

# Jefferson County Public Schools

## School and Community Nutrition Services

### DOCUMENTED PROCUREMENT PROCEDURES

### CHILD NUTRITION PROGRAMS

This procurement plan provides a written description of the procurement procedures that are used when procuring goods and services for the federal Child Nutrition Program. SFA (School Food Authorities) are required to have and use written procurement procedures that comply with the federal regulations, laws, and policies. However, SFAs must also follow any applicable State and local procurement requirements when they are stricter than but not in contradiction to what is federally required.

While not required by SCN for this procurement plan to have an official approval by the schools governing body or administration, it is important that they are knowledgeable of the procedures that are reflected in this document and understand that they must be used when procuring for the Child Nutrition Program. These procedures should be reviewed at least once annually and updated at the frequency needed to remain current with what is required for the SFA to follow.

This procurement plan was implemented on August 10, 2016 and will remain in effect from that date forward until amended.

This procurement plan has been amended for SY 24-25

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Superintendent of Schools

*Yolanda Edington*

Child Nutrition Program Director

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Date

*5-28-24*

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Date

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School Finance Officer

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Date

*Adopted August 10, 2016*  
*Amended March 29, 2018*  
*Amended January 11, 2022*  
*Amended June 26, 2023*  
*Amended January 23, 2024*

## Section A: General Procurement Standards 2 CFR 2003.18

### Written Procurement Procedures 2 CFR 200.318(a):

Jefferson County Public Schools' School and Community Nutrition Services (SCNS), the School Food Authority (SFA) for the District, must have and use documented procurement procedures that are consistent with the standards identified in 2 CFR 200.317 through 200.327 as well as applicable state, and local laws and regulations for the acquisition of property or services required to participate in the Federal Child Nutrition Program.

This procurement plan provides the written procurement procedures that are reflective of the federal procurement requirements that must be followed, and state and local policies that are allowable by federal regulations or stricter than what is federally required.

### Contractor Administrative Oversight 2 CFR 200.318(b):

Jefferson County Public Schools' School and Community Nutrition Services (SCNS) is required to maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

Contract administration oversight refers to all steps taken after contract award to make sure the requirements of the contract are met. It encompasses all dealings between the SFA and the vendor from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes have been resolved. Collectively, oversight enables the SFA to evaluate vendor performance and document, as appropriate, whether they have met the terms, conditions, and specifications of the award.

The SCNS Purchasing Administrator is responsible for ensuring that SCNS employees conduct contract oversight by ensuring:

- ✓ The Contractor Performance Oversight SOP is followed
- ✓ Monitoring the Buy American Provision- Country of Origin is USA, exemptions are documented.
- ✓ Goods and services are provided as outlined in the solicitation and the resulting contract.
- ✓ Quantity and quality of the goods and services are received as requested.
- ✓ Goods and services are provided at the agreed upon time, locations, and conditions.
- ✓ The SFA's substitution policy is followed when required.
- ✓ The amount charged is the amount agreed upon in the awarded contracts and agreements.
- ✓ Vendors are contacted when disparities are found for resolution or correction.
- ✓ Vendors are deemed not responsible and therefore ineligible for future contract or purchase awards when such action is found to be reasonable due to poor performance and is adequately documented.

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

The SFA must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. No employee,

officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the SFA may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, SFAs may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the SFA.

If the SFA has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the SFA must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the SFA is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

The Jefferson County Board of Education has implemented the following Code of Conduct: 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 Jefferson County Board of Education 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 per KY Model Procurement 45A.340
- 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.

- Jefferson County Board of Education employees shall not receive, directly or indirectly, any gift, reward, or promise of reward in exchange for influence in recommending or procuring the use of any goods, services, property, or merchandise of any kind for which District funds are expended per Board Policy 03.0322.
- Jefferson County Board of Education must set standards when financial interest is not substantial, or the gift is an unsolicited item of nominal value and may be acceptable.

The nominal amount identified per Jefferson County Board of Education is: \$50 or \$50 market value of goods or services per person per year from any one source.

Disciplinary actions to be applied for violation of Jefferson County Board of Education written standard of conduct are:

- a. Administrative or disciplinary action under applicable contract
- b. Suspension
- c. Dismissal

#### **Unnecessary or Duplicative Items 2 CFR 200.318(d):**

The SFAs procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis should be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

#### **Intergovernmental and Inter-Entity Agreements 2 CFR 200.318(e):**

To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the SFA is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements must be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

These types of agreements may include the use of contracts procured by cooperative groups, procurement agents, and third-party entities. SFAs may use contracts obtained through such agreements when the guidance outlined in policy memo *SP-05-2017, Q&A Purchasing Goods and Services Using Cooperative Agreements, Agents, and Third- Party Services* is followed.

##### **A group of SFAs, procuring for SFAs:**

When an SFA is part of a co-operative group with other SFAs to collectively procure goods and services for their child nutrition programs, the resulting contracts may be used without further procurement actions required.

SFAs must ensure that all contracts were procured in an acceptable manner and obtain a copy of all documentation of the procurement process for their records prior to use. When procuring as a group, each individual SFA remains responsible for monitoring contractor performance to ensure compliance with all contract provisions.

SFA only co-operative groups include groups where two or more SFAs come together to jointly procure goods or services, SFA only groups within an Education Service Center that procure contracts exclusively for the use of the SFAs in their member schools, and CNP State Agencies.

**Two or more SFAs coming together to jointly procure contracts:**

When two or more SFAs agree to jointly procure together to take advantage of volume pricing for products or services procured in one contract, the resulting contract may be used by those SFAs without further procurement actions. The group of SFAs, as defined in the scope of the solicitation, cannot materially change from the original group who plan to purchase together. Forecasting activities conducted prior to the formation of this cooperative should include actual and potential members of the cooperative and the solicitation should clearly define the expected level of members in the scope.

**Educational Service Centers:**

Educational Service Centers that provide services that procure contracts specifically for the use by the SFAs in their member school districts may be used without further procurement actions. These SFA only cooperatives must follow, at a minimum, the federal procurement regulations when procuring goods and services for its members.

**CNP State agency cooperative agreements:**

Contracts procured by the state agencies that administer the child nutrition programs in the state may be used without conducting further procurement by SFAs. In Kentucky this includes KDE contracts (e.g., Point of Service contract) and KDA contracts (e.g. Hauling of commodities).

Whenever a SFA only group purchasing model is used:

- The procurement must be conducted in compliance with the procurement standards that apply to an individual SFA. This includes the procurement requirements in 7 CFR 210, 7 CFR 220, 2 CFR 250 and 2 CFR 200.317-.327, as well as any state and local procurement standards, if more restrictive.
- Solicitations must be published and clearly identify all product descriptions, specifications, and estimated quantities required, and all terms, conditions, required contract provisions as applicable.
- When applicable, the solicitation and contract must outline how the allocable portion of each discount, rebate and/or credit will be returned and/or disclosed to each participating SFA.
- When applicable, the solicitation and contract must also outline how each proportionate value pass-through method for crediting the value of USDA foods will be returned and/or disclosed to each participating SFA.

If an SFA determines that additional goods and services are needed but were not procured by the SFA only co-operative group, the SFA must conduct a separate competitive procurement process following their own procurement procedures to purchase them.

**Procurement Agents:**

If a procurement agent was used to procure a contract available through an intergovernmental or an interagency agreement, the procurement agent must have been properly procured. A procurement agent is an individual or business authorized to act on an entity's behalf. Agents must have been procured using one of the federal procurement methods that contractually required them to conduct all competitive procurements with the SFAs interests solely in mind. SFAs must ensure that all contracts were procured by a procurement agent in an acceptable manner and

maintain all documentation of the procurement process in their records prior to use.

