



BULLITT COUNTY
Board of Education

CHILD NUTRITION PROGRAM
PROCUREMENT PLAN



BULLITT COUNTY PUBLIC SCHOOLS
DEPARTMENT OF SCHOOL
NUTRITION SERVICES

Last Edited: April 6, 2026

BULLITT COUNTY BOARD OF EDUCATION

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. SFAs 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 will be followed as written and will be amended as needed. This procurement plan was last amended on **April 20, 2026** and is being implemented as of this date.

Superintendent of District

Date

Director of School Nutrition Services

Date

District Finance Officer

Date

Section A: General Procurement Standards

Documented Procurement Procedures 2 CFR 200.318(a):

The non-federal entity must maintain and use documented procedures for procurement transactions under a federal award, including for acquisition of property or services. These documented procurement procedures must be consistent with State, and local regulations and the standards identified in 2 CFR 200.317 through 200.327.

Documented procedures must also address the requirements of the program regulations as applicable to the SFA in 7 CFR 210 (NSLP), 7 CFR 220 (SBP), 7 CFR 225 (SFSP), 7 CFR 226 (CACFP), and 2 CFR 250 (USDA Donated Foods), as well as any additional guidance or requirements in FNS policy memos and guidance issued by SCN.

The **Child Nutrition Director** is responsible for:

- ensuring that there are written policies and procedures to implement the procurement standards identified in 2 CFR 200.317 through 200.327, the additional standards incorporated through the implementation of 2 CFR 200.317 through 200.327, the applicable State and local policies, the program regulations, FNS policy memos, and other guidance issued by SCN when procuring for the Child Nutrition Program.
- ensuring that the written policies and procedures are incorporated into this procurement plan.
- reviewing and revising the procurement plan and all written policies and procedures at least annually or more frequently when needed to ensure that they are current and accurate.

Oversight of contractors 2 CFR 200.318(b):

Non-federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. See also 2 CFR 200.501(h).

Child Nutrition Director is responsible for ensuring that the SFA conducts contract oversight by ensuring:

- 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 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.

Compliance Responsibility for Contractors 2 CFR 200.501 (h):

In most cases, the non-federal entity's compliance responsibility for contractors is to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of a federal award. Federal award compliance requirements normally do not flow down to contractors. However, for procurement transactions in which the contractor is made responsible for meeting program requirements, the non-federal entity must ensure those requirements are met, including by clearly stating the contractor's responsibilities within the contract and reviewing the contractor's records to determine compliance. Also, when these procurement transactions relate to

a major program in an audit, the scope of the audit must include a determination of whether these transactions comply with Federal statutes, regulations, and the terms and conditions of a federal award.

Child Nutrition Director is responsible for ensuring that contractors procured to meet program requirements are compliant by ensuring:

- Ensuring that the contractor's responsibilities are clearly stated in the solicitation and resulting agreement or contract.
- Provide oversight by reviewing the contractors' records to ensure that they are operating in compliance with what is required.

Additional Procedures and Practices include:

- Contracts, Bids, and/or Proposals shall identify applicable federal requirements, including but not limited to program regulations, performance standards, recordkeeping, and monitoring expectations, as appropriate to the scope of services.
- The Child Nutrition Director provides reasonable oversight of contractors by reviewing invoices, delivery records, performance reports, and other applicable documentation to verify compliance with contract terms and program requirements.
- When contractors are responsible for meeting program requirements, the Child Nutrition Director shall review contractor records, as necessary, to ensure compliance with federal, state, and local requirements.

Conflicts of Interest 2 CFR 200.318 (c):

The non-federal entity 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, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the Federal award. A conflict of interest includes when the employee, officer, agent, or board member, any member of their immediate family, their partner, or an organization that 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 an entity considered for a contract. An employee, officer, agent, and board member of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors. However, the non-federal entity may set standards for situations where the financial interest is not substantial, or a gift is an unsolicited item of nominal value. The non-federal entity's standards of conduct must also provide for disciplinary actions to be applied for violations by its employees, officers, agents, or board members.

If the non-federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian Tribe, they must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the non-federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

The **Child Nutrition Director** is responsible for:

- Ensuring that a code of conduct that addresses conflicts of interest and governs the actions of employees engaged in procurement is implemented.
- Ensuring that the code of conduct is applicable to employees, officers, agents, and board members.

- Ensuring that the policy prohibits persons with real or apparent conflicts of interest to participate in the selection, award, or administration of a contract.
- Ensuring that the policy prohibits employees, agents, officers, and board members from soliciting or accepting gratuities, favors, or anything of monetary value from contractors.
- Ensuring that if a nominal value is established for when gifts may be accepted, that it is identified in the policy.
- Ensuring that the policy identifies the disciplinary measures that will be taken when the policy is violated.

The Bullitt County Board of Education has implemented the following Code of Conduct; the below Code of Conduct directly reflects that of [BCPS Board Policy 04.32](#) in relation to KSBA.

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 District 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.⁶

The officers, employees, and agents of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. In determining whether an activity constitutes an impermissible acceptance of a gratuity or item of monetary value, the definition of “gratuity” (covering anything of more than [fifty dollars \[\\$50\] value](#)) set forth in [KRS 45A.445](#) shall apply. Violation of these standards may result in disciplinary action including, but not limited, to suspension, dismissal, or removal.

