

**DAYTON INDEPENDENT SCHOOL DISTRICT FOOD SERVICES DEPARTMENT**

**Sponsor number: 10023**

Name of School Food Authority

(SFA)

**DOCUMENTED PROCUREMENT PROCEDURES  
CHILD NUTRITION PROGRAMS**

2 CFR 200.318(a)

The procurement plan will be implemented on **01/15/2021** and will remain in effect from that date forward until amended. Unless where outlined and permissible per applicable laws, procurements must adhere to free and open competition. Sponsors must retain all documentation for each procurement per regulations.

*Chef Pamela S. Tramble-Emanuel*

*January 15, 2021*

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Food Service Director Chef Pam

\_\_\_\_\_  
Date

\_\_\_\_\_  
Finance Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Superintendent of Schools

\_\_\_\_\_  
Date

## PROCUREMENT PLAN

### **A. General Procurement Standards**

As a condition of participation in Federal Child Nutrition Programs, the Dayton Independent School District will purchase goods, products, and/or services for use in the Child Nutrition Programs (CNP) in compliance with 2 CFR Part 200 as well as 7 CFR Part 210, 220, 225, 226. Procurement standards are specifically located in 2 CFR 200.317-326 (Federal Awards and Grants), 7 CFR 210.21 (NSLP), 7 CFR 220.16 (SBP), 7 CFR 225.17 (SFSP), and 7 CFR 226.22 (CACFP). (Note Parts 3016 and Part 3019 have been superseded by 2 CFR Part 200 as adopted and supplemented by USDA in 2 CFR Part 400 for the SFSP and other Child Nutrition Programs.)

The primary purpose of these written procurement procedures is to assure full and open competition, transparency in transactions, comparability, and documentation of all procurement activities. The procurement process practiced by the CNP Sponsor must not restrict or eliminate competition. For example, description of goods, products, and/or services to be procured should not contain features that unduly restrict competition. Competition helps assure that goods, products, and/or services will be obtained that best meets your organization's needs.

A new written procurement procedure does not need to be developed every year. However, an annual review of the approved procedures is suggested to assure its relevance to current regulations and policies.

## **B. Procurement Management – SFA and Governing Body**

It is the responsibility of **Food Service Director-Chef Pamela S. Tramble-Emanuel**, including future **FSD** to evaluate the procurement needs and forecast the amounts to be purchased so the correct method of procurement will be followed.

The **Food Service Director** will verify no awards, sub awards, and contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in the Federal assistance programs or activities in accordance with **2 CFR 200.213**.

The **Food Services Director** will perform a cost or price analysis in connection with every procurement action in excess of the simplified acquisition threshold including contract modifications in accordance with **2 CFR 200.323(a)**.

The **Food Services Director** will ensure that contracts contain the applicable provisions described in Appendix II to 2 CFR 200 and 7 CFR 210.21 in accordance with **2 CFR 200.326**.

Regardless of procurement method, the following factors will be determined regarding the allowability of costs in accordance with **2 CFR 200 Subpart E. (2 CFR 200.400-2 CFR 200.474)**

- 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 federal, state, and local laws.

Child Nutrition Program Sponsors may set a lower simplified acquisition threshold than the Federal or State of Kentucky simplified acquisition threshold. The most restrictive (lowest) threshold must be used.

### **\*State of Kentucky Procurement Method**

If applicable, indicate which state allowable method of Procurement is used:

- Model Procurement (45A)
- Bid Law (KRS 424.260)

Method used: Model Procurement

Purchasing will be conducted at the most restrictive procurement threshold:

<b>Procurement Method</b>	<b>Federal Threshold</b>	<b>State of Kentucky* Threshold</b>	<b>CNP Dayton Independent School Sponsor Procurement Threshold (Fill In)</b>
Micro-Purchasing	\$10,000- 2 CFR 200.67 & 2 CFR 200.320(b)	\$10,000	<u><b>\$10,000</b></u>

Informal Small Purchase/Intermediate Procurement	Less than \$250,000- 2 CFR 200.320(b)	Less than \$20,000	<b><u>Less than \$20,000</u></b>
Formal (IFB/RFP)	Greater than \$250,00 or any total Food Service Management Contract- 2 CFR 200.320(c)(d)	Greater than 20,000	<b><u>Greater than \$20,000</u></b>
Capital Equipment	Over \$5,000-2 CFR 200.33	Over \$5,000	<b><u>Over \$30,000 for sealed bids/quotes</u></b>

- All staff conducting purchasing will be trained on procurement procedures.