Procuring a procurement agent:

1. The scope of duties and responsibilities of the procurement agent must be clearly defined in the solicitation, as well as how prices/costs for services are to be quoted for evaluating agents' bids/responses for contract award.
2. When fees are charged, the SFA must ensure that the fees are fixed based on a purchase unit, volume, or cost (fees cannot be a percentage of cost). Agents cannot be considered if they do not openly provide the full price per purchase unit for their service. Paying a fee does not constitute a solicitation or contract with an agent.
3. Ensure that the following required solicitation and contract language is included:  
"When procuring goods or services for their client, agents must follow procedures consistent with 2 CFR Part 200.317-.327 and applicable program regulations" (including state and local procurement requirements if more restrictive).

Procurement agents must be required to confirm in their response to the solicitation that they will represent the client and will have the client's best interests exclusively in mind when preparing solicitations for publication on the client's behalf. The agent may not have any conflict of interest, real or apparent. For example, **the agent may not use pre-existing contractual relationships in lieu of conducting a competitive procurement on behalf of the SFAs.**

The SFA is responsible for monitoring the Agents' performance and ensuring compliance with all program requirements. This includes that the agent includes in published solicitations and contracts all terms, conditions, required contract provisions, as applicable, and all product descriptions, specifications, and estimated quantities required.

In order to ensure free and open competition, a procurement agent must:

- Work closely with the SFA to understand their needs.
- Develop solicitations on the SFAs behalf consistent with 2 CFR Part 200.317-.327 and the applicable program regulations as required for SFAs.
- Award contracts only to responsible contractors whose bid/offer is lowest/most advantageous to the Program with price as the primary factor, award fixed-price or cost-reimbursable contracts, as specified by the Program operator, or State agency, as applicable, and monitor the ensuing contract on behalf of the Program operator as required in 2 CFR 200.318(b), if specified in the original solicitation and resulting contract.
- An agent publishing a solicitation on behalf of an SFA may not respond to the solicitation themselves.

#### **Third-Party Entities:**

Contracts available to SFAs through sources such as state contracts, non-SFA only co-operative groups, and other agreements may only be used as one response or one source of price in response to the SFAs competitive procurement. Prior to accepting a contract as a price source for their procurement, the SFA must obtain a copy of all documentation of the procurement process for their records and ensure that the contracts were properly procured in compliance with the federal regulations.

**Non-CNP State Agency Agreements and Contracts:** The SFA may consider a non-CNP state agency (i.e., Ky Finance Cabinet) procurement as one response or one source of price when conducting a

competitive procurement. For example, if the purchase is under the SFAs micro-purchase threshold, the SFA may purchase directly from the state's procured sources using micro-purchase procedures. If the procurement is less than the SFAs small purchase threshold, the SFA may obtain a price or rate quotation from the state's procured sources.

For procurements over the SFAs small purchase threshold, the SFA must:

1. Conduct a cost analysis,
2. Develop a solicitation (sealed bid or competitive proposal), and
3. Use the contracted vendors and prices from the State's contract as one response or source.

The procurement of the non-CNP state contracts do not replace the competitive procurement process that is required to be conducted by the SFA. Rather, the non-CNP state contracts give SFAs additional sources that may be utilized when conducting a competitive procurement.

**Inter-agency agreements:** Inter-agency agreements can include contracts procured by non-SFA only cooperatives, contracts procured and available for use by both SFAs and non-SFA entities or may be contracts that are procured by the district or individual schools.

- Jefferson County Public School's District contracts used by School and Community Nutrition Services follow federal procurement regulations and will be utilized by SCNS to procure goods and services when necessary.

For Non-CNP state agency contracts, SFAs may consider these agreements or contracts as one response or one source of price when conducting a competitive procurement. For procurements over the SFAs small purchase threshold, the SFA must:

1. Conduct a cost analysis,
2. Develop a solicitation (sealed bid or competitive proposal), and
3. Use the contracted vendors and prices from the inter-agency contract as one response or source.

**Group Purchasing Organizations:** The business model of a GPO may include a variety of services such as facilitating procurement for their members/member agencies and procuring products and services from an external source such as an affiliated or unaffiliated full-line distributor. Other examples that GPO's may be called include third party purchasers, group buying organizations, and procurement cooperatives.

Paying a membership fee or conducting a formal procurement for the services of a GPO does not constitute compliance with the competitive procurement process that must be followed by SFAs to enable the use of the GPOs contracts, price lists, discounts, or services outside of the SFA conducting a competitive procurement process. Similar to the Non-CNP state agency contracts, the SFA may consider the prices available through the GPO contracts or agreements as one response or one source of price when conducting a competitive procurement.

SFAs may pay a membership fee to multiple GPOs and when using micro or small purchase procedures and may consider the price for products from GPOs as one source among an adequate number of qualified sources.

For procurements over the SFAs small purchase threshold, the SFA must:

1. Conduct a cost analysis,
2. Develop a solicitation (sealed bid or competitive proposal), and
3. Use the contracts and prices from the third-party entity as one response or source, or the GPO may independently respond to the solicitation.

The procurement of access to the services of a third-party entity or the payment of a membership fee does not replace the competitive procurement process that is required to be conducted by the SFA. Rather, the third-party entity provides an SFA additional sources that may be utilized when conducting a competitive procurement.

- **Piggybacking onto Existing Contracts:** Prior to piggybacking onto an existing contract, the SFA must obtain the documented history of the procurement in order to determine that the contract was procured in compliance with 2 CFR Part 200.318-.327 and the applicable program regulations.
  - The procurement history documentation collected must include all documents demonstrating the details of the procurement that is relevant for the procurement method conducted.
  - Contracted parties considering additional parties must have included a provision allowing "piggybacking" or the addition of additional entities in their contracts in order to avoid creating a material change. If such a provision is not included in the contract, the SFA may not use the existing contract.
  - For contracts containing this provision, the language used should specify the applicable limitations of the extension (e.g., dollar value or the number of additional parties that may be added).
  - Such contracts must be thoroughly reviewed by the SFA to ensure that the contract will meet their needs and conform to all applicable program requirements.

The SCNS Purchasing Administrator is responsible for obtaining all documentation detailing the procurement of contracts available through intergovernmental and inter-entity agreements, reviewing them to ensure that they were properly procured, and determining if they are able to be used without the use of additional procurement procedures by the SFA.

**Excess and Surplus Property 2 CFR 200.318(f):**

The SFA should utilize federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

**Responsible Contractors 2 CFR 200.318(h):**

The SFA must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to matters such as contractor integrity, compliance with public contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

**Procurement Records 2 CFR 200.318(i):**

The SFA will retain records sufficient to detail the history of procurement. These records include, but are not limited to, the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

**Settlement of Issues 2 CFR 200.318(k):**

The SFA alone is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the SFA of any contractual responsibilities under its contracts. FNS will not



substitute its judgment for that of the SFA unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

### **Section B: Competition 2 CFR 200.319**

#### **Full and Open Competition 2 CFR 200.319(a):**

All procurement transactions when purchasing goods or services for the Child Nutrition Program must be conducted in a manner that provides full and open competition that is consistent with the federal regulations.

#### **Objective Contractor Performance 2 CFR 200.319(b):**

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or

Situations considered to be restrictive of competition include but are not limited to:

- 1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- 2) Requiring unnecessary experience and excessive bonding;
- 3) Noncompetitive pricing practices between firms or between affiliated companies;
- 4) Noncompetitive contracts to consultants that are on retainer contracts;
- 5) Organizational conflicts of interest;
- 6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement;
- 7) Any arbitrary action in the procurement process.