As indicated in [BCPS Board Policy 07.13](#):

- The purchase during the school day of any food or service from a contractor for individual use is prohibited.
- The removal of any food, supplies, equipment, or school property such as records, recipe books, and the like is prohibited.
- The outside sale of such items as used oil, empty cans, and the like will be sold by contract between the District and the outside agency. Individual sales by any school person to an outside agency or other school person is prohibited.

Failure of any employee to abide by the above-stated code may result in disciplinary action, including but not limited to, a fine, suspension, or dismissal.

Ethical Standards

To avoid conflicts that may arise during the decision-making process for procurement of services and products for the District, employees shall adhere to the ethical standards set out in [KRS 45A.455](#)

Preference for Resident Bidders

For all contracts funded in whole or in part by the District, the Board shall apply the reciprocal preference for resident bidders required by law. Geographical preferences relating to school nutrition

service purchases may be utilized only as permitted by applicable federal law.

Exemptions

Federal regulatory requirements do not provide a bidding exception for purchase of perishables using school nutrition service funds. Such purchases must follow applicable federal regulations.

Price Reductions

Price reductions may be accepted on supplies and/or equipment being offered by the vendor with whom a price agreement has been made if the supplies and/or equipment meet all terms and conditions specified in the price agreement except for price and if the price reduction is offered to all participants in the price agreement. Price reductions may be accepted even if the reduced price requires the purchase of a specified quantity of units different from the quantity stated in the original price agreement.

Small Purchases

District small purchase procedures developed by the Superintendent may be used for any contract in which the aggregate amount does not exceed \$40,000.00. These procedures shall be made available to the public.

Avoidance of unnecessary or duplicative items 2 CFR 200.318(d):

The procedures used by the non-Federal entity 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.

The **Child Nutrition Director** is responsible for:

- Ensuring that planning procedures avoid the procurement of unnecessary or duplicative items.
- Assessing when it may be appropriate to break out procurements to obtain a more economical purchase.
- Conducting an analysis when appropriate of lease vs. buy alternatives.
- Conducting analysis to determine the most economical approach.

Additional Procedures and Practices

- The Child Nutrition Director shall plan procurements based on approved menus, participation trends, inventory on hand, and operational needs to avoid unnecessary or duplicative purchases.
- Prior to initiating a procurement, the Child Nutrition Director shall review existing inventory and active contracts to determine whether program needs can be met without additional purchasing.
- The Child Nutrition Director shall assess whether procurements should be consolidated or broken out to obtain more economical pricing, improved competition, or better overall value, considering storage capacity and delivery logistics.
- When appropriate, the Child Nutrition Director shall evaluate lease versus purchase options for equipment or services, considering expected useful life, maintenance costs, warranty coverage, and available funding.
- The Child Nutrition Director shall consider total cost (including purchase price, delivery, maintenance, and useful life) when determining the most economical procurement approach.
- Documentation shall be maintained in accordance with applicable procurement requirements to demonstrate compliance with federal, state, and local regulations.

Procurement Arrangements using strategic sourcing 2 CFR 200.318 (e):

When appropriate for the procurement or use of common or shared goods and services, SFAs are encouraged to enter into State and local intergovernmental agreements or inter-entity agreements for procurement transactions. These or similar procurement arrangements using strategic sourcing may foster greater economy and efficiency. Documented procurement actions of this type (using strategic sourcing, shared services, and other similar procurement arrangements) will meet the competition requirements in 2 CFR 200.318.

The use of these procurement sources must be used in compliance with the USDA policy memo SP 05-2017, CACFP 03-2017 and SFSP 02-2017: Q&A: Purchasing Goods and Services Using Cooperative Agreements, Agents, and Third-Party Services.

The **Child Nutrition Director** is responsible for:

- Obtaining all documentation detailing the procurement of contracts available through intergovernmental and inter-entity agreements.
- Reviewing the procurement documentation to ensure that they were properly procured.
- Ensuring that a piggyback clause is included and identifies objective and measurable limitations before a material change occurs when applicable.
- Determining if the procurement source may only be used through the use of micro-purchase or simplified acquisition procurement procedures.

The Bullitt County Board of Education uses a co-operative recognized under Kentucky state law that has contracted with a GPO, aka third party buying agent. A copy of the co-operative's procurement plan is available upon request.

When using a strategic sourcing contract, the **Child Nutrition Director** will:

- Obtain and review documentation demonstrating that the original procurement was conducted in compliance with 2 CFR 200.317–200.327, applicable state and local requirements, and USDA program regulations.
- Verify that the procurement allowed full and open competition and did not contain restrictive specifications.
- Ensure that any contract does not eliminate the SFA's responsibility for contract oversight.
- Remain responsible for monitoring performance, pricing, substitutions, and invoicing.

Upon request, the following documentation will be provided:

- The original solicitation and award documentation
- Evidence of competition and compliance review
- The executed agreement or participation documentation
- Monitoring and payment records

The co-operative also uses the procurement services of the Kentucky Educational Development Corporation (KEDC) for Dairy and Bakery products. Additionally, the Bullitt County Board of Education utilizes these same procurement services for beverage and ice cream products in the child nutrition programs.