**Standards of Conduct (2 CFR 200.318(c)):**

The Sponsor must maintain a written code of standards of conduct that includes procedures that governs the performance of its officers, employees, or agents who are engaged in the award and administration of contracts supported by Child Nutrition Program Funds.

The following conduct will be expected of all persons who are engaged in the awarding and administration of contracts supported by Child Nutrition Program Funds.

- No employee, officer or agent of the Dayton Independent School 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;
  - e. A less-than-arms-length transaction. This is one party's ability to control or influence the other party to the transaction. A less-than-arms-length transaction occurs:
    - i. When a transaction is conducted between related parties, meaning that the integrity of the transaction could be compromised;
    - ii. When one party to the transaction is able to control or influence the actions of the other party.

Examples include:

1. Hiring the CEO's brother as a janitor.

2. Purchasing goods or services from a business owned by an officer, employee, or relative of the Sponsor's entity.
  3. Agreement for computer maintenance between a business and person who are related to the Sponsor's employees or board members.
- **Dayton Independent School's** employees, officers or agents must not solicit or accept gratuities, favors, or anything of monetary value from prospective contractors/vendors, potential contractors, or parties of subcontract.
  - **Food Services Director** must set standards when financial interest is not substantial or the gift is an unsolicited item of nominal value and may be acceptable.
  - Disciplinary actions to be applied for violation of written standard of conduct from/for **Food Services Director, not limited to and/or employees within the department** are: (list appropriate actions for your organization).  
Article: 03.27.AP.1 – Personnel Actions Procedures
    - a. Written Notice Concerns-Finding
    - b. Procedure for Public Reprimand/Suspension/Dismissal of Classified Employment
    - c. Procedure A (To be utilized when Superintendent serves as Hearing Authority)

**Buy American Provision Requirements (7 CFR 210.21(d), & CFR 220.16(d) :**

Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a provision, Section 12(n) to the National School Lunch Act (NSLA) (42 USC 1760(n)), requiring school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodities or products. This Buy American provision supports the mission of the Child Nutrition Programs, which is to serve children nutritious meals and support American agriculture.

Limited exceptions to the Buy American provision:

There are limited exceptions to the Buy American provision which allow for the purchase of foods not meeting the "domestic" standard as described above (i.e., "non-domestic") in circumstances when use of domestic foods is truly not practicable.

These exceptions, as determined and documented by the **Food Service Director**, are:

- The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- Competitive bids/quotes reveal the costs of a U.S. product are significantly higher than the non-domestic product.

Compliance with, and monitoring of, the Buy American provision by SFAs:

To ensure compliance with the Buy American provision the SFA must ensure solicitation and contract language includes the requirement for domestic agricultural commodities and products.

- **The Dayton Independent Schools** must also include the Buy American requirement in its documented procurement procedures and retain records documenting any exceptions.
- The **Dayton Independent Schools** should ask the supplier, i.e., manufacturer or distributor, for specific information about the percentage of U.S. content in any processed end product.
- In order for **Food Services Director** to be able to document the domestic content, they should include in their procurement process a requirement for certifying the domestic percentage of the agricultural food component of commodities and products.
- Solicitation and contract language must be monitored by the determine **Food Services Director** contractor compliance as required by **2 CFR 200.318(b)**, in order to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- Monitoring is also accomplished by reviewing products and delivery invoices or receipts to ensure the domestic food that was solicited and awarded is the food that is received.
- **Food Services Director** also need to conduct a periodic review of storage facilities, freezers, refrigerators, dry storage, and warehouses to ensure the products received are the ones solicited, and awarded, and comply with the Buy American provision.

**Minority, Women Owned and Small Business (2 CFR 200.321):**

A Child Nutrition Program Sponsor must take all necessary affirmative steps to assure that minority business, women business enterprise, and labor surplus area firms are used when possible.