#### **Geographic Preference 2 CFR 200.319(c):**

The use of state, or local geographical preferences in the evaluation of bids or proposals is prohibited, except as expressly allowed by USDA to mandate or encourage geographic preference.

As amended, the National School Lunch Act (NSLA) allows SFAs receiving funds through a Child Nutrition Program to apply a geographic preference when procuring unprocessed, locally grown, or locally raised agricultural products. The ability to apply a preference for local products applies only to unprocessed or minimally processed items. The geographic preference rule does not apply to any products that have been cooked, heated, canned or that have any additives or fillers. It can be applied to a wide array of products that meet the definition of unprocessed or minimally processed such as various forms of fruits, vegetables, meats, fish, poultry, dairy, eggs, and grains.

Definitions for local vary widely depending on the unique geography and climate where a school is located and on the abundance of local food producers and manufacturers. Local may be defined as within a certain number of miles from the school, within the county, or within the state. Alternatively, definitions might include more than one state (i.e., Kentucky, and Tennessee) or distinct parts of states (i.e., specific counties in southwest Kentucky). In addition, different definitions of local can depend on the product or season.

When determining what will be considered local, the SFA must ensure that there is adequate competition within the defined area for the products to be procured. If there is inadequate competition in the defined geographic area, the SFA must re-examine their definition of "local" for the procurement.

Examples of how local may be defined:

1. The definition of local may be a generally described area for multiple unprocessed agricultural products procured at the same time.
  - Locally grown/raised means within a 150 (miles) radius Jefferson County Public Schools Nutrition Service Center

**Written Procedures for Procurement Transactions 2 CFR 200.319(d):**

The SFA will follow their written procedures for conducting procurement transactions to ensure that all solicitations:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
2. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

**Vendor Lists 2 CFR 200.319(e):**

The SFA must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the SFA must not preclude potential bidders from qualifying during the solicitation period.

When SFAs use pre-approved vendor lists in their procurement activities the SFA directly solicits to the vendors on the list. In addition, SFAs must also publicly advertise the procurement as usual in order to allow for other potential bidders to qualify during the solicitation period.

When using a vendor list, SFAs must take actionable steps to ensure there is adequate free and open competition. Prior to using a vendor list an SFA should ensure:

1. The list is current.
2. A suitable number of qualified sources exist on the list.
3. When applicable, the products or services on the list are specific in nature, not just general such as "food", "supplies", etc.
4. All potential vendors had the opportunity to be on the list.
5. When applicable, all potential vendors were subject to the same evaluation and ranking criteria.
6. Vendors that did not request or, when applicable, compete for inclusion on the list are **not** included on the list.
7. The lists are updated at least each bid period.
8. The opportunity exists to add new qualified vendors.

9. Potential vendors are not prohibited from qualifying for inclusion on the list during the solicitation period.
10. A system exists to remove listed vendors, for cause. (KY Model Procurement Article 9.2)

**Noncompetitive Procurements 2 CFR 200.319(f):**

Noncompetitive procurements will only be conducted as allowed in accordance with 2 CFR 200.320(c).

**Section C: Methods of Procurement to Be Followed 2 CFR 200.320**

The SFA must have and use documented procurement procedures, consistent with the standards of this section and 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required the operation and administration of the Child Nutrition Program. The SFA must utilize a federal procurement method for each purchase or procurement in which Child Nutrition Funds are expended.

1) Jefferson County Board of Education informal methods

- Micro Purchasing (as related to Federal Procurement 2 CFR 220.321(a)(1))
  - Per JCPS Board Policy 3.27.2: (c) For all purchases which do not exceed \$5,000 in value, the contracting officer shall use his best efforts to obtain the lowest price from a responsible and responsive bidder, for the supplies, services or construction to be procured.
  - Small purchases

2) Jefferson County Board of Education formal procurement methods

- Sealed Bids
- Competitive Proposals

Noncompetitive Procurement

Thresholds for these procurement methods are set at the federal level, the state level, and the local level. State and local thresholds may be more restrictive than the Federal thresholds, but they may not be more permissive than the federal levels. The most restrictive (lowest) threshold that applies to the SFA must be followed when conducting procurement

**Procurement Method Thresholds**

Procurement Method	Federal Threshold	*State of Kentucky Thresholds for Public Schools and Institutions <input type="checkbox"/> N/A (Nonpublic Schools and RCCIs)	*Local SFA Procurement Thresholds	Applicable Thresholds followed
Micro-purchasing (as related to Federal Procurement 2 CFR 200.320 (a)(1))	\$10,000	No threshold or restriction: (45A.380 Emergency Declaration; KRS 424.260): <ul style="list-style-type: none"> <li>● Perishable Foods.</li> <li>● Professional services.</li> <li>● Replacement parts.</li> <li>● Supplies sold at public auction.</li> <li>● Contracted vendors offering discounts or reduced prices. (a.k.a. approved vendor lists)</li> <li>● Items that are on State, local, KEDC, or GSA bids.</li> </ul> \$5,000 or less: <ul style="list-style-type: none"> <li>● Items/services that are not available from approved vendors.</li> </ul> \$2,500 or less: <ul style="list-style-type: none"> <li>● Items/services that are cheaper than offered by approved vendors.</li> </ul>	\$5000	Yes
Small Purchase	\$250,000 or less	\$40,000 or less	\$40,000 or less	Yes
Formal (IFB/RFP)	Higher than Small Purchase Threshold	Higher than Small Purchase Threshold	>\$40,000	Yes

\*Applicable micro-purchase thresholds are not identified as a “micro-purchase threshold” in state law and will most likely not be identified as a “micro-purchase threshold” in local policies. This verbiage is specific to the federal regulations and is used to describe when a procurement method that does not require multiple price quotes or a competitive solicitation process may be used. SFAs will need to identify the thresholds associated with any noncompetitive purchases that are allowable in their state or local policies but are not allowable use of noncompetitive procurement in the federal regulations when determining the micro-purchase threshold that they are required to follow. Micro-purchase procedures may not be used by the SFA if their local policies do not allow them to make any purchases without price quotes being obtained.

### Determining which Procurement Method to Use

The procurement standard regarding records in 2 CFR 200.318(i) requires that the rationale for the procurement method used is documented in the records detailing the history of a procurement.

When determining whether to use informal or formal procurement procedures, there are two (2) main factors that should be considered:

1. The estimated value or cost of a purchase or procurement.
2. The length of time vendors may guarantee a price.

Estimated Value or Cost: An independent estimate of what the value or cost of an anticipated procurement should be determined early in the procurement process. There are multiple sources that an independent estimation of cost may be based on.

These include, but are not limited to:

- Published price lists, commercial catalogs, or published commodity market indexes.
- Historical prices paid for same or similar items.
- Existing Federal contract prices
- Survey of other SFAs for what they pay, or price quotes received for the same or similar items.
- Information received through a Request for Information (RFI) process.

When using historical prices there may be known factors that will increase the estimated price, such as the consumer price index (CPI). These known factors should be included in your independent cost estimate.

If the estimated value or cost of the procurement is at or above the small purchase threshold, the procurement must be formally solicited. If the estimated value or cost of the procurement is below the small purchase threshold, the procurement may be informally solicited.

Length of time price is guaranteed: When price and/or availability of food items are subject to significant fluctuations it may not be feasible to find vendors, who will guarantee a fixed bid price for a full year. Breaking these purchases up into smaller procurement transactions to benefit from market conditions may allow for the use of an informal procurement method.

SCNS Purchasing Administrator is responsible for:

- Determining the value or cost of the procurement (aka independent cost estimate).
- Determine the procurement method that will be used.

**Informal Procurement Methods 2 CFR 200.320(a):**

Jefferson County Board of Education allowable informal procurement methods include

- Micro-purchasing (as related to Federal Procurement 2 CFR 200.320 (a)(1))
- Small purchases procedures

The SFA may utilize the informal procurement methods when the estimated cost of the goods and services to be procured will be below the applicable threshold for each method.