A copy of the KEDC's procurement plan is available upon request.

Use of excess and surplus Federal property 2 CFR 200.318 (f):

The SFA is encouraged to use excess and surplus Federal property instead of purchasing new equipment and property when it is feasible and reduces project costs.

Child Nutrition Director is responsible for:

- Evaluating if the use of excess or surplus Federal property would be appropriate and feasible in lieu of purchasing new equipment to reduce costs.

Additional Procedures and Practices:

- When excess or surplus Federal property is used, the Child Nutrition Director shall ensure the property is properly inventoried, tracked, and maintained in accordance with applicable recordkeeping requirements.
- Documentation supporting the evaluation and use of excess or surplus Federal property shall be maintained and made available for review upon request
- The Child Nutrition Director shall maintain procedures to identify unused or underutilized equipment within the district and evaluate opportunities for transfer and reuse prior to the purchase of new equipment.

Use of value engineering clauses 2 CFR 200.318 (g):

When practical, the non-federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering means analyzing each contract item or task to ensure its essential function is provided at the overall lowest cost.

- When included, value engineering clauses shall allow the contractor to propose cost-saving alternatives that meet or exceed the original specifications and program requirements, subject to SFA review and approval.

Responsible contractors 2 CFR 200.318 (h):

The non-federal entity must award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract. The non-federal entity must consider contractor integrity, public policy compliance, proper classification of employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), past performance record, and financial and technical resources when conducting a procurement transaction. See also 2 CFR 200.214.

Child Nutrition Director is responsible for:

- Ensuring that contracts are only awarded to contractors that possess the ability to perform successfully under the terms and conditions of a proposed procurement.
- Ensuring that the reasons for vendors deemed non-responsible are properly documented and justifiable.

Suspension and debarment 2 CFR 200.214:

Non-federal entities are subject to the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, as well as 2 CFR part 180. The regulations in 2 CFR

part 180 restrict making Federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from receiving or participating in Federal awards.

Child Nutrition Director is responsible for:

- Ensuring that contracts are not entered into entities that are suspended or debarred.

Additional Procedures and Practices:

- The Child Nutrition Director shall verify the eligibility of all contractors, vendors, and subrecipients prior to award by reviewing the System for Award Management (SAM) Exclusions List or other official federal exclusion lists.
- Documentation of the eligibility check shall be maintained in the procurement file, including the date and method of verification, for each contract or agreement.
- Contracts shall include language requiring contractors to certify that they are not suspended, debarred, or otherwise excluded from Federal programs.
- The Child Nutrition Director shall ensure that any contractor found to be suspended or debarred is immediately removed from consideration and ineligible for future awards until the exclusion is lifted.

Procurement Records 2 CFR 200.318 (i):

The non-federal entity must maintain records sufficient to detail the history of each procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.

Child Nutrition Director is responsible for:

- Maintaining sufficient records to detail the history of each procurement transaction.
- Ensuring records identify the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for contract price.
- Obtaining and reviewing the documentation for any contracts or purchase agreements that are sourced through group purchasing efforts to ensure that there are sufficient records to meet this standard.
- For contracts or purchase agreements sourced through group purchasing organizations or cooperative agreements, the Child Nutrition Director shall obtain and review documentation demonstrating that the procurement was conducted in accordance with federal, state, and local procurement requirements.

Time-and-materials type contracts 2 CFR 200.318 (j):

1. The non-federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a recipient or subrecipient is the sum of:
 - a. The actual cost of materials; and
 - b. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
2. Because this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency.

Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, non-federal entities awarding such a contract must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

The **Child Nutrition Director** is responsible for ensuring that all time-and-materials contracts:

- Are properly justified
- Include a ceiling price
- Are actively monitored for efficiency and cost control
- Comply with 2 CFR 200.318(j), KDE guidance, and all applicable federal, state, and local procurement requirements.

Settlement of contractual and administrative issues 2 CFR 200.318 (k):

The non-federal entity is responsible for the settlement of all contractual and administrative issues arising out of its procurement transactions. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-federal entity of any contractual responsibilities under its contracts. The Federal agency will not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a federal concern. The non-federal entity must report violations of law to the Federal, State, or local authority with proper jurisdiction.

Child Nutrition Director is responsible for:

- Ensuring that a process is implemented to address contractual and administrative issues arising out of procurement transactions; such issues include
 - Source evaluation disputes, including justification for contractor selection
 - Vendor protests regarding procurement decisions
 - Contract claims or disputes related to performance, delivery, or pricing

The process shall include:

- ❖ Documentation requirements for all disputes, claims, and resolutions
 - ❖ Timelines and responsible parties for review and resolution
 - ❖ Steps for escalation when federal, state, or local laws or regulations are implicated
- All settlement actions shall be conducted in accordance with contract terms and applicable federal, state, and local procurement regulations.
 - Violations of law or regulations discovered during procurement or contract administration shall be reported promptly to the appropriate Federal, State, or local authority with jurisdiction.
 - Documentation of the resolution process, including communications, decisions, and final outcomes, shall be maintained in the procurement file and made available upon request

