluation factors, including price or cost when required, and relative importance to the program. Any response to publicize RFPs shall be honored to the maximum extent practical.
- C. The school district will provide a mechanism:
 1. For technical evaluation of the proposals received. Criteria will include price or cost when required, and relative importance to RFP.
 2. To determine which responsible bidders will be contacted for further written or verbal discussion.
 3. For selection of contract award.
- D. The contract must be awarded to the responsible bidder whose proposal is most advantageous to the school district when price or other factors are considered.
 1. Cost-plus-a-percentage-of-cost method of contracting is prohibited.
 2. All RFPs received must be documented, and such documentation shall be retained by the school district with other program records for three years after the end of the fiscal year to which they pertain.

5. **Noncompetitive Negotiation** is procurement through solicitation of a proposal from only one source and can only be used when the procurement is not permissible under small purchase procedures, competitive sealed bids (formal advertising), or competitive negotiation. The decision to use noncompetitive negotiation must be justified in writing and available for audit and review. As with the other methods of procurement, such documentation must be maintained with other program records for three years after the end of the fiscal year to which they pertain or until the findings of audits are resolved. Cost-plus-a-percentage-of-cost method of contracting is also prohibited. Circumstances under which procurement may be made by noncompetitive negotiations are limited to the following:
- A. The merchandise or service is available only from a single source.
 - B. A public emergency exists, and the urgency for the requirements will not permit the delay involved with competitive sealed bids (formal advertising) or competitive negotiation.
 - C. After solicitation from a number of sources, competition is found to be lacking.

6. **Cost Reimbursable Contracts**

Cost Reimbursable contracts means a formal, legally enforceable contract that reimburses the contractor for costs incurred under the contract, but does not provide for any other payment to the contractor, with or without a fixed fee. In a cost reimbursable contract, allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates, and other applicable credits accruing to or received by the contractor. SFAs contracting services with a food service management company will have the option to procure services applying a fixed fee contract or a cost-reimbursable contract.

The school food authority must include the following provisions in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts:

- A. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;
- B. The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account);
or
The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;

- C. The contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;
- D. The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State Agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;
- E. The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and the contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.
- F. Prohibited expenditures. No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include the requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.

For additional guidance refer to *Contracting with Food Service Management Companies: Guidance for School Food Authorities* or contract the School Nutrition Programs and 7 CFR 210.21 (F)(I)(VI).

Forms Necessary for the Procurement Process

- Procurement Plan
- Chart of Procedures
- Code of Conduct
- Purchase Documentation Sheet with attached quotes
- Vendor Contact Sheet
- Nonkickback Affidavit (if applicable)
- Certificate Regarding Lobbying (if applicable)
- All other documentation as it applies to Federal and State rules and regulations.

BUY AMERICAN PROVISION

The Child Nutrition Reauthorization Act of 1998 requires SFAs participating in the NSLP and SBP in the contiguous United States to purchase for those programs, to the maximum extent practicable, domestic commodities or products for use in meals served under the NSLP and SBP. The legislation defines "domestic commodity or product" as one that is produced in the United States and is processed in the United States substantially using agricultural commodities that are produced in the United States. The report accompanying the legislation stipulated that "substantially" means that over 51 percent of the final processed products consists of agricultural commodities that were grown domestically.

It is essential that SFAs understand the need to ensure that all purchases of agricultural commodities and food products comply with this statutory provision. The provision should be included in bid specifications to ensure compliance. This provision applies to all funds maintained in the food service account and not just federal reimbursement.

GEOGRAPHIC PREFERENCES

SFAs receiving funds through the Child Nutrition Programs may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. SFAs, however, are not required to purchase locally grown and locally raised agricultural products, or to apply a geographic preference in their procurements of these products.

SFAs or the procuring entity has the discretion to determine whether and how a geographic preference meets its needs. SFAs may define the area for any geographic preference (e.g., State, county, region, etc.). Geographic preference may only be applied to the procurement of unprocessed agricultural products which are locally grown and locally raised, and that have not been cooked, seasoned, frozen, canned, or combined with any other products.

The term “unprocessed” precludes the use of geographic preference for agricultural products that have significant value added components. This does not preclude handling and preparation such as might be necessary to present an agricultural product to a school food authority in a useable form, such as washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton.” Additionally, using a minimal amount of preservatives on locally grown produce may be needed for the purpose of preventing spoilage and would be acceptable. However, milk served in the Child Nutrition Programs must be pasteurized and meet State and local standards. Pasteurized milk is the only dairy product for which geographic preference may be applied.