**Micro-Purchase Procedures 2 CFR 200.320(a)(1):**

This procedure may be used when a single transaction for goods or services has an aggregate total cost that is equal to or less than the SFAs micro-purchase threshold. For purposes of micro-purchasing, a transaction is 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.” To the maximum extent practicable, the SFA should distribute micro-purchases equitably among available qualified suppliers.

Micro-purchases may be awarded without obtaining price or rate quotes if the SFA considers the price to be reasonable based on research, experience, purchase history or other information. The SFA must document the reason for determining price reasonableness in their records. Even in situations where micro-purchase procedures may be used, small purchase procedures should be utilized if it is determined to be more advantageous to do so.

Micro-Purchase Procedures:

1. **PLANNING:** Identify the goods or services to be procured, ensure that it is necessary to be purchased for the program, and identify the anticipated cost of the procurement.

SCNS Purchasing Administrator is responsible for:

- Planning for the procurement.
  - Ensuring the cost of the procurement does not exceed the SFAs micro-purchase threshold.
  - Use best efforts to obtain the lowest price from a responsible and responsive bidder, for the supplies, services or construction to be procured.
2. **DEVELOP WRITTEN SOLICITATION:** (written specifications of goods or services sought): The SFA will develop written specifications (solicitation) for each micro-purchase transaction. The solicitation document will include the written specifications for the goods and services to be purchased including Buy American Provision requirements when applicable, and any additional technical requirements that are required in order to conduct business with the SFA. No unreasonable requirements that may limit competition will be included in the specifications of the solicitation, such as requiring unnecessary experience, or the specification of a “brand name” without allowing an “equal to” product. Once developed, the solicitation is used to identify a responsible vendor for goods or services to be procured.
  3. **RECORDKEEPING:** The SFA will ensure that the history of each micro-purchase/ noncompetitive procurement is adequately documented (2 CFR 200.318(i)).

SCNS Purchasing Administrator/Director of Purchasing is responsible for documentation of each micro-purchase/noncompetitive transaction:

- ✓ Rationale/Justification for using micro-purchase method.
- ✓ Written specifications of the goods or services procured (i.e., a solicitation).
- ✓ Vendor Name and relevant contact information.
- ✓ Purchase date.
- ✓ Itemized receipt of purchase that includes what was purchased and the amount paid.
- ✓ The method used by the SFA used to determine that the price was reasonable.
- ✓ Receipts, invoices, and payment history.

**Small Purchase Procedures 2 CFR 200.302(a)(2)(i):**

Small purchase procedures may be used when goods or services have an aggregate total cost that is equal to or less than the SFA's small purchase threshold. When small purchase procedures are used, price or rate quotes must be obtained from an adequate number of qualified sources as determined by the SFA.

1. **PLANNING:** Identify the goods or services to be procured, ensure that it is necessary to be purchased for the program, and identify the anticipated cost of the procurement.

SCNS Purchasing Administrator is responsible for:

- Planning for the procurement.
  - Ensuring the amount of the procurement will not exceed the SFAs small purchase threshold.
2. **DEVELOP A WRITTEN SOLICITATION:** A written solicitation document will be developed for each small purchase procurement. The solicitation document will include the written specifications for the goods and services to be procured including the Buy American Provision requirements when applicable, any additional technical requirements that a vendor must be able to provide, such as delivery requirements, and any applicable information that may be relevant to the vendors response to the solicitation. The specifications and technical requirements will be written so that they allow for full and open competition. No unreasonable requirements will be used such as unnecessary experience requirements, or the specification of a "brand name" product without allowing "an equal to" product. Once developed, the solicitation document will be used to obtain 2 or more price quotes and/or pricing information as appropriate from responsible vendors.
  3. **OBTAIN PRICE QUOTES:** Price quotes may be obtained orally, in writing, or from electronic sources. All prospective vendors will be provided the same solicitation information when obtaining price quotes. The responses of other vendors will not be shared with other prospective vendors until the purchase has been awarded.

SCNS Purchasing Administrator is responsible for:

- Ensuring that solicitations are developed and include written specifications of the goods or services to be procured (including the Buy American Provision when applicable), any additional technical requirements for vendors, such as delivery requirements, and any applicable information relevant to the procurement that may affect a vendor's response.
  - Ensuring that the solicitation does not include any unnecessary requirements that may limit competition.
  - Ensuring that solicitations are used to obtain price quotes and/or pricing information as appropriate from prospective vendors.
  - Ensuring that price quotes received are not shared with prospective vendors when obtaining price quotes.
  - Ensuring that an adequate number (2 or more) of price quotes are obtained from responsible vendors.
4. **DETERMINE IF QUOTES ARE RESPONSIVE TO THE WRITTEN SOLICITATION:** When making a small purchase award, it will first be determined if the goods or services of the price quotes received are responsive to the solicitation. When the goods or services offered do not meet all specifications and requirements in the solicitation, the price quote will be deemed non-responsive and will not be

further considered for purchase award. When this occurs, additional quotes must be obtained if needed to ensure that the procurement remains a competitive process.

The Director of Purchasing is responsible for:

- Ensuring that the goods or services from the price quotes received are determined to be responsive to the solicitation and eligible to be further evaluated for purchase award.
  - Determining if additional price quotes will be obtained to ensure the procurement remains a competitive process.
5. EVALUATE RESPONSIVE QUOTES FOR PURCHASE AWARD: Once it has been determined that 2 or more price quotes have been received from responsive and responsible vendors, the responses will be evaluated, and the purchase will be awarded based on the lowest price quote received.

SCNS Purchasing Administrator is responsible for:

- Evaluating the price quotes that were deemed responsive to the solicitation and determining purchase award based on the lowest price quote received.
6. RECORDKEEPING: The SFA will ensure that the history of each small purchase procurement is adequately documented (2 CFR 200.318(i)).

The SCNS Purchasing Administrator/Director of Purchasing is responsible for documentation of records:

- ✓ Solicitation document for the goods or services procured and used to obtain price quotes.
- ✓ All vendors contacted or attempted to be contacted, the date they were contacted or attempted to be contacted, and their corresponding contact information.
- ✓ Documentation of the price quotes received specific to the method in which they were obtained. Copies of any written price quotes received, documentation if provided orally, or an electronic image if from a website or other electronic avenue.
- ✓ The reason a price quote may be deemed unresponsive to the solicitation.
- ✓ The evaluation of responses to determine purchase award.
- ✓ Receipts, invoices, and payment history.

#### **Formal Procurement Methods 2 CFR 200.320(b):**

There are two formal procurement methods that may be used when procuring goods and services for the Child Nutrition Program:

1. Sealed Bids
2. Competitive Proposals

The SFA will utilize one of the formal procurement methods when the estimated cost of the goods and services to be procured will be above the small purchase threshold. Formal procurement methods may be utilized when purchases are estimated to be under the small purchase threshold if it is determined to be appropriate or more advantageous to do so.

#### **Sealed Bidding 2 CFR 200.320(b)(1):**

The Sealed Bidding procurement method is the preferred method to use when conducting a formal



procurement where there is no substantive difference, other than price, of products or services that meet established specifications. A firm fixed price (lump sum or unit price) contract will be awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bid, is the lowest in price.

When determining if sealed bidding is feasible, the following conditions should be determined to be present:

- ✓ A complete, adequate, and realistic specification or purchase description is available;
- ✓ Two or more responsible bidders are willing and able to compete effectively for the business;
- ✓ 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.