Examples of labor and employment practices 2 CFR 200.318 (l):

1. The procurement standards in this subpart do not prohibit recipients or subrecipients from:
 - a. Using Project Labor Agreements (PLAs) or similar forms of pre-hire collective bargaining agreements;
 - b. Requiring construction contractors to use hiring preferences or goals for people residing in high-poverty areas, disadvantaged communities as defined by the Justice40 Initiative (see OMB Memorandum M-21-28), or high-unemployment census tracts within a region no smaller than the county where a federally funded construction project is located. The

- hiring preferences or goals should be consistent with the policies and procedures of the recipient or subrecipient, and must not prohibit interstate hiring;
- c. Requiring a contractor to use hiring preferences or goals for individuals with barriers to employment (as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102(24)), including women and people from underserved communities as defined by Executive Order 14091;
 - d. Using agreements intended to ensure uninterrupted delivery of services; using agreements intended to ensure community benefits; or
 - e. Offering employees of a predecessor contractor rights of first refusal under a new contract.
2. Recipients and subrecipients may use the practices listed in paragraph (1) if consistent with the U.S. Constitution, applicable Federal statutes and regulations, the objectives and purposes of the applicable Federal financial assistance program, and other requirements of this part.

Procurement Training 7 CFR 210.21 (h):

School nutrition program directors, management, and staff tasked with National School Lunch Program procurement responsibilities must complete annual training on Federal procurement standards annually.

The training topics provided should be specific to each staff member's role and their assigned procurement related responsibilities. Training topics provided should aim to enable the identified staff to gain knowledge of Federal procurement requirements and ensure that they have the knowledge they need to successfully implement what is required. Records must be maintained in accordance with the Professional Standards documentation requirements to demonstrate compliance with this requirement.

Child Nutrition Director is responsible for:

- Identifying all staff who have responsibilities related to conducting procurement, making purchases from procured sources, and monitoring or contract management activities.
- Identifying the appropriate procurement training topics and number of training hours each staff member should receive annually based on their role and responsibilities.
- Ensuring that each staff member completes and documents the annual procurement training in accordance with the Professional Standards requirements.

Section B: Competition Standards in Procurement
2 CFR 200.319

Competition 2 CFR 200.319 (a):

All procurement transactions for the Federal program must be conducted in a manner that provides full and open competition and is consistent with the competition procurement standards and through the use of one of the procurement methods in 2 CFR 200.320.

Child Nutrition Director is responsible for:

- Ensuring that all contracts and purchase agreements procured by the Child Nutrition Program were procured in compliance with the Federal procurement competition standards and through the use one of the procurement methods in 2 CFR 200.320.
- Ensuring that all contracts and purchase agreements procured by entities other than the Child Nutrition Program were procured in compliance with the Federal procurement competition standards and through the use of one of the procurement methods in 2 CFR 200.320

Objective Contractor Performance 2 CFR 200.319 (b)&(c):

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing for such procurements.

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; and
7. Any arbitrary action in the procurement process.

Child Nutrition Director is responsible for:

- Ensuring that all contracts and purchase agreements used to purchase goods and services utilizes objective contractor performance and eliminates unfair competitive advantage.
- Ensuring that vendors who develop or draft specifications, procurement requirements, statements of work, invitations for bid, or requests for proposals are excluded from competing for the procurement.

Geographic Preference 7 CFR 210.21 (g):

A geographic preference may be applied when procuring unprocessed locally grown or locally raised agricultural products, including the use of “locally grown”, “locally raised”, or “locally caught” as procurement specifications or selection criteria for unprocessed or minimally processed food items. When utilizing the geographic preference to procure such products, the school food authority has the discretion to determine the local area to which the geographic preference option will be applied, so long as there are an appropriate number of qualified firms able to compete. “Local,” for the intent of

purchasing for Bullitt County Public Schools Department of School Nutrition Services, will mean within a 75 mile radius of the county's border; this will include parts of southern Indiana.

The optional geographic procurement preference may only be applied when procuring "unprocessed locally grown or locally raised agricultural products". Unprocessed means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); the addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

Child Nutrition Director is responsible for:

- Ensuring that a geographic preference is only applied to the procurement of unprocessed agricultural products.
- Defining what is considered "local" for a procurement.
 - Local will mean within a 75 mile radius of the county's border; this will include parts of southern Indiana
- Ensuring that there is adequate competition in the definition of "local" established for a procurement.
- Determining the method in which a preference for local will be applied in a procurement; may include, but not limited to:
 - Awarding additional evaluation points to local vendors in a competitive proposal
 - Applying a price preference or percentage discount for qualifying local products
 - Including "locally grown," "locally raised," or similar language in product specifications, when appropriate

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

The SFA must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

1. Are made in accordance with § 200.319(b);
2. Incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured. The description may include a statement of the qualitative nature of the property, equipment, or service to be procured. When necessary, the description must provide minimum essential characteristics and standards to which the property, equipment, or service must conform. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to clearly and accurately describe the technical requirements, a "brand name or equivalent" description of features may be used to provide procurement requirements. The specific features of the named brand must be clearly stated; and
3. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Child Nutrition Director is responsible for:

- Ensuring that the written procedures for each procurement method in 2 CFR 200.320 adhere to

this procurement standard.