The following affirmative steps must be used in determining if a firm is available:

- Placing qualified small and minority businesses and women's business enterprises on the solicitation lists;
- Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises.

**Contractor Performance Oversight Procedures:**

**Food Services Director** will conduct contractor performance oversight. 2 CFR 200.318(b) Monitoring occurs after contract is awarded. Responsibilities include:

- Periodic on-site review of food storage facilities.

- Monitor Buy American provision – Exemptions are documented, and Country of Origin is USA.
  - Monitors that product/price/quality are as specified in bid and awarded contract. Such programmatic monitoring, financial monitoring, or both will be done **Food Services Director** (Quarterly, Semi-annual, or annually.)
- Monitor that deliveries are as required.
- Monitor that costs are accurate, and discounts, rebates, and credits are being returned to the nonprofit food service account.
- Documentation of any contractor claims or breach of contract.
- Documentation of vendors that declined to respond to the solicitation or are found to be a non-responsive bidder.

For all formal contracts, the SFA must develop and implement written procedures for the responsibilities as stated above to ensure sufficient oversight of awarded contracts.

### **C. Procurement Methods Used to Purchase Goods and Services using School Nutrition Funds**

Identify the applicable procurement methods utilized by the SFA:

	<b>Yes</b>	<b>No</b>
<b>Micro-Purchasing</b>	Written requests, for bidding/quotes and final review. According to guidelines/policies according to KDE and DIS. Any question share with Finance Director.	
<b>Small/Informal</b>	Written requests, bidding/quotes and final review. According to guidelines/policies according to KDE and DIS. Any question share with Finance Director.	
<b>Formal</b>	Written requests, bidding/quotes and final review. According to guidelines/policies according to KDE and DIS. Any question share with Finance Director.	

#### **Micro-Purchase procedures (2 CFR 200.67 & 2 CFR 200.320(a) :**

This method applies to the purchase of supplies or services when the aggregate dollar amount does not exceed \$10,000. These purchases may be awarded without soliciting competitive quotes if the Sponsor considers the price reasonable in accordance with 2 CFR 200.404 and complies with the Buy American

provision. The Sponsor must distribute the micro-purchases equitably among qualified suppliers and document all purchases.

- The **Food Services Director** will determine whether the aggregate amount of purchases for goods and/or services does not exceed the micro-purchase threshold of (equal to or less than) \$10,000 (or the local micro-purchasing threshold, a micro-purchasing procedure may be utilized. In so doing, the **Food Services Director** will be responsible to ensure that, under no condition, will purchases be sub-divided into amounts of \$10,000 or less, or the lesser required threshold, in order to circumvent the formal and informal purchasing requirements.
- Purchase orders may be solicited without quotes if the **Food Services Director** determines such practice is consistent with micro-purchasing regulations and consistent with the SFA's written Procurement Plan.
- The **Food Services Director** shall ensure competition is achieved by distributing purchase transactions equitably among qualified sources where the price is reasonable.
- For purposes of micro-purchasing, a transaction shall be defined as "an occurrence in which two (2) or more entities exchange goods, services or money between or among them under an agreement formed for their mutual benefit."
- All micro-purchases were approved by the **Food Services Director** prior to the initiation of a single micro-purchase.
- The **Food Services Director** agrees to contact the State agency with any questions about allowable/unallowable micro-purchases, and further agrees to maintain all documentation to substantiate micro-purchases including the following:
  - Rationale for using micro-purchasing;
  - Estimated cost of the item/service to be procured (indicating an one-time purchase of \$10,000 or less or the micro-purchasing threshold established by the local BOE "\$10,000 or less";
  - Name and address of the vendor;
  - Documentation that purchases are made from a variety of potential vendors as opposed to a single vendor for the majority of micro-purchases;
  - Receipts, invoices, and payment history.

**Federal Informal small purchase (2 CFR 200.320(b)):**

This method applies for purchases of goods, products, and/or services when the aggregate dollar amount is less than the SFAs identified simplified acquisition threshold. Price or rate quotes should be obtained from two (2) or more qualified sources and all purchases must be documented and be in compliance with the Buy American Provision



- In developing the written specifications, the same information needs to be used for all vendors/contractors. The Sponsor may do its own market research and use prices found online, in catalogs, newspapers, farmer's markets, or obtain prices from grocery stores.
- Each vendor/contractor will be given an opportunity to provide a price or rate quote on the same written specifications.
- The **Food Services Director** responsible for contacting potential vendors/contractors when price or rate quotes are needed.
- The price quotes are to remain confidential information until the actual award has been made.
- Quotes from an adequate number (2 or more) of qualified sources will be obtained. When an adequate number of quotes is not obtained, the district will provide written documentation as to why there were fewer than adequate number.
- Quotes are awarded by **Food Service Director**. Quotes will be awarded to the lowest and best quote based upon price, quality, service availability, and/or the bottom line quote according to spec mentioned in the determining factors.
- The **Food Service Director** is responsible for documentation of records:
  - to show selection of vendor/contractor;
  - reasons for selection;
  - names of all vendors/contractors contacted;
  - price quotes from each vendor/contractor;
  - written specifications; and
  - Receipts, invoices, and payment history.
- Any time an accepted item is not available, the **Food Service Director** will select the acceptable alternate. **Food Service Director** will document the reason for accepting an alternate and keep the documentation on file.
- The **Food Service Director** is required to sign documentation, confirming a review and the approval of the purchase of the goods, products, and/or services.
- The **Food Service Director** is the Sponsors authorized purchaser.

**Formal Purchase Procedures: Competitive Sealed Bidding (IFB) & Competitive Sealed Proposals (RFP)  
(2 CFR 200.320(c) (d)):**

This method applies to purchases of supplies or services when the aggregate cost amount is greater than the Sponsor's simplified acquisition threshold or for any Food Service Management Company contract. The formal procurement method requires the use of an Invitation for Bid (IFB) or a Request for Proposal (RFP).

- The Sponsors **Food Service Director** authorized purchaser.
- A cost or price analysis will be conducted prior to the awarding of any contract including contract modifications. 2 CFR 200.323(a)
- An announcement of an **Invitation for Bid (IFB) or a Request for Proposal (RFP)** will be placed in the Newspaper/media, Website, other internet source to publicize the intent of the Child Nutrition Program Sponsor to purchase needed items. The advertisement for bids/proposals or legal notice will be run for minimum of 30 days, max 90 days according to the notices.
- An advertisement is required for all purchases over the Sponsor's simplified acquisition threshold of actual amount of the CNP Sponsor's simplified acquisition threshold. The announcement (advertisement or legal notice) will contain a general description of items to be purchased, the deadline for submission of sealed IFB's and RFP's and the address where complete specifications and other procurement documents may be obtained.
- In an IFB or RFP, each vendor/contractor will be given an opportunity to bid/quote on the same specifications.
- The developer of written specifications or descriptions for procurements will be prohibited from submitting bids/quotes or proposals for such products or services.
- The IFB or RFP will clearly define the purchase conditions. The following, shall be addressed in the procurement document:
  - (1) Contract time period
  - (2) CNP Sponsor is responsible for all contracts awarded (statement)
  - (3) Date, time, and location of bid/quotes opening
  - (4) How vendor/contractor will be informed of bid/quotes acceptance or rejection
  - (5) Delivery schedule
  - (6) Requirements which bidder must fulfill in order for bid/quotes to be evaluated
  - (7) Benefits to which the Child Nutrition Program Sponsor will be entitled if the contractor cannot or will not perform as required

- (8) Statement assuring positive efforts will be made to involve minority and small business
- (9) Statement regarding the return of purchase incentives, discounts, rebates, and credits to the Child Nutrition Program Sponsor non-profit Child Nutrition account
- (10) Contract and/or purchase orders may be issued for firm fixed prices after formal bidding process
- (11) Price adjustment clause based on appropriate standard or cost index
- (12) Method of evaluation and type of contract to be awarded
- (13) Method of award announcement and effective date (if intent to award is required by State or local procurement requirements)
- (14) Specific bid/quotes protest procedures including contact information of person and address and the date by which a written protest must be received
- (15) Provision requiring access by duty authorized representatives of the CNP Sponsor, State Agency, United States Department of Agriculture, or Comptroller General to any books, documents, papers and records of the contractor which are directly pertinent to all negotiated contracts.
- (16) Method of shipment or delivery upon contract award.
- (17) Program Regulations: The contractor shall be in conformance with the applicable portions of the CNP Sponsor's agreement under the program. The contractor will conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 225, 226 and 250.
- (18) The contractor shall provide products that meet the Public Law 111-296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). The contractor's products shall meet grade level caloric, sodium, saturated fat, and trans fat requirements as applicable for your program.
- (19) Affordable Care Act: The contractor understands and agrees that it shall be solely responsible for compliance with the patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act, Public Law 111-152 (collectively the Affordable Care Act "ACA"). The contractor shall bear sole responsibility for providing health care benefits for its employees who provide services to the CNP Sponsor as required by State or Federal law.
- (20) Buy American Provision (applies to NSLP, SBP, and USDA Foods): The contractor will purchase, to the maximum extent practicable, domestic commodities or products in accordance with 7 CFR 210.21(d) and 7 CFR 220.16(d). The contractor shall purchase,

to the maximum extent practicable, domestic agricultural commodities or products substantially processed in the United States. "Substantially" means the final processed product contains over 51% domestically grown agricultural commodities. This provision applies to all food purchases paid from the nonprofit school food services account. There are limited exceptions to this provision which allow for the purchase of products not meeting the "domestic" standard as described above (*non-domestic*) in circumstances when use of domestic products is truly not practicable. Documentation requirements include the following:

- Documentation that requests the consideration on the use of domestic alternative foods before approving an exception;
- A requirement to document the use of a non-domestic food exception when competition reveals the cost of a domestic food is significantly higher than non-domestic food; and
- A requirement to document the use of a non-domestic alternative food due to the domestic food not produced or manufactured in sufficient and reasonable available quantities of a satisfactory quality?

(21) Disclosure of Lobbying Activities: Pursuant to Byrd Anti-Lobbying Amendment 31 USC 1352, the contractor must disclose lobbying activities in connection with school nutrition programs. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis. 2 CFR Part 200.213 and Appendix II to 2 CFR Part 200 (I) **(Applies to contracts over \$100,000).**

(22) Certification Regarding Lobbying: Pursuant to 31 USC 1352, the contractor must submit a certification regarding lobbying which conforms in substance with the language provided in 2 CFR 200.450. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered Federal actions. **(Applies to contracts over \$100,000).**

(23) Certificate of Independent Price Determination: The vendor admits that all prices in their Offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Offertory or with any competitor certification regarding non-collusion.

(24) Civil Rights Compliance: In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found [online](#) and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information required in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (a) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

- (25) Clean Air Act, Clean Water Act, and Environmental Protection Agency Regulation: The contractor will comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738 and Environmental Protection Agency regulations which prohibit the use, under nonexempt federal contracts, grants or loans to facilities included on the EPA list of Violating Facilities. The CNP Sponsor will report all violations to ADE and to the USEPA Assistance Administrator for Enforcement. (Applies to contracts over \$150,000)
- (26) Contract Work Hours and Safety Standard Act: The contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). (Applies to contracts over \$2,500).
- (27) Debarment, Suspension, Ineligibility and Voluntary Exclusion: By signing the Offer & Award form, the contractor shall certify that they have not been debarred, suspended, or otherwise excluded from or ineligible for participations in federal assistance programs under executive order 12549 and 12689. The contractor shall comply with regulations implementing Office of Management and Budget Guidance in Non-procurement Debarment and suspension codified at 2 CFR 180, 2 CFR 417, and 2 CFR 200.213. These regulations restrict transactions with certain parties that are debarred, suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs or activities. (2 CFR 180.220(b) (1): Applies to contracts equal or exceed \$25,000).
- (28) Energy Policy and Conservation Act: The contractor shall meet the mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act. (Pub. L. 94-163,89 Stat.871)
- (29) Equal Employment Opportunity: The contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended

by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations. (41 CFR Chapter 60)

- (30) Record Keeping: The books and records of the contractor pertaining to operations under this agreement shall be available to the CNP Sponsor at any reasonable time. These records are subject to inspection or audit by representatives of the CNP Sponsor, State Agency, the USDA, and the US General Accounting Office at any reasonable time and place. The CNP Sponsor shall maintain such records, for a period of not less than three (3) years after the final day of the contract, or longer if required for audit resolution. (7 CFR 210.23(c), and 2 CFR Part 200.333).
- (31) Invoicing: The contractor fully discloses all discounts, rebates, allowances and incentives received by the CNP Sponsor from its suppliers. If the contractor receives a discount, rebate, allowance, or incentive from any supplier, the contractor must disclose and return to the CNP Sponsor the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the CNP Sponsor. The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoice presented to the Sponsor for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. (2 CFR 200 and 7CFR 210.21)

No expenditure may be made from the nonprofit food service account for any cost resulting from a cost-reimbursable contract that fails to include the requirements of 2 CFR 200 and 7 CFR 210, nor may any expenditure be made from the nonprofit food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, next allowable costs. (2 CFR 200 and 7 CFR 210.21)

The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable and the amount that is unallowable; 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. (7 CFR 210.21(f)(A)(B))

- (32) Termination Clause: The contract may be terminated for cause and for convenience by the CNP Sponsor. Appendix II to 2 CFR Part 200. (Applies to contracts over \$10,000).
- (33) Signed statement of non-collusion.
- (34) For building projects: Copeland "Anti-Kickback" Act. All contracts and sub grants in excess of \$2000 for construction or repair awarded by recipients and sub recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act.
- (35) Davis-Bacon Act. The contractor shall comply with the Davis-Bacon Act (Appendix II to 2 CFR 200/7 CFR 3019.48). (Applies to construction contracts over \$2,000).

(36) Optional: Applying a Geographical Preference. 7 CFR Part 210.21(g), 7 CFR 225.17, SP18-2011, Procurement Geographic Preference Q&As and SP03-2012, Procurement Geographic Preference Q&As Part II. (Only use if applicable)

- A. The Sponsor seeks to increase its purchase of seasonal, minimally processed fresh fruits and raw vegetables as part of the Farm to School Program. Reasons for purchasing local products include the potential cost savings, nutrition education for students, and quality of product.
- B. The Sponsor is interested in the following locally grown products:  
**<Insert items of interest with specifications here>**
- C. The contractor will make every effort to provide the Sponsor with locally grown products according to the definitions below.
  - 1. Locally Grown: **<Insert parameters of CNP Sponsor's local definition here>** [i.e. Grown within 200 miles]
  - 2. Minimally processed: Includes refrigerating, adjusting size (peeling, slicing, dicing, cutting, chopping), washing, packaging and adding ascorbic acid or other preservatives to prevent oxidation or produce (as described in USDA's Final Rule of Geographic Preference).
- D. All products designated under the geographic preference clause shall be labeled with its designating origin (grower name and address/state or area of production) on each case/invoice delivered.
- E. Locally grown products should be generally free from insect damage and decay (flexible on grading for produce only per USDA guidance). Produce items are to be rinsed, cleaned and packed in appropriate commercial produce packaging such as waxed cardboard boxes or sanitary/reusable bins.

(37) Rights to Inventions Made Under a Contract or Agreement (if applicable)?  
(Appendix II to 2 CFR 200/7 CFR 3019.48)

- Specifications will be prepared and provided to potential vendors/contractors desiring to submit IFB or RFP for the products or services requested. Vendors/contractors will be selected using the Sponsor's procedures such as:
  - 1. Does the vendor's product meet the required specifications?
  - 2. Does the vendor's delivery schedule meet the Sponsor's needs?
  - 3. Other criteria that each Sponsor determines is of value to them.
- If any potential vendor/contractor is in doubt as to the true meaning of specifications or purchase conditions, an interpretation will be provided by Title of Person.
- Bids/proposals from an adequate number (2 or more) of qualified sources will be obtained. When an adequate number of bids/proposals is not obtained, the district will provide written documentation as to why there were fewer than adequate number.
- The **Food Service Director and Finance Director** is responsible for securing all IFB or RFP.