Sealed Bidding Procedures:

1. **PLANNING:** Identify the goods or services to be procured, ensure that it is necessary to be purchased for the program, and identify the anticipated cost of the procurement.
2. **DEVELOP A SOLICITATION DOCUMENT:** An Invitation for Bid (IFB) is used when using the sealed bidding procurement method.

The IFB should include:

- Written specifications or description of the products or services needed.
- Terms and conditions of the contract.
- Any attachments or instructions needed for the bidder to properly respond.
- Identification of the type of contract to be awarded.
- The federal contract clauses and provisions as applicable.
- An explanation of how the contract will be evaluated for contract award (Line item, Total Cost, or Market Basket).
- If value-added language (broad language inviting incentives or investments) is included, stated criteria for how this will be evaluated, and a statement informing the bidder that the unallowable cost items will be excluded prior to the evaluation for contract award. Unallowable cost items are any goods or services not required for the operation and improvement of the Child Nutrition Program (e.g., scoreboards).
- The time and date in which bids must be received.
- The time and date that bids will be opened and evaluated.
- Any other pertinent information relevant to enable the vendor to respond to the solicitation.

The SFA will ensure that specifications, terms, and conditions in the IFB will not unnecessarily limit competition by, but not limited to:

- Ensuring all specifications, terms and conditions are reasonable.
- Not requiring unnecessary experience.

- Not specifying “brand name” products. An “equal” product with performance or relevant requirements will always be allowed.
- Not using specifications developed by vendors.
- Any other arbitrary actions that may directly or indirectly limit competition.

SCNS Purchasing Administrator/Director of Purchasing is responsible for ensuring the Invitation for Bid solicitation document includes all necessary information and does not limit competition.

3. PUBLICLY ADVERTISE: The Invitation for Bid (IFB) will be publicly advertised for a length of time that provides sufficient time to solicit from an adequate number of qualified suppliers. IFBs will be advertised in the Newspaper/media, Website, or Eschool mall notification to publicize the intent of the SFA to purchase items or services. The advertisement for bids or legal notice will be run for 7-42 days. Additionally, known suppliers may be directly contacted and informed of the solicitation’s availability. Affirmative steps to include Minority Businesses, Women’s Business Enterprises, and Labor Surplus Firms will be utilized.

The announcement (advertisement or legal notice) will contain a general description of items or services to be purchased, the deadline for submission of sealed bids, and how solicitation documents may be obtained.

The Director of Purchasing is responsible for ensuring the IFB is publicly advertised for an adequate length of time in order to solicit from an adequate number of suppliers.

If any potential vendor has questions concerning the specifications or purchase conditions, an interpretation will be provided by SCNS Purchasing Administrator/Director of Purchasing.

4. BID OPENING: The IFB will be opened at the time and date described in the solicitation. Details of the bid opening will be adequately documented to demonstrate that procedures were properly followed.

The Director of Purchasing is responsible for ensuring that the bid opening process is adequately documented including the day, time, and attendees.

5. EVALUATION AND CONTRACT AWARD: All bids that are received by the stated deadline will be opened for consideration. No contracts will be awarded to bidders that developed the specifications or descriptions for the procurement. Any bids that are rejected will have a documented sound reason for doing so.

Bids will only be deemed responsive to the solicitation when all specifications, terms, and conditions (including buy American requirements when applicable) are met. When bids are deemed non-responsive to the solicitation, the reason they have been deemed non-responsive will be identified and documented.

When a response includes an offer of goods or services that is beyond what was solicited, the overly responsive offer will either be eliminated from consideration, or the portion deemed to be overly responsive will not be considered when evaluating for contract award.

All bids deemed responsive to the solicitation will be evaluated as described in the solicitation for contract award. A fixed price contract will be awarded to the responsible bidder(s) with the lowest price bid.

One of the following methods will be used to evaluate the lowest price bid for contract award:

- Bottom Line or Total Cost Analysis: The prices and anticipated quantities are totaled for all items being procured. The lowest total priced bid from a responsive vendor is selected for the award.
- Line-Item Analysis: Each item listed on the bid is individually awarded to the lowest bidder.
- Market Basket Analysis: A representative sample that reflects 75% or more of the estimated contract value (estimate cost of items and expected quantities needed) is evaluated for contract award. The lowest bid from a responsive vendor is awarded the contract. Although not evaluated for contract award, the bidder must provide pricing for all items bid which then becomes the contracted price for those items. Goods may be added to the contract after contract award if that option was allowed in the solicitation, as long as the total value of all additional goods does not exceed the amount specified in the contract (limiting additional cost to 5-10% is recommended), and added goods are included in a contract amendment.

The Director of Purchasing is responsible for ensuring that bid openings, acceptance or rejections, evaluations and contract awards are made in compliance with requirements.

#### 6. RECORDKEEPING:

The Director of Purchasing/SCNS Purchasing Administrator/Director of Account Payable is responsible for documentation of records ensuring that the history of Competitive Sealed Bidding Procurements are adequately documented (2 CFR 200.318(i)).

The following documents will be maintained:

- ✓ Rationale for the procurement method used.
- ✓ The independent cost estimate of goods or services determined prior to advertising the IFB with documentation of the market research conducted (if any).
- ✓ A copy of the Invitation for Bid and any amendments that were published.
- ✓ Documentation evidencing advertisement of the procurement.
- ✓ Documentation concerning the pre- bid or proposal conference (if applicable) and/or any solicitation Questions and Answers.
- ✓ Signed acknowledgement of any solicitation amendments.
- ✓ Documentation concerning any "No Bid" letters or correspondence and the disqualification of bidders ("nonresponsive").
- ✓ Public Bid Opening documentation.
- ✓ Documentation of the evaluation of bid responses for contract award.
- ✓ Documentation of the Cost or Price Analysis conducted to determine that prices are "fair and reasonable".
- ✓ Protest letters, decisions, or other related documents.
- ✓ A copy of the signed and executed contract.
- ✓ Contract modifications and documents supporting such modifications.
- ✓ Documentation related to any option exercised including related contract modifications.
- ✓ Vendor-submitted data and reports.

- ✓ Correspondence/documentation related to complaints or vendor performance.
- ✓ Invoices and Payment Vouchers.
- ✓ Contact administration correspondence between the SFA and the Vendor.
- ✓ Correspondence/documents concerning contract close-out.

**Competitive Proposal 2 CFR 200.320(2):**

The Competitive Proposal procurement method is generally used when the products or services are more complex and factors in addition to cost are considered when making an analysis to award the contract. All factors that are considered, including price, have a written method for evaluating the proposals received and making selections for contract award. Negotiations may or may not be utilized. A fixed price or a cost-reimbursable contract may be awarded.

1. **PLANNING:** Identify the goods or services to be procured, ensure that it is necessary to be purchased for the program, and identify the anticipated cost of the procurement.
2. **DEVELOP A SOLICITATION:** A Request for Proposal (RFP) solicitation will be used when using competitive proposal procedures.

The RFP will include:

- Written specifications or description of the products or services needed.
- Terms and conditions of the contract.
- Any attachments or instructions needed for the bidder to properly respond.
- Identification of the type of contract to be awarded.
- The federal contract clauses and provisions as applicable.
- The information respondents must provide in their proposals to accomplish what is requested.
- The criteria that will be used to evaluate for contract award and an explanation on how the criteria will be weighted and scored.
- If value-added language (broad language inviting incentives or investments) is included, the RFP will include the criteria for how this will be evaluated, and a statement informing bidders that unallowable cost items will be excluded prior to the evaluation for contract award. Unallowable cost items are any goods or services not required for the operation and improvement of the child nutrition program (e.g., scoreboards).
- The time and date in which proposals must be received.
- Any other pertinent information needed to enable the vendor to respond to the solicitation.