Pre-Qualified Vendor Lists 2 CFR 200.319 (e):

The SFA must ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and include enough qualified sources to ensure maximum open competition. When establishing or amending prequalified lists, the non-Federal entity must consider objective factors that evaluate price and cost to maximize competition. The non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

Child Nutrition Director is responsible for:

- Ensuring that any pre-qualified lists used in procurement transactions are current and include enough qualified sources to ensure maximum open competition.
- Ensuring that objective factors are used when establishing or amending pre-qualified lists.
- Ensuring that potential bidders are precluded from qualifying to be on the list during the solicitation process.

Noncompetitive Procurements 2 CFR 200.319 (f):

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

Child Nutrition Director is responsible for:

- Ensuring any noncompetitive procurements conducted are for one of the limited circumstances identified in 2 CFR 200.320.
- All noncompetitive procurements are properly documented in accordance with the procedures required for the circumstance that applies.

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

Procurement Methods 2 CFR 320:

There are three types of procurement methods described in this section: informal procurement methods (for micro-purchases and simplified acquisitions); formal procurement methods (through sealed bids or proposals); and noncompetitive procurement methods. The non-federal entity must maintain and use documented procurement procedures for the use of each procurement method that are consistent with the standards of this section identifying the methods of procurement to be followed in 2 CFR 200.320, the general procurement standards in 2 CFR 200.318, and the competition standards in 2 CFR 200.319.

Procurement Planning:

In order to identify the method of procurement to use, the non-federal entity must implement proper procurement planning practices by:

1. Identifying the needs of each procurement.
2. Conducting market research.
3. Developing written specifications for what is to be procured.
4. Calculating an independent cost estimate of the procurement.
5. Identifying the procurement method to use and documenting the rationale for its use.

Child Nutrition Director is responsible for:

- Identifying the needs of each procurement.
- Conducting market research.
- Calculating an independent cost estimate of the procurement.
- Determining the procurement method to be used and documenting the rationale for the use of the procurement method selected.

Procurement Method Thresholds:

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 must be followed when conducting procurement.

Procurement Method Thresholds

Procurement Method	Federal Threshold	*Local SFA Procurement Thresholds	Applicable Thresholds followed
Micro-purchase	\$15,000	\$15,000	\$15,000
Simplified Acquisitions	\$350,000 or less	\$40,000	\$40,000
Formal (IFB/RFP)	Higher than Simplified Acquisitions Threshold	Higher than Simplified Acquisitions Threshold	Higher than Simplified Acquisitions Threshold

*Applicable micro-purchase thresholds are not identified as a “micro-purchase threshold” in state law and will most likely will 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.

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 simplified acquisition threshold, the procurement must be formally solicited. If the estimated value or cost of the procurement is below the simplified acquisition 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.

Child Nutrition Director 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 for small purchases 2 CFR 200.320 (a):

These procurement methods expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods may be used when the value of the procurement transaction does not exceed the non-federal entity's applicable simplified acquisition threshold.

There are two (2) informal procurement methods:

1. Micro-purchases
2. Simplified Acquisitions

Micro-Purchases 2 CFR 200.320 (a) (1):

Distribution: Micro-purchase procedures may be when a single transaction for goods or services has an aggregate total cost that is equal to or less than the SFAs applicable micro-purchase threshold. To the maximum extent practicable, the SFA should distribute micro-purchases equitably among available qualified suppliers.

Award: Micro-purchases may be awarded without soliciting competitive price or rate quotations if the recipient or subrecipient considers the price reasonable based on research, experience, purchase history, or other information; and maintains documents to support its conclusion.

Micro-purchase thresholds: The SFA is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

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.

Child Nutrition Director is responsible for:

- Planning for the procurement.
- Ensuring the cost of the procurement does not exceed the SFAs micro-purchase threshold.

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 the goods or services to be procured.

Child Nutrition Director is responsible for:

- Ensuring written specifications for each micro-purchase are developed (including the Buy American Provision when applicable) and any additional technical requirements for conducting business with the SFA.
- Ensuring that the specifications do not include any unnecessary requirements that may limit competition.

3. **DETERMINE PRICE REASONABLENESS:** Micro-purchases are awarded without soliciting competitive prices or rate quotations when the SFA considers the price from a responsible vendor to be reasonable based on market research, experience, purchase history, or other relevant information.

Child Nutrition Director is responsible for:

- Determining prices from responsible vendors to be reasonable, based on market research, experience, purchase history, or other relevant information.

4. **RECORDKEEPING:** The SFA will ensure that the history of each micro-purchase procurement is adequately documented (2 CFR 200.318(i)).

Child Nutrition Director is responsible for documentation of each micro-purchase 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 to determine that the price was reasonable.
- Receipts, invoices, and payment history.

Simplified Acquisitions 2 CFR 200.320 (a) (2):

Procedures: Simplified acquisition procedures may be used when the aggregate dollar amount of the procurement does not exceed the non-Federal entity’s applicable simplified acquisition threshold. If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. The non-Federal entity may exercise judgment in determining the number of qualified sources that is adequate for the goods or services that are purchased.