For more information regarding geographic preferences, refer to USDA memos Procurement Geographic Preferences Q&As: SP18-2011 and SP 03-2013

Exceptions to Geographical Preference

While a geographic preference may be used to encourage the purchase of locally grown and locally raised products by enabling an institution to grant an advantage to local growers, this provision does not eliminate the requirement for procurements to be conducted in a manner that allows for free and open competition, consistent with the purchasing institution’s responsibility to be responsible stewards of federal funds.

All other procurement must be conducted in a manner that maximizes open and free competition. SFAs are not allowed to limit the solicitation announcement to a particular geographic area to limit competition from potential vendors. SFAs using the small purchasing method cannot limit solicitation to local vendors. SFAs must purchase from vendors that quote the lowest aggregate price and conform to all the material terms and conditions listed in the specifications.

DEBARMENT OR SUSPENSION

An SFA is prohibited from contracting with an individual or company that has been debarred or suspended in accordance with 2 CFR 180 as adopted and modified by USDA regulations at 2 CFR Part 417. This prohibition does not extend to contracts in existence at the time of the debarment or suspension or to most contracts under \$100,000. Rather, it

applies to new contracts and extensions or renewals of existing contracts of \$100,000 or more and to contracts for audit services, regardless of amount. This prohibition does not apply to proposed debarments.

When an SFA enters into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified.

SFAs have the option of:

(a) printing the page form the Excluded Parties List System (EPLS) at <https://www.epls.gov> and maintaining such record with other supporting documentation to demonstrate that the SFA had reference the Excluded Parties List System; or

(b) incorporating a clause into the Sub-grantee's Agreement Contract which required the parties to certify that they have not been suspended or debarred, prior to Program participation. .

LOBBYING CERTIFICATION (REFERENCE 7 CFR §3018)

SFAs must obtain a lobbying certification from vendors for procurement contracts of \$100,000 or more. Any vendor whose contract award is for \$100,000 or more must complete a Certification regarding Lobbying form. The SFA must keep this signed certification statement on file with a copy of the vendor's contract. Certification Regarding Lobbying form (page 24).

Any SFA or its vendors who participate in lobbying activities must complete a Disclosure of Lobbying Activities form. SFAs must submit the completed form to the Arkansas Department of Human Services. A vendor would submit its completed form to the SFA. Refer to the ARDHS Forms and Instruction Manual for Disclosure of Lobbying Activities Form.

BEVERAGES AND SNACK AGREEMENTS

The following is a summary of existing regulatory requirements for beverage and snack agreements with SFAs participating in the School Nutrition Programs.

1. In some cases, the exclusive contracts do not involve nonprofit school food service account funds, in which case there are no federal FNS procurement issues involved. However, if any nonprofit school food service products are purchased via the exclusive contract, then all federal procurement requirements must be met. If small purchase procedures are used for a procurement of \$100,000 or less, price or rate quotations must be obtained from an adequate number of qualified sources.
2. If nonprofit school food service products are included in the contract, any rebates, commissions, scholarship fund contributions, or any other payments back to the SFA or SFA-related organizations, must be reimbursed to the nonprofit school food service account on a prorated basis.
3. There is no federal prohibition on multiyear contracts other than for Food Service Management Companies. It is suggested, however, that school procurement officials

consider the impact of multiyear contracts, as opposed to one-year contracts, on beverages and snacks. Long-term contracts would appear to be more appropriate

for nonperishable products and services such as warehousing and equipment rental; however, as noted above, there is no federal prohibition on these longer-term contracts.

4. Public Law 108-265 requires a SFA participating in the NSLP to not directly or indirectly restrict the sale or marketing of fluid milk products by the school at any time or any place on the school premises or at any school-sponsored event. SFAs must ensure that all contracts with outside vendors to furnish food or beverages do not limit the sale of milk on school grounds. Terms such as ***Exclusive Pouring Rights*** are terms used by vendors to limit the sale of milk.

ADDITIONAL CONTRACT PROVISIONS FOR 3019- PRIVATE NONPROFIT INSTITUTIONS CFR 3019.48

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

1. Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

1. All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
2. Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.
 - A. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

- B. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - C. A payment bond on the part of the contractor for 100 percent of the contract price "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.
 - D. Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."
3. All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.
 4. All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

Reports and Records Appendix A to Part 3019--Contract Provisions

All contracts, awarded by recipient including small purchases, shall contain the following provisions as applicable:

1. Equal Employment Opportunity--All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
5. Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)--All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work

Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)--When required by Federal program legislation, all construction contracts awarded by the recipients and

subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction").

4. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)--Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
5. Rights to Inventions Made Under a Contract or Agreement--Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
6. Clean Air Act (42 U.S.C. 7401 et. seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended--Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
7. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)--Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

This document is a sample and is not intended to be all inclusive. The School Food Authority is ultimately responsible to ensure that the plan complies with all Federal Regulations, State Procurement Code and Regulations and local procurement policies.

Name of School Food Authority

**PROCUREMENT PLAN
CHILD NUTRITION PROGRAMS**

This procurement plan contained on the following pages _____ through _____ will be implemented on _____ from that date forward until amended. All procurements must adhere to free and open competition. Source documentation must be available to determine open competition, the reasonableness, the allowability and the allocation of costs.

Chairman, Board of Education Date

Superintendent of Schools Date

(Rev. 06-29-16)

(Name of School Food Authority)**PROCUREMENT PLAN**

1. The **(Name of School Food Authority)** plan for procuring items for use in the Child Nutrition Program is as follows. The procurement plan provides for free and open competition, transparency in transactions, comparability, and documentation of all procurement activities.
2. If the amount of purchases is more than the Federal small purchase threshold currently valued at \$150,000, or State agency or SFA approved threshold if less, formal procurement procedures will be used as required by 2 CFR Part 200.318-326, formerly 7 CFR §3016.36. Informal procurement procedures (small purchase) will be required for purchases under the most restrictive small purchase threshold.
 - A. If the **amount of purchases for items is less than the district's small purchase threshold, the following, SMALL PURCHASE PROCEDURES, including quotes,** will be used. Quotes from an adequate number of qualified sources will be required.
 1. Written Specifications will be prepared and provided to the vendor.
 2. Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. A minimum of two vendors shall be contacted.
 3. The (Title of person/position) will be responsible for contacting potential vendors when price quotes are needed.
 4. The price quotes will receive appropriate confidentiality before award.
 5. Quotes will be awarded by (Title of person/position). Quotes awarded will be to the lowest and best quote based upon quality, service availability, price, and/or _____.
 6. The (Title of person/position) will be responsible for documentation of records to show selection of vendor, reasons for selection, names of all vendors contacted, price quotes from each vendor, and *written specifications*.
 7. The (Title of Person) will be responsible for documentation that the actual product specified is received.
 8. Any time an accepted item is not available, the (Title of person/position) will select the acceptable alternate. Full documentation will be made available as to the selection of the acceptable item.

9. Bids will be awarded on the following criteria:

- a. Price _____ (Ex.: quality, delivery, service, etc.)
- b. _____
- c. _____

10. The (Title of person/position) is required to sign all quote tabulations, signifying a review and approval of the selections.

3. If the amount of purchases is more than the Federal micro purchase threshold currently valued at \$3,000, small purchase procedures will be used as required by 2 CFR Part 200.318-326, formerly 7 CFR §3016.36. Micro purchase procedures will be allowed for purchases under the most restrictive micro purchase threshold. It is \$3,000, but this threshold is periodically adjusted for inflation. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions).

1. Micro-purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost.
2. **Competition:** Purchases within the micro-purchase threshold can be awarded without soliciting competitive price quotations as long as the price is reasonable.
3. **Purchases:** To the extent practicable, purchases must be distributed equitably among qualified suppliers. Price comparisons are not required, but the price(s) should be considered reasonable.
4. This distribution of purchases among qualified suppliers can happen in one of two ways; as a single purchase or over several purchases. For example a school procuring apples may purchase:
5. **Reasonable Price:** To verify the reasonableness of a price, the organization could compare previous purchases, have personal knowledge of the item being purchased, and/or compare to similar items being purchased.
6. **Records:** Documentation must be kept for all purchases regardless of the procurement method used, including micro-purchases. Best practice: Maintain all micro-purchase documentation in one file.

4. The following procedures will be used for all other purchases:

- Competitive Sealed Bids

- Competitive Negotiation
- Noncompetitive Negotiation

Miscellaneous Provisions:

1. The School Food Authority agrees that the reviewing official of each transaction will be the (Title of person/position).
2. Payment will be made to the vendor when the contract has been met and verified and has met the SFA's procedures for payment. (If prompt payment is made, discounts, etc. are accepted.)
3. Specifications will be updated as need.
4. If product is not as specified, the following procedure will take place:
 - _____
 - _____
 - _____

The following conduct will be expected of all persons who are engaged in the awarding and administration of contracts supported by School Food and Nutrition Program Funds. These written standards of conduct include:

1. No employee, officer or agent of the (School Food Authority) shall participate in the selection or in the award or administration of a contract supported by program funds if a conflict of interest, real or apparent, would be involved.

Conflicts of interest arise when one of the following has a financial or other interest in the firm selected for the award:

- a. The employee, officer or agent;
 - b. Any member of the immediate family;
 - c. His or her partner;
 - d. An organization which employs or is about to employ one of the above.
2. The (School Food Authority)employees, officers or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
 3. Penalties for violation of the standards of code of conduct of the (School Food Authority) School Child Nutrition Program should be:
 - a. Reprimand by Board of Education;
 - b. Dismissal by Board of Education;
 - c. Any legal action necessary.

CODE OF CONDUCT

The following conduct will be expected of all persons who are engaged in the award and administration of contracts supported by school food and nutrition programs funds.

- No employee, officer, or agent of the _____ (SFA) shall participate in the selection of or in the award or administration of a contract supported by program funds if a conflict of interest, real or apparent, would be involved.
- Conflicts of interest arise when any of the following has a financial or other interest in the firm selected for the award:
 - The employee, officer, or agent
 - Any member of his/her immediate family
 - His or her partner
 - An organization that employs, or is about to employ, any of the above

The _____ (SFA's) officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of material and/or monetary value from contractors, potential contractors, or parties to subagreements. The school district may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

The removal of any food, supplies, equipment, or school property, such as official records, recipe books, and the like, is prohibited.

The outside sale of such items as used oil, empty cans, and the like will be sold by contract between the _____ (SFA) and the outside agency. Individual sales by any school person to an outside agency or other school person is prohibited.

Failure of any employee to abide by the above-stated code could result in a fine or suspension, or both, or dismissal. Interpretation of the code will be given at any time by contacting _____ at _____
(title of person) (telephone number)

The _____ (SFA) will not be responsible for any other explanation or interpretation that anyone presumes to make on behalf of the School Board.

This plan adopted by the School Board of the _____
(School Food Authority)

at the regularly scheduled meeting on this _____ dd/mm/yy

Signature: _____
Superintendent Date

Secretary of the Board Date

CHART OF PROCEDURES

The _____ School District will purchase the following products or group of products and services as per the stated purchase period using the identified procurement method. Price quote time frame period is defined as the time frame for which bids or quotes are obtained and awarded.

PRODUCT	PRICE QUOTE TIME FRAME	PROCUREMENT METHOD USED
Milk		
Bread		
Canned fruits		
Canned vegetables		
Frozen fruits		
Frozen vegetables		
Prepared fruits and vegetables		
Fresh fruits		
Fresh vegetables		
Meats		
Paper products		
Chemicals		
Small equipment		
Large equipment		

Sample Request for Quotation Insert Letterhead

Subject: Request for Quotations

Date: _____

To: _____ Name of sales rep
 _____ Name of company

Fax No: _____
 From: _____ Name of personnel
 _____ Name of SFA

Deadline for submission: _____

Dear Sales Rep:

Our school is requesting products for the school food service program. Attached is a list of items and the specification of those items.

To comply with federal standards, we request that all products are American made processed products to the maximum extent practicable.

We are also requesting that processed entrée items be CN labeled or have product formulation sheets that demonstrate compliance for meat and whole grain rich products as required by USDA Child Nutrition Programs.

Please submit all quotes not later than _____ date for consideration.
 You may fax the quotes to _____ or mail to the below address:

_____ Name of contact person
 _____ Address

If you have any questions, please call _____.

Example of a Product Request Sheet

Item Specification	CN or formulation statement required	Quantity (aggregate)	Delivery or special requests
Bosco Pizza Bread	yes	2 cases	
Beef, ground, fresh, no more than 26% fat	no (in FBG)		
Beef patties, 2 oz tyson or like product	yes	5 cases	
Pork sausage, frozen	no (in FBG)	1 lb	
Chili Con Carne with beans	no (in FBG)	5 cases	
Chili with beans	yes (not in FBG)	64 oz	
milk, 1% white	no	10 cases	weekly
Whole wheat bread, 1 oz slice	no		1 st ingredient WW
Green beans, canned	no	5 cases	

School _____

Year _____

VENDOR CONTACTS

This form is to be used for school districts to document vendor responses. If only one vendor responds, the SFA does not need to do price comparisons.

Name, Address, and Telephone Number of Vendor	Name of Person Contacted	Date of Contact	Type of Contact (Letter, Phone, Personal)	Response Received

CERTIFICATION REGARDING LOBBYING

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds.

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into of a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Name of School Food Authority

Agreement Number

Name/Title of Submitting Official

Signature of Submitting Official

Date