The SFA will ensure that the specifications, terms, criteria for evaluation and the conditions in the RFP will not unnecessarily limit competition by, but not limited to:

- Ensuring all specifications, terms and conditions are reasonable.
- Not requiring unnecessary experience.
- Not specifying "brand name" products. An "equal" product with performance or relevant requirements will always be allowed.
- Not using specifications developed by vendors.

- Not using arbitrary actions that may directly or indirectly limit competition.
- The criteria to be scored in proposals will be clearly identified and will be both objective and measurable.
- The criteria to be scored will include price and other criteria such as product specifications, service and deliveries, geographic preferences for local products, and overall qualifications. Price will have the highest weight of the criteria used.
- How each criterion will be scored is clearly described in the solicitation documents.

The Director of Purchasing is responsible for ensuring the Request for Proposal solicitation document includes all necessary information and does not limit competition.

3. PUBLICLY ADVERTISE: The Request for Proposal (RFP) will be publicly advertised for a length of time that provides sufficient time to solicit from an adequate number of qualified vendors. RFPs will be advertised on the JCPS Purchasing website to publicize the intent of the Child Nutrition Program to purchase needed items or services and known suppliers will be directly contacted and informed of the solicitation's availability. The advertisement for proposals or legal notice will be run for 7-42 days. Affirmative steps to include Minority Businesses, Women's Business Enterprises, and Labor Surplus Firms will be utilized. The announcement (advertisement or legal notice) will contain a general description of items to be purchased, the deadline for submission of proposals and the address where complete specifications and other procurement documents may be obtained.

The Director of Purchasing is responsible for ensuring the Request for Proposal solicitation is publicly advertised for an adequate length of time in order to solicit from an adequate number of suppliers.

If any potential vendor has questions concerning the specifications or purchase conditions, an interpretation will be provided by the Director of Purchasing/SCNS Purchasing Administrator.

4. EVALUATION AND CONTRACT AWARD: RFPs will be accepted, evaluated, and awarded a fixed price or cost-reimbursable contract as described in the solicitation. Any proposals that are rejected will have a documented sound reason for doing so. No contracts will be awarded to bidders that developed the specifications or descriptions for the procurement. When a response includes an offer of goods or services that is beyond what was solicited, the overly responsive proposal will either be eliminated from consideration, or the portion deemed to be overly responsive will not be considered when evaluating for contract award.

Methods that may be used to evaluate proposals for contract award:

- **Two-Step Negotiation:** The technical aspects of the proposals are solicited, evaluated, and ranked before cost is considered. Once the top-ranked proposals are identified, the SFA will enter into negotiations with these vendors. Negotiations are directed at obtaining equivalent, not necessarily equal technical proposals from each vendor. Once equivalent proposals are obtained, vendors are instructed to submit their best and final prices. The contract award will be made to the vendor who submitted the lowest price for their proposal as all of the negotiated proposals were previously deemed acceptable.
- **If Two-Step Negotiation is not utilized:** Evaluate both the cost and technical components of the proposal and rank responses as scored. If desired, the SFA may negotiate both the costs proposed, and services and/or items proposed with the responding vendors. The contract award is made to the vendor presenting the most advantageous proposal, with price used as the primary factor.

The Director of Purchasing is responsible for ensuring that proposals are accepted, evaluated, and awarded in compliance with requirements.

5. RECORDKEEPING:

The Director of Purchasing/SCNS Purchasing Administrator/Director of Accounts Payable is responsible for documentation of records ensuring that the history of Competitive Proposal Procurements are adequately documented (2 CFR 200.318(i)).

The following documents will be maintained:

- ✓ Rationale for the procurement method used.
- ✓ The independent cost estimate of goods or services determined prior to advertising the RFP with documentation of the market research conducted (if any).
- ✓ A copy of the Request for Proposal and any amendments that were published.
- ✓ Documentation evidencing advertisement of the procurement.
- ✓ Documentation concerning the proposal conference (if applicable) and/or any solicitation Questions and Answers.
- ✓ Documentation concerning any "No Bid" letters or correspondence and the disqualification of bidders ("nonresponsive").
- ✓ Documentation of the results of technical evaluations, individual evaluator scoring sheets and narratives, and consensus scoring sheets and narratives.
- ✓ Documentation of negotiations, if conducted, and subsequent submittal of "best and final offer" proposals
- ✓ All documentation of the Cost or Price Analysis conducted to determine prices are "fair and reasonable".
- ✓ Protest letters, decisions, or other related documents.
- ✓ A copy of the signed and executed contract.
- ✓ Contract modifications and documents supporting such modifications.
- ✓ Documentation related to any option exercised including related contract modifications.
- ✓ Vendor-submitted data and reports.
- ✓ Correspondence/documentation related to complaints or vendor performance.
- ✓ Invoices and Payment Vouchers.
- ✓ Contact administration correspondence between the SFA and the Vendor.
- ✓ Correspondence/documents concerning contract close-out.

**Noncompetitive Procurement Procedures 2 CFR 200.320(c):**

There are specific circumstances in which noncompetitive procurement may be used. Noncompetitive procurement will only be conducted if one or more of the following circumstances apply:

- 1) The item is available only from a single source.

- 2) The public exigency or emergency for the purchase will not permit waiting for the time required to publicize and award a competitive solicitation.
- 3) School and Community Nutrition expressly authorizes a noncompetitive procurement in response to a written request.
- 4) After solicitation of a number of sources, competition is determined inadequate. (i.e., only 1 response received to a competitive solicitation, or no responses received were fully responsive to a competitive solicitation).

#### **Inadequate Competition and Sole Source:**

In accordance with 2 CFR 200.324(b) the SFA will negotiate profit as a separate element of the price for each contract in which there is no price competition (sole source or only one response to the solicitation received). To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the vendor, the vendors investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

When inadequate responses are received from a solicitation, the SFA will evaluate if the lack of responses may be due to a poorly written solicitation or if the written specifications and technical requirements established are too restrictive. The SFA will also evaluate the solicitation to determine what changes may be needed to have a competitive procurement process in the future.

The Director of Purchasing/SCNS purchasing Administrator is responsible for negotiating profit as a separate element of the price for each contract in which there is no price competition. (sole source or only one response to solicitation received)

The Director of Purchasing/SCNS Purchasing Administrator is responsible for evaluating if the lack of responses may be due to a poorly written solicitation or if the written specifications and technical requirements established are too restrictive.

#### **Public Exigency or Emergency:**

Lack of planning is not considered an emergency and will not justify conducting noncompetitive purchasing. Even when a public emergency is enacted, the individual circumstance of the SFA is still the determining factor if noncompetitive procedures can be used.

When noncompetitive procurement is necessary due to an emergency, The Director of Purchasing is responsible for ensuring they are necessary, allowable, and that prior approval is obtained from KDE.

Procedures to obtain prior approval from KDE:

1. Submit requests 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 the use of a competitive procurement method.
  - b. The estimated cost of the goods and/or services.

#### **Recordkeeping:**

Whenever noncompetitive procurement procedures are used, the SFA will ensure that the history of each noncompetitive procurement is adequately documented (2 CFR 200.318(i)).

The Director of Purchasing/SCNS Purchasing Administrator is responsible for documentation of records as applicable:

- ✓ Items or services procured.
- ✓ Contract type and length.
- ✓ Vendors contacted, and vendors awarded.
- ✓ Statement signed by the Superintendent and the reason for emergency or pressing need.
- ✓ KDE approval.
- ✓ Billing and payment history.
- ✓ Documentation of the evaluation conducted to determine that competition was not restricted when inadequate responses are received.
- ✓ Sole source documentation.
- ✓ Cost analysis when required and negotiation with vendors for better terms and prices.