Simplified acquisition thresholds: The non-federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures, which may be lower than, but must not exceed, the threshold established in the federal regulations.

Simplified Acquisition 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.

Child Nutrition Director is responsible for:

- Planning for the procurement.
- Ensuring the amount of the procurement will not exceed the SFAs simplified acquisition threshold.

2. **DEVELOP A WRITTEN SOLICITATION:**

Child Nutrition Director is responsible for:

- Developing a written solicitation document to obtain price quotes that includes the written specifications of the goods or services to be procured (including the Buy American Provision when applicable), any additional technical requirements for vendor (such as delivery requirements), and any applicable information relevant to the procurement that may affect a vendor's response.
- 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.

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.

Child Nutrition Director is responsible for:

- 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 simplified acquisition 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.

Child Nutrition Director 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.

Child Nutrition Director 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:** Ensuring that each simplified acquisition is adequately documented.

Child Nutrition Director 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.
- Receipts, invoices, and payment history.

Formal Procurement Methods 2 CFR 200.320 (b):

Formal procurement methods are required when the value of the procurement transaction exceeds the simplified acquisition threshold of the non-Federal entity. Formal procurement methods are competitive and require public notice. The following formal methods of procurement are used for procurement transactions above the non-Federal entity's applicable simplified acquisition threshold:

- Sealed Bids (IFB)
- Proposals (RFP)

Sealed Bids 2 CFR 200.320 (b) (1):

This is a procurement method in which bids are publicly solicited through an invitation and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price. The sealed bids procurement method is preferred for procuring construction services.

Feasibility: For sealed bidding to be feasible, the following conditions should be present:

- A. A complete, adequate, and realistic specification or purchase description is available.
- B. Two or more responsible bidders have been identified as willing and able to compete effectively for the business.
- C. 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.

Requirements for use: If sealed bids are used, the following requirements apply:

- A. Bids must be solicited from an adequate number of qualified sources, providing them with sufficient response time prior to the date set for opening the bids. Unless specified by the Federal agency, the non-federal agency may exercise judgment in determining what number is adequate.
- B. The invitation for bids must be publicly advertised.
- C. The invitation for bids must define the items or services with specific information, including any required specifications, for the bidder to properly respond.
- D. All bids will be opened at the time and place prescribed in the invitation for bids.
- E. The bids must be opened publicly.
- F. A firm-fixed-price contract is awarded in writing to the lowest responsive bid and responsible bidder. When specified in the invitation for bids, factors such as discounts, transportation cost, and life-cycle costs must be considered in determining which bid is the lowest. Payment discounts must only be used to determine the low bid when the recipient or subrecipient determines they are a valid factor based on prior experience.
- G. The non-federal entity must document and provide a justification for all bids it rejects.

Child Nutrition Director is responsible for:

- Proper implementation of the Sealed Bidding (IFB) procedures and process.

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.

Child Nutrition Director is responsible for:

- Planning of the procurement.

2. **DEVELOP A SOLICITATION DOCUMENT:** An Invitation for Bid (IFB) is used when using the sealed bidding procurement method.

Child Nutrition Director is responsible for:

- ensuring the Invitation for Bid (IFB) solicitation document includes all necessary information and does not limit competition.

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., score boards).
- The time and date in which bids must be received.
- Methods acceptable for bid submission (mail or email submission acceptable)

- 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 non-Federal entity 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.

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 on the district’s website and other sources to publicize the intent of the SFA to purchase items or services. The advertisement for bids or legal notice will be advertised for a minimum of 10 consecutive 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, Veteran-Owned businesses 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.

If any potential vendor has questions concerning the specifications or purchase conditions, an interpretation will be provided by the **Child Nutrition Director**.

Child Nutrition Director 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.

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.

Child Nutrition Director is responsible for:

- ensuring that the bid opening process is adequately documented including the day, time, attendees, names of vendors submitting a bid, documentation justifying the rejection of bids, and the initial bid tallies.

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, and added goods are included in a contract amendment.

Child Nutrition Director is responsible for:

- the evaluation for contract award

6. **RECORDKEEPING**: 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 (IFB) 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.

Child Nutrition Director is responsible for:

- ensuring that procurement conducted with Sealed Bidding procedures are adequately documented.

Proposals 2 CFR 200.320(b)(2):

This is a procurement method used when conditions are not appropriate for using sealed bids. This procurement method may result in either a fixed-price or cost-reimbursement contract.

Requirements for use: Proposals are awarded in accordance with the following requirements:

- A. Requests for proposals require public notice, and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified entities. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered.
- B. The non-federal entity must have written procedures for conducting technical evaluations and making selections.
- C. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-federal entity considering price and other factors.
- D. The non-federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used to procure architectural/engineering (A/E) professional services. The method may not be used to purchase other services provided by A/E firms that are a potential source to perform the proposed effort.

Child Nutrition Director is responsible for the proper implementation of the Proposal (RFP) procedures and process.

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.

Child Nutrition Director is responsible for:

- Planning 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 – Price will have the highest weight of the criteria used.
- 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., score boards).
- The time and date in which proposals must be received.
- Methods acceptable for bid submission (mail or email submission acceptable)
- Any other pertinent information needed to enable the vendor to respond to the solicitation.