- The **Food Service Director and Finance Director** is responsible to ensure all CNP Sponsor procurements are conducted in compliance with applicable Federal regulations, State General Statutes or policies of the Sponsor.
- The following criteria will be used in awarding contracts as a result of bids/quotes. (Examples: quality, delivery, service, etc.)
  1. Price - Analysis
  2. Services
  3. Quality
  4. Geographic Preference
- In awarding a competitive negotiation (RFP), a set of award criterion in the form of a weighted evaluation sheet will be provided to each bidder in the initial bid/quotes document materials. Price alone is not the sole basis for award but remains the primary consideration when awarding a contract. Following evaluation and negotiations a firm fixed price or cost reimbursable contract is awarded.
- The contracts will be awarded to the responsible bidder/proposer whose bid/quotes or proposal is responsive to the invitation and best meets the needs of the CNP Sponsor, price, and other factors considered. Any and all bids/quotes or proposals may be rejected in accordance with law.
- The **approved signature** is required to sign on the bid/quote tabulation of competitive sealed bids/quotes or the evaluation criterion score sheet of competitive proposals signifying a review and approval of the selections.
- The **Finance Director** will review the procurement system to check ensure compliance with applicable laws.
- The **Food Services Director** is responsible for documentation that the actual product specified is received.
- Any time an accepted item is not available, the **Food Services Director** will select the acceptable alternate. The contractor must inform **Food Services Director** time/by when a product is not available. In the event a non-domestic agricultural product is to be provided to the CNP Sponsor, the contractor must obtain, in advance, the written approval of the product. The **Food Service Director** must comply with the Buy American Provision (if the Sponsor participates in NSLP, SBP or USDA Foods).
- Full documentation as to the reason an accepted item was unavailable, and to the procedure used in determining acceptable alternates, will be available for audit and review. The person responsible for this documentation is **Food Services Director**.



- The **Food Services Director** for forwarding all required documents to the finance department is responsible for maintaining all documentation of the procurement process. As the second backup system. Reference Section E- Internal Controls and Recordkeeping.

**Procurement by Noncompetitive Proposals (2 CFR 200.320(f)):**

Procurement by noncompetitive proposal will only be used if one or more of the four circumstances apply:

1. Item is available **only** from a single source (aka Sole Source),
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
3. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the **Finance Department**.
4. After solicitation of a number of sources, competition is determined inadequate.

If items are available only from a single source when the award of a contract is not feasible using the formal purchase procedures (IFB/RFP), noncompetitive negotiation procedures will be used: (must have prior approval from State agency before executing. **2 CFR Part 200.320(f)(1-3))**

When a noncompetitive proposal is used the CNP Sponsor must:

- Prepare and provide written specification to the vendor/contractor in accordance with **2 CFR 200.319(c)(1)**.
- The **Food Services Director** is responsible for the documentation of records to fully explain the decision to use the non-competitive negotiation. The records will be available for audit and review.
- The **Food Services Director** is responsible for documentation that the actual product or service specified was received.
- The **Finance Director** is responsible for reviewing the procedures to be certain all requirements for using single source or non-competitive negotiation are met.
- When noncompetitive procurement is necessary in order to make an emergency purchase to continue service, **Finance Director** is responsible for making emergency purchases and ensuring they are necessary, allowable, and receive prior approval from KDE. The following emergency procedures shall be followed:
  1. Requests for approval must be submitted via email to: Lauren Moore, Director, Division of School and Community Nutrition [Lauren.moore2@education.ky.gov](mailto:Lauren.moore2@education.ky.gov).
  2. Requests should include:
    - a. A signed statement by the Superintendent describing the emergency that exists which will cause public/program harm as a result of the delay in competitive procedure.
    - b. Estimated cost of the goods and/or services.

- Record keeping responsibilities include:
  - Ensuring that a record of the emergency purchase procedure, request information, and State Agency approval is maintained and available for audit and review. The record includes, at a minimum, the following:
    - item name;
    - dollar amount;
    - vendors contacted, and vendor awarded;
    - statement signed by the Superintendent and reason for emergency or pressing need; and
    - State agency approval.
    - Billing and payment history

#### **D. Equipment Purchases (2 CFR 200.33, 2 CFR 200.313, 2 CFR 200.439):**

If the amount of purchase for equipment is greater than \$5,000, the following procedure is used. Equipment means tangible personal property (including information technology systems) having a useful life of more than one (1) year and per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statements purposes, or \$5,000.

<b>Capitalization Threshold</b>	<b>\$30,000 with sealed bid/quote</b>
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Complete Dayton Independent School Food Service Department "Formal Procurement Form" is a must. Not, limited to KDE's Bidding Contract Policy 04.33 that are in the guideline.

During an administrative review, as required by **7 CFR Part 210.18**, and audits as required by **2 CFR 200.501**, the Sponsor's equipment purchases will be reviewed. Sponsors may purchase any equipment from the Pre-Approved Capital Equipment List following proper Federal, State, or local procurement procedures, as applicable, without submitting a *Capitol Equipment Purchase Request* to Agency for approval.

- The **Finance Director** will develop written specifications of required equipment and provide them to vendors.
- Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. An adequate number of vendors shall be contacted.
- The price quotes will receive appropriate confidentiality before award.
- If using the nonprofit food service account or USDA funding for the purchase, the CNP Sponsor will seek prior approval from the Kentucky Department of Education, Division of School and Community Nutrition by submitting an Equipment Pre-Approval Request.
- Quotes will be awarded by **Food Services Director and Finance Director**. Quotes awarded will be to the lowest and best quote based upon quality, service availability, price, and or the bottom line according to the bid/quotes, including other specification.

- The Finance Director is 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.
- The Finance Director is responsible for documentation that the actual product specified is received.
- The **Director of Pupil Personnel** is responsible for managing Real Property Title, Use, Disposition Selling, and Transferring in accordance with **2 CFR 200.311**.
- The Finance Department is responsible is to ensure at the termination of the award or completion of the project and the unused supplies exceed \$5,000 in total aggregate value and not needed for any other Federal award that supplies are retained for use on other activities or be sold. In either case, the Federal Government must be compensated for the amount in accordance with **2 CFR 200.314**.
- **No** purchase is approved till KDE has supported the purchase as requested in writing. Apart of the recording processing.

**E. Internal Controls and Record Keeping (2 CFR 200.61, 2 CFR 200.62, 2 CFR 200.333, 2 CFR 200.336):**

The SFA and contractor shall agree to retain all books, records and other documents relative to the contract agreement for three (3) years after final payment. The CNP Sponsor, its authorized agents, State Agency, and/or USDA auditors shall have full access to and the right to examine any of said materials during said period. Specifically, the CNP Sponsor shall maintain, at a minimum, the following documents:

- Written rationale for the method of procurement;
- A copy of the original solicitation;
- The selection of contract type;
- The bidding and negotiation history and working papers'
- The basis for contractor selection;
- Approval from the State agency to support a lack of competition when competitive bids, quotes or offers are not obtained;
- The basis for award cost or price;
- The terms and conditions of the contract;
- Any changes to the contract and negotiation history;
- Billing and payment records'
- A history of any contractor claims; and

- I. A history or any contractor breaches.

## **F. Cooperative Purchasing Agreements/Agents/Third-Party Services** **(Intergovernmental Agency) 2 CFR 200.318(e):**

The CNP Sponsor may enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

The CNP Sponsor entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a federal concern. Violations of law will be referred to local, State, or Federal authority having proper jurisdiction. **(2 CFR 200.318)**

- The **Finance Director** will ensure all procurement regulations are followed when using a Cooperative Purchasing Agreement, an Agent, or a Third-Party Service.
- The **Finance Director** will ensure all costs paid from the nonprofit food service account are necessary, reasonable, allocable, and otherwise allowable per 2 CFR 200.403 and the applicable cost principles in **2 CFR 200, subpart E**.
- The **Finance Director** will ensure procurements by Cooperative Groups, Agents, and Third-Parties are conducted in a manner maximizing full and open competition consistent with Federal procurement standards in **2 CFR 200.318-.326** and in applicable Program regulations.
- The **Food Services Director and Finance Director** will ensure that when using an agent (a person or business authorized to act on the client's behalf), the agent's services in excess of the micro-purchase threshold of \$10,000 are competitively procured in accordance with Federal procurement methods outlined in **2 CFR 200.320**.
- The **Finance Director** will ensure that when using a third-party entity to make purchases, the SFA uses the third-party's pricing as one source when soliciting price/rate quotes (small purchase).