Any contracts that result from noncompetitive procurements conducted due to an emergency or inadequate competition will be limited in duration until competitive procurement can be conducted.

#### **Section D: Minority Businesses, Women's Business Enterprises, and Labor Surplus Firms (2 CFR 200.321):**

SFAs must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

The following affirmative steps must be taken:

- 1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- 2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- 3) 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;
- 4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- 5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- 6) Requiring third party entities and procurement agents who may procure on behalf of the SFA to take the same affirmative steps in the procurement process.

#### **Section E: Domestic Preference for Procurements 2 CFR 200.322:**



The SFA should, to the greatest extent practicable, provide a preference for the purchase and use of domestic goods. The USDA program regulations in 7 CFR 210.21(d), and 7 CFR 220.16(d) identify the Buy American Provision Requirements that are applicable to SFAs participating in the NSLP and SBP.

SFAs are required to purchase, to the maximum extent practicable, domestic agricultural commodities or products. There are limited exceptions to the Buy American provision which allow for the purchase of foods not meeting the “domestic” standard.

The National School Lunch Act defines “domestic commodity or product” as an agricultural commodity that is produced in the U.S. and its territories (Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands), and a food product that is processed in the U.S. substantially using agricultural commodities produced in the U.S. and its territories (Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands). This means that all unprocessed foods must be domestic, and all processed foods must be processed domestically using at least 51% domestically grown items, by weight or volume.

#### **Implementing the Buy American Provision:**

FNS defines a food component as one of the components comprising a reimbursable meal. The food components are: meats/meat alternates, grains, vegetables, fruits, and fluid milk (refer to 7 CFR 210.2 for full definitions). Any procurement of food products in which funds will be used from the nonprofit food service account to purchase must comply with the Buy American provision.

To ensure compliance with the Buy American provision the SFA must include solicitation and contract language identifying the requirement for domestic agricultural commodities and products. The SFAs should ask suppliers for specific information about the percentage of U.S. content in any processed end products.

Jefferson County Board of Education is responsible for ensuring that the requirement to comply with Buy American Provision is included when applicable in all procurement methods utilized.

#### **Exception Request Approvals:**

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 by the SFA, 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.

Before approving an exception request, alternatives to purchasing a non-domestic product will be considered.

When exceptions are granted, the following documentation will be maintained as applicable:

#### Exception granted for unavailability:

- ✓ Communication(s) from vendors indicating that the product is not produced or manufactured in sufficient and reasonable quantities or quality in the U.S. (Can be emails, documentation of telephone communications, etc.)
- ✓ Alternatives that the SFA considered prior to approving an exception. (e.g., substitute domestic pears for non-domestic bananas may have been considered).

- ✓ The reason(s) why the SFA decided to grant the exception to substitute a non-domestic product for a domestic one.

Exception granted for a significant cost difference:

- ✓ Communication(s) from the vendor indicating that there is a significant cost difference between a domestic and non-domestic product. (Can be emails, documentation of telephone communications, etc.)
- ✓ The cost of the domestic and non-domestic product compared.
- ✓ Alternatives that the SFA considered prior to approving an exception.
- ✓ The reason(s) why the SFA decided to grant the exception to substitute a non-domestic product for a domestic one.

SCNS Purchasing Administrator is responsible for receiving exception requests from vendors, reviewing the request to see if it is for an allowable exception, determining if an exception request from vendors will be approved, and ensuring all actions are adequately documented.

**Monitoring of Buy American Requirements:**

In order to ensure that contractors perform in accordance with contracts or purchase orders, the SFA will review products and delivery invoices or receipts to ensure the domestic food that was solicited and awarded is the food that is received. In addition, a periodic review of storage facilities, freezers, refrigerators, dry storage, and warehouses will be conducted in order to ensure the products received are the ones solicited, and awarded, in compliance with the Buy American provision.

**NOTE:** If alternative procedures are utilized, replace the procedures below with what is implemented in the SFA.

Procedure to monitor when deliveries are received:

1. Product labels and packaging are inspected to identify non-domestic food products when food deliveries are received per HACCP SOP 4-1 Receiving deliveries
2. If any products are substituted in the delivery, the product packaging and labels will be inspected to ensure they are in compliance with Buy American. If the country-of-origin information is not identified, the vendor will be contacted to obtain the country of origin or a certification of the % of U.S. content.
3. When non-domestic **USDA or DOD food products** are delivered:
  - a) The product will be rejected.
  - b) The Kentucky Department of Agriculture (KDA) will be contacted immediately.
  - c) All the shipping and receiving information for the product will be provided to KDA.
  - d) A complaint will be logged in the WBSCM.
4. When **non-USDA or DOD foods**, the process for addressing vendor non-compliance will be implemented when the unapproved non-domestic products are delivered.

Procedures to periodically monitor food storage areas:

1. All storage areas are monitored periodically to identify any nondomestic products. (It is suggested to monitor while conducting a monthly physical inventory.)
2. When **non-domestic USDA or DOD food products** are found in storage:

- a) The Kentucky Department of Agriculture (KDA) will be contacted immediately.
  - b) All the shipping and receiving information for the product will be provided to KDA.
  - c) A complaint will be logged in the WBSCM.
3. When **non-USDA or DOD foods**, the process for addressing vendor non-compliance will be implemented when the unapproved non-domestic products are identified.

Procedures to address vendor non-compliance:

1. When unapproved non-domestic products are identified:
  - a) If found during delivery, the product will be rejected if meal production schedules will allow for a delay in receiving a replacement product.
  - b) If found while monitoring storage areas, the product will be pulled from storage and/or indicated that the product should not be used.
2. The vendor will be notified that an unapproved non-domestic product was received and that it must be replaced with a domestic product. If the vendor indicates that a domestic product cannot be provided for a reason that could be an allowable exception, the vendor will be instructed to provide adequate documentation to support the request for an allowable exception and will be reminded that exceptions must be approved prior to delivery.
3. The incidence of the vendor's contractual non-compliance with the Buy American Provision will be documented and maintained on file.
4. The SFA will utilize the specific Remedies for Breach of Contract as described in the contract clause for incidences of noncompliance with the contract requirements.
5. The SFA will utilize the Termination clause in the awarded contract once the criteria for termination for non-compliance with contractual requirements have been reached.
6. The vendor's non-compliance record will be considered when evaluating whether or not they are considered a responsible bidder to future procurement solicitations.

SCNS Purchasing Administrator/Director of Purchasing is responsible for ensuring that the SFA conducts monitoring for compliance of the Buy American Provision when receiving deliveries, conducting a periodic review of storage facilities, freezers, refrigerators, dry storage, and warehouses, and addressing vendor non-compliance when found.

**Section F: Procurement of Recovered Materials 2 CR 200.323:**

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. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **Section G: Cost and/or Price Analysis 2 CFR 200.324:**

The SFA must perform a cost or price analysis in connection with every procurement action in excess of their small purchase threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the SFA must make independent cost estimates before receiving bids or proposals.

The SFA must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices are not an allowable cost to the nonprofit foodservice account per the federal cost principles found in 2 CFR 200 Subpart E.

**PROCEDURES:** In order to ensure that the prices that are paid out of federal funds are fair and reasonable, a cost or price analysis must be conducted when using formal procurement methods and prior to implementing contract amendments. This analysis begins with identifying independent cost estimates of the anticipated procurement prior to issuing solicitations and prior to implementing contract amendments.

A cost or a price analysis may be conducted singularly, or in combination with one another to ensure that prices are fair and reasonable.

A price analysis is conducted when procurements lend themselves to a simple comparison of proposed prices and an independent price estimate.

A cost analysis is conducted:

- When a response or price quote received is significantly lower compared to all other price's quotes received (best practice - 15% or greater difference is suggested).
- If it is unable to be determined that the proposed costs are fair and reasonable after conducting a price analysis.
- Whenever a price analysis is insufficient to determine reasonableness due to what is being procured.
- There was inadequate competition in response to the solicitation.

To conduct a Price Analysis:

The bid prices received are compared to the independent cost estimated identified. When prices offered are within the realm of what was expected, it will be determined that the proposed prices are fair and reasonable.

To conduct a Cost Analysis:

Each individual element of cost that makes up the total price in the vendor's response are evaluated. The evaluation can include elements such as labor, administrative costs, lifecycle costs, Buy American factors, multi-year prices, the profit for the vendor, etc. The individual cost elements will be compared to independent cost estimates, or against the other responses received as is appropriate in order to determine if the prices are fair and reasonable.

The SCNS Purchasing Administrator is responsible for conducting a cost and/or price analysis when formal procurement methods are used and prior to implementing contract amendments.

#### **Section H: FNS or SCN Review of Records 2 CFR 200.325:**

The SFA will make available, upon request of the USDA Food and Nutrition Services (FNS) or School and Community Nutrition (SCN) the technical specifications on proposed procurements where FNS or SCN believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. If conducted, this review will take place prior to the time the specification is incorporated into a solicitation document. However, if the SFA desires to have the review accomplished after a solicitation has been developed, FNS or SCN may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

The SFA will make available upon request, to FNS or SCN pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

1. The SFAs procurement procedures or operation fails to comply with the federal procurement standards;
2. The procurement is expected to exceed their small purchase threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
3. The procurement, which is expected to exceed their small purchase threshold, specifies a "brand name" product;
4. The proposed contract is more than their small purchase threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement;
5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than their small purchase threshold.

#### **Section I: Bonding Requirements 2 CFR 200.326:**

When child nutrition funds are used to pay for procurements from a construction or facility improvement contract or subcontract exceeding the small purchase threshold, the SFA must ensure that the federal programs interest is adequately protected. Unless previously determined by FNS or SCN that this is the case, the minimum requirements must be as follows:

- a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- b. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

#### **Section J: Solicitation and Contract Clauses and Provisions 2 CFR 200.327:**

Contracts used by SFAs are required to contain the clauses and provisions set forth in the Federal

Uniform Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 C.F.R. Pt. 200, App. II., as applicable. Contracts must also conform to the program specific regulatory requirements set forth in 7 CFR 210, 7 CFR 220, and 2 CFR 250 as applicable.

SFAs must determine which of the following clauses and provisions are applicable to a particular procurement and include them in the solicitation and contract documents when required. When federal funds will be used to pay for purchases made from an awarded contract, all of the federally required contract clauses and provisions must be included. This requirement applies whether the SFA is conducting their own procurement, or when using contracts that are procured by the district, co-operative groups, and third-party entities.

The tables below provide a summary of the required clauses or provisions identified in 2 CFR 200 Appendix II, and in the program regulations 7 CFR 210, 7 CFR 220, and 2 CFR 250. Additional clauses and provisions may be required or beneficial depending on what good or service is being procured. A full description of the clauses and provisions, suggested or required language, required form links, and other requirements can be found in **Appendix A of this document**. SFAs must use the required language and forms when indicated. The suggested language may be used to assist SFAs when they are writing their own clauses and provisions to include in their procurement documents.

#### **Section K: Prior Written Approval 2 CFR 200.407:**

While not a procurement policy, there are federal financial management regulations that require some purchases to be pre-approved by SCN before the procurement process is conducted in order to be an allowable cost to the non-profit foodservice account.

#### **Equipment Purchases 2 CFR 200.439(b)(2):**

Equipment purchases are allowable as a direct cost to the Child Nutrition Program, if items with a unit cost of \$1,000 or per JCPS Fixed asset guidelines or \$5000.00 after the initial GASB 34 asset valuation has the prior written approval from the Division of School and Community Nutrition.

2 CFR 200.33 defines "equipment" as tangible personal property (including information technology systems) having a useful life of one year or longer and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization threshold established by the SFA for financial statement purposes, or \$1,000.

SFA Capitalization Threshold:	\$1,000.00
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The USDA allows state agencies to establish a list of equipment that SFAs may purchase without submitting a request for prior approval (USDA memo SP 39-2016; SFSP 13-2016; CACFP 11-2016). If the amount of purchase for equipment is greater than the applicable capitalization threshold, the following procedure is used:

1. The SFA will identify if the desired equipment is identified on the SCN approved equipment list.
  - If the equipment is listed, the appropriate procurement method will be determined, and the applicable procedures followed to procure the equipment.
2. If the equipment desired is not on the approved list, the SCN Prior Approval Equipment Request form will be completed and submitted to SCN for approval.

**Reconversion Costs 2 CFR 200.462:**

Facility alteration costs incurred for the maintenance and/or updates to facilities that will be charged to the Child Nutrition Program are allowable as a direct cost when written prior approval has been obtained from SCN.

**The following language will be placed in all JCPS District SCNS bids**

- Buy American when applicable
- Discounts, rebates, allowances, and incentives
- Cost reimbursable contracts
- Certification regarding lobbying
- Required Clauses for Federal Contract

The United States Department of Agriculture (USDA) requires vendor(s) awarded contract(s) on National School Lunch Program (NSLP), National School Breakfast Program (NSBP) or associated Nutrition Services and JCPS District contracts to certify and assure that they will comply with all of the applicable requirements of Items 1-15 as listed below. Vendor(s) also agree these items may be amended from time to time, including adding appropriate provisions to all contracts between JCPS and for-profit contractors.

**All awarded vendors/contractors:**

- (1) Must be in strict compliance with the administrative, contractual, or legal remedies as outlined in Model Procurement (Article IX Legal and Contractual Remedies), where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate (Contracts more than the simplified acquisition threshold).
- (2) Are subject to termination for cause and for convenience by the grantee or sub grantee as outlined in Model Procurement (Article VI Contract Modification and Termination Section 6.5) (All contracts in excess of \$10,000).
- (3) Agree to 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).
- (4) Agree to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR Part 3). For construction and repair awarded by the recipients and sub recipients in excess of \$2000.
- (5) Agree to comply with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2000 awarded by grantees and sub grantees when required by Federal grant program legislation).
- (6) Agree to comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts awarded by grantees and sub grantees in excess of \$100,000, which involve the employment of mechanics or laborers).

(7) JCPS Nutrition Services will obtain all rights to any discovery or invention which arises or develops in the course of or under such contract (37 CFR Part 401).

(8) The books and records of the contractor pertaining to operations under this agreement shall be available to the Child Nutrition Program (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).

(9) Must be in strict compliance for contracts in excess of \$150,000, including subcontractor and sub grants, with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 7401-7671q), and the Federal Water Pollution Act 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).

(10) Agree to comply, for contracts in excess of \$100,000, with the Byrd Anti- Lobbying Amendment (31 U.S.C. 1352) and the New Restrictions on Lobbying and annually sign and submit to JCPS Nutrition Services the Certificate Regarding Lobbying and if applicable, the Disclosure of Lobbying Activities (Form SF-LLL).

(11) Non-federal entities that are 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. The requirements of the Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

(12) 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).

13) Agree to comply with collusion to restrain bids is prohibited, section 45A.325 of Kentucky Model Procurement Code, which restrains, tends to restrain, or is reasonably calculated to restrain competition to bid at a fixed price, or refrain from bidding, or otherwise, is prohibited.

14.) Pursuant to 2 CFR 200.216, Contractor shall not offer equipment, services, or system that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The provision at 48 C.F.R Section 52.204-26 requires that offerors review SAM prior to completing their required representations. This rule applies to all acquisitions.