The non-Federal entity 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.

Child Nutrition Director 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 suppliers. RFPs will be advertised on the district’s website and other internet sources to publicize the intent of the SFA to purchase items or services. The advertisement for bids or legal notice will be advertised for a minimum of 10 consecutive 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, Veteran-Owned businesses 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 proposals, and how solicitation documents may be obtained.

If any potential vendor has questions concerning the specifications or purchase conditions, an interpretation will be provided by the **Child Nutrition Director**.

Child Nutrition Director 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.

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.

Child Nutrition Director is responsible for:

- ensuring the evaluation of contract award is properly conducted and scored as described in the RFP.

5. **RECORDKEEPING:** 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 (RFP) 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.

Child Nutrition Director is responsible for:

- completing the cost or price analysis process
- ensuring that procurement conducted with Proposal procedures are adequately documented.

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 aggregate dollar amount of the goods or services needed does not exceed the micro-purchase threshold. (Micro-purchase procedures will be followed.)
2. The item is available only from a single source.
3. The public exigency or emergency for the purchase will not permit waiting for the time required to publicize and award a competitive solicitation.
4. School and Community Nutrition expressly authorizes a noncompetitive procurement in response to a written request.
5. 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).

Single Source Noncompetitive Procurement:

When a noncompetitive procurement is conducted due to an item being only available from a single source, a written justification for the procurement must be maintained. The written justification should answer the following questions:

1. What are the unique specifications/circumstances/requirements that are needed?
2. Why is this the only supplier/solution/product that meets the requirements?
3. Describe the due diligence that was performed in determining that this is the only solution for the needs of the program. In other words, how do you know there are no other solutions to your needs?

Child Nutrition Director is responsible for:

- Documenting a written justification for sole source noncompetitive procurements.
- Maintaining documentation to support the written justification.

Public Exigency or Emergency Noncompetitive Procurement:

When a public exigency or emergency for a purchase above the SFAs micro-purchase threshold will not permit waiting for the time required to publicize and award a competitive solicitation, pre-approval to use a noncompetitive procurement method must be obtained from SCN.

Procedures to obtain prior approval from SCN:

1. Submit requests via email to: Lauren Moore, Director, Division of School and Community Nutrition 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.

Child Nutrition Director is responsible for:

- obtaining pre-approval from SCN for emergency purchases above their micro-purchase threshold.

Noncompetitive Procurement Expressly Authorized by SCN:

SFAs may submit a written request to SCN to authorize a noncompetitive procurement for situations not expressly described in the regulations. To submit a request for SCN to authorize a noncompetitive procurement:

1. Submit requests via email to: Lauren Moore, Director, Division of School and Community Nutrition Lauren.moore2@education.ky.gov.
2. Requests should include:
 - a. A description of the goods or services sought.
 - b. The estimated cost of the goods or services.
 - c. The reason why the SFA is requesting to use a noncompetitive procurement method for the procurement of goods or services.

Child Nutrition Director is responsible for:

- submitting a written request to SCN to noncompetitively procure goods or services.

Pre-Approval Process to [Order Hardware for Mosaic](#):

1. Evaluation of Needs

A. Determine what hardware items you need or want. Considerations include:

- Replacing outdated hardware. (Example: Replace hardware that doesn't meet the minimum specifications for support.)
- Upgrading existing hardware to improve current operations. (Examples: Replace a manual cash drawer with an electronic cash drawer, replace a pin pad with a combination pin pad scanner to allow for barcode scanning, or enable new operations by utilizing a mobile POS to begin a new service model such as breakfast in the hallway.)
- Outfitting new buildings or service lines. (Example: Install new hardware at a new building or add additional serving lines to existing buildings)

B. Calculate the total costs of needed hardware by reviewing the current KDE Mosaic Hardware Price List.

2. Evaluation and Documentation of Procurement Method

A. Review your local Micro Purchasing limit. If the total costs of the needed hardware are below your limit, the following is needed for the transaction to be considered compliant:

1. Documentation of Price Reasonability

a. This can include but is not limited to notes made on a micro-purchase log, PO, or invoice. Notes must state the price determination was made based on personal knowledge, market research, or other methods utilized.

2. Specifications

a. This can include but is not limited to notes made on the micro-purchase log or other documentation showing the specifications of the product purchased.

3. Record of Purchase

a. This can include the PO, invoice, or any other documentation that shows the amount paid to the vendor for the product.

B. If total costs are greater than your local Micro Purchasing limit, the following is required to be deemed compliant:

1. Specifications

a. Each item purchased must have a specification written before purchase. All specifications can include the brand name of Heartland/Mosaic or equal if available but must also include the phrase 'the vendor must provide technical support for installation/integration, and customer service support for the products purchased.'

2. Complete the Mosaic Hardware Purchasing: Non-Competitive Purchase Request Form. Maintain the approval of the request.

3. Completing the Purchase

A. Email Mike Walker and Kim Lane with Heartland (michael.walker@e-hps.com; kimberly.lane@e-hps.com) your request, including the item(s) needed and the quantity.

B. Document the record of the purchase. This can include the PO, invoice, or other documentation that shows the amount paid to the vendor for the product.

**Section D: Contracting with small businesses, minority businesses, women's business enterprises,
veteran-owned businesses, and labor surplus area firms.
(2 CFR 200.321)**

When possible, the SFA should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.

Such consideration means:

1. These business types are included on solicitation lists;
2. These business types are solicited whenever they are deemed eligible as potential sources;
3. Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
4. Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
5. Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring a contractor under a Federal award to apply this section to subcontracts.

Child Nutrition Director is responsible for:

- Ensuring these entities are considered when planning a procurement.
- Appropriate outreach efforts are used when conducting procurement.

Section E: Domestic Preference for Procurements
2 CFR 200.322:

The non-Federal entity should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.

The requirements for the purchase, acquisition, and use of domestic foods, goods, products or materials must be included in all procurement procedures, solicitations, and contracts, and purchase orders under Federal awards.

For the purposes of procuring non-agricultural commodities:

1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

For the purposes of procuring agricultural products:

1. A domestic commodity or product means:
 - a. An agricultural commodity that is produced in the United States; and
 - b. A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.
2. Substantially using agriculture commodities that are produced in the United States means over 51 percent of a food product must consist of agricultural commodities that were grown domestically.
3. To meet the definition of a domestic commodity or product, harvested fish must meet the following requirements:
 - a. Farmed fish must be harvested within the United States or any territory or possession of the United States; and
 - b. Wild caught fish must be harvested within the Exclusive Economic Zone of the United States or by a United States flagged vessel.

When procuring agricultural products there are two limited exceptions in which a non-Federal entity may accept non-domestic products.

1. The product is listed in the Federal Acquisitions Regulations (FAR) at 48 CFR 25.104 and/or is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
2. Competitive bids reveal the cost of a United States product is significantly higher than the non-domestic product.

Non-domestic food purchases (those that do not meet the definition of domestic commodity or product must not exceed the following caps by the established deadlines):

- By July 1, 2025, non-domestic food purchases must not exceed 10 percent of total annual

- commercial food costs that a school food authority purchases per school year.
- By July 1, 2028, non-domestic food purchases must not exceed 8 percent of total annual commercial food costs that a school food authority purchases per school year.
 - By July 1, 2031, non-domestic food purchases must not exceed 5 percent of total annual commercial food costs that a school food authority purchases per school year.

Non-Federal entities must maintain documentation to demonstrate that when using one of the limited exceptions their non-domestic food purchases do not exceed the applicable annual thresholds.

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.

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.

Child Nutrition Director is responsible for:

- Ensuring that the requirement to comply with Buy American Provision is included in all procurement procedures and documents when applicable.
- Monitoring their compliance with the established caps for non-domestic food purchases.
- Receiving and reviewing exception requests from vendors.
- Deciding if exception requests will be approved and can be supported with adequate documentation.
- Ensuring that monitoring of the Buy American Provision is conducted when receiving deliveries, and through a periodic review of storage facilities, freezers, refrigerators, dry storage, and warehouses.
- Addressing vendor non-compliance when it is found.

Procedure to process exception request from vendors:

1. All vendor requests for Buy American exceptions shall be submitted **in writing** to the Child Nutrition Director (or designee) prior to substitution or delivery, when practicable. Written requests may be submitted via email or formal communication from the vendor.

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.
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 of 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 regularly to identify any nondomestic products.
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 of 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.

Section F: Procurement of Recovered Materials
2 CFR 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 of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the 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.

The non-Federal entity should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

Child Nutrition Director is responsible for:

- ensuring that a contract clause regarding recovered materials is included when it is applicable to the procurement.

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 transaction, including contract modifications, in excess of the simplified acquisition threshold. The method and degree of analysis conducted depend on the facts surrounding the particular procurement transaction. For example, the non-Federal entity should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However, as a starting point, the recipient or subrecipient must make independent estimates before receiving bids or proposals.

Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred, or cost estimates included in negotiated prices would be allowable for the non-Federal entity under 2 CFR 200 subpart E.

The SFA must not use the “cost plus a percentage of cost” and “percentage of construction costs” methods of contracting.

Child Nutrition Director is responsible for:

- Conducting a cost and/or price analysis in a procurement when the simplified acquisition threshold is exceeded.
- Conducting a cost and/or price analysis prior to implementing contract amendments that will exceed the simplified acquisition threshold.
- Conducting a cost or price analysis whenever it is needed to ensure that fair and reasonable prices are paid.

Additional Procedures and Practices include:

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 prices 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 estimate 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.

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

The FNS or SCN may review the technical specifications of proposed procurements under the Federal award if they believe the review is needed to ensure that the item or service specified is the one being proposed for acquisition. The SFA must submit the technical specifications of proposed procurements when requested by FNS or SCN. This review should take place prior to the time the specifications are incorporated into a solicitation document. When the SFA desires to accomplish the review after a solicitation has been developed, FNS or SCN may still review the specifications. In those cases, the review should be limited to the technical aspects of the proposed purchase.

When requested, the SFA must provide its procurement documents, including but not limited to solicitation documents, specifications, evaluation criteria, procurement procedures, proposed contracts and contