

Henderson County School District

Name of School Food Authority

(SFA)

**DOCUMENTED PROCUREMENT PROCEDURES**

**CHILD NUTRITION PROGRAMS**

2 CFR 200.318- 327

The procurement plan will be implemented on 08/01/22 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.

---

Bob Lawson

Superintendent of Schools

---

Date

## **PROCUREMENT PLAN**

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

As a condition of participation in Federal Child Nutrition Programs, the Henderson County 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 (Note Parts 3016 and Part 3019 have been superseded by 2 CFR Part 200 as adopted and supplemented by USDA in 2 CFR Part 400 for the SFSP and other Child Nutrition Programs.)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 Child Nutrition Director to evaluate the procurement needs and forecast the amounts to be purchased so the correct method of procurement will be followed.

The Child Nutrition Director will verify no awards, subawards, 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 Child Nutrition 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 Child Nutrition 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:

Procurement Method	Federal Threshold	State of Kentucky* Threshold	CNP Sponsor Procurement Threshold (Fill In)
Micro-Purchasing	\$10,000- 2 CFR 200.67 & 2 CFR 200.320(b)	-----	<u>\$2500</u>
Informal Small Purchase/Intermediate Procurement	Less than \$250,000- 2 CFR 200.320(b)	Under \$30,000	<u>\$2501-\$29,999</u>
Formal (IFB/RFP)	Greater than \$250,000 or any total when using a Food Service Management Contract- 2 CFR 200.320(c)(d)	Greater than \$30,000	<u>\$30,000 and above</u>
Capital Equipment	Over \$5,000-2 CFR 200.33	Over \$5,000	<u>Over \$5,000</u>

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

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

The Child Nutrition Program 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 Henderson County School District 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.
    - iii. Examples include:
      - 1. Hiring an administrator's relative as a favor;
      - 2. Purchasing goods or services from a business owned by an officer, employee, or relative of the Sponsor's entity.
      - 3. Agreement for equipment maintenance between a business and person who are related to the Sponsor's employees or board members.
- Henderson County School District 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.
- Henderson County School District 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 Henderson County School District written standard of conduct are: (list appropriate actions for your organization).
  - a. Fine
  - b. Suspension
  - c. Dismissal

### **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 Child Nutrition 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 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 Henderson County School District must also include the Buy American requirement in its documented procurement procedures and retain records documenting any exceptions.
- Henderson County School District 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 Child Nutrition 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 Child Nutrition Director to determine 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.
- Child Nutrition Director also needs 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):**

Henderson County School District 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:**

Child Nutrition 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 Child Nutrition Director. (Quarterly, Semi-annual, or annually.)

- Monitor that deliveries are completed in accordance with contract requirement.
- Monitor that costs are accurate, and discounts, rebates, and credits are being returned to the nonprofit food service account.
- Maintain documentation of contractor claims and breach of contract occurrences.
- 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:

	Yes	No
<b>Micro-Purchasing</b>	x	
<b>Small/Informal</b>	x	
<b>Formal</b>	x	

#### **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 Child Nutrition 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 (Child Nutrition 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 (Child Nutrition Director) determines such practice is consistent with micro-purchasing regulations and consistent with the SFA's written Procurement Plan.
- The (Child Nutrition 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 (Child Nutrition Director) prior to the initiation of a single micro-purchase.
- The (Child Nutrition 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 a one-time purchase of \$10,000 or less or the micro-purchasing threshold established by the local BOE (\$2500));
  - 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 Child Nutrition Account Clerk is 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.
- Purchases are awarded by Child Nutrition Director. Purchases will be awarded to the lowest and best bidder based upon price, quality, service availability, and/or geographical preference?.
- All specifications that include the use of the “brand name” for a product must allow for “an equal product” or like item to be offered. 2 CFR 200.319(a)(6)(7)
- The Child Nutrition 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 Child Nutrition Director will select the acceptable alternate. Child Nutrition Director will document the reason for accepting an alternate and keep the documentation on file.
- The Child Nutrition Director is required to sign documentation, confirming a review and the approval of the purchase of the goods, products, and/or services.
- The Child Nutrition 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 Child Nutrition Director is the Sponsors 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 Length of Time.
- An advertisement is required for all purchases over the Sponsor's simplified acquisition threshold of \$29,999. 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 on the same specifications.
- The developer of written specifications or descriptions for procurements will be prohibited from submitting bids 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 when applicable.
- 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)
- Clear Air/Clean Water: For subcontracts and subgrants of amounts in excess of \$150,000, the contract must include a clause requiring the contractor to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671) and the Federal Water Pollution Contract Act as amended (33 U.S.C. 1251-1387) and the contractor must agree to report all violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 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)
- Suspension and Debarment. Per 2 CFR part 180, OMB Guidelines to agencies on *Governmentwide Nonprocurement Debarment and Suspension*, as well as related *Executive Orders 12689 and 12549*; Grantees, contractors, and subcontractors (at any level) that enter into covered transactions requires verification that the person with

whom they intend to do business has not been excluded or disqualified when entering into a transaction.

- Lobbying. Contractors that apply or bid for an award exceeding \$100,000 must file the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).
- Contract Work Hours and Safety Standards Act Clause. This clause would be required only for contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers.
- Procurement of Recovered Materials Pursuant to 2 CFR 200.322. This provision only applies to a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
- 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).
- 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))

- Termination Clause: If the contract is in excess of \$10,000, your contract must contain a clause that addresses termination for cause and for convenience by the school district including the manner by which it will be effected and the basis for settlement. The USDA does not prescribe the form or content of these clauses. Appendix II to 2 CFR Part 200. (Applies to contracts over \$10,000).
- Signed statement of non-collusion.
- 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.
- 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).
- Remedies. If the contract is for more than the simplified acquisition threshold currently set at \$150,000, your contract must include a clause that addresses administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. The USDA does not prescribe the form or content of these clauses.
- 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)
  - 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.
  - The Sponsor is interested in the following locally grown products: <Insert items of interest with specifications here>
  - The contractor will make every effort to provide the Sponsor with locally grown products according to the definitions below.
    - Locally Grown: <Within ?60 miles> [i.e. Grown within 200 miles]
  - 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).
  - 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.
  - 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.

- 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 district'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 Child Nutrition Director.
- 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 Finance Office is responsible for securing all IFB or RFP.
- The Finance Officer 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. (Examples: quality, delivery, service, etc.)
  1. Price
  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 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.
- Cost Reimbursable Contracts. The child nutrition program sponsor 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.
  - The contract language provided below is mandatory.  
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; 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; 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; 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; 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. 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.

- The contracts will be awarded to the responsible bidder/proposer whose bid or proposal is responsive to the invitation and best meets the needs of the child nutrition program sponsor, price, and other factors considered. Any and all bids or proposals may be rejected in accordance with law.
- The Finance Officer is required to sign on the bid tabulation of competitive sealed bids or the evaluation criterion score sheet of competitive proposals signifying a review and approval of the selections.
- The Finance Officer will review the procurement system to check ensure compliance with applicable laws.
- The Child Nutrition Director is responsible for documentation that the actual product specified is received.
- Any time an accepted item is not available, the Child Nutrition Director will select the acceptable alternate. The contractor must inform Child Nutrition Director within two

weeks of a bid award that 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 Child Nutrition Director must comply with the Buy American Provision (if the Sponsor participates in NSLP, SBP or USDA Foods).

- All specifications that include the use of the “brand name” for a product must allow for “an equal product” or like item to be offered. 2 CFR 200.319(a)(6)(7)
- 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 Child Nutrition Director.
- The Child Nutrition Director is responsible for maintaining all documentation of the procurement process. 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;
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 Child Nutrition Director;
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 Child Nutrition 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 Child Nutrition Director is responsible for documentation that the actual product or service specified was received.



- The Child Nutrition 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, Child Nutrition 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.
- When noncompetitive procurement is necessary in order to make a single source purchase or because there is a lack of responsible and responsive bidders, the child nutrition sponsor is responsible for ensuring that the purchase is necessary, allowable, and receives prior approval from KDE.

The following procedure 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 Child Nutrition Director describing why the purchase is a single source purchase.
    - 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>\$5,000</b>
---------------------------------	----------------

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 Child Nutrition Director will develop written specifications of required equipment and provide them to vendors.
- Vendors will be given an opportunity to provide a price quote on the same specifications.
- Prior to the contract award, the confidentiality of all price quotes is strictly maintained.
- 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.
- Contracts will be awarded by Child Nutrition Director. Contracts awarded will be to the lowest and best quote based upon quality, service availability, price, and or geographical location.
- The Child Nutrition 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 Child Nutrition Director is responsible for documentation that the actual product specified is received.

- The Child Nutrition Director is responsible for managing Real Property Title, Use, Disposition Selling, and Transferring in accordance with **2 CFR 200.311**.
- The Child Nutrition Director 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**.

**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 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
- 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 Child Nutrition Director will ensure all procurement regulations are followed when using a Cooperative Purchasing Agreement, an Agent, or a Third-Party Service.
- The Child Nutrition 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 Child Nutrition 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 Child Nutrition 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 Child Nutrition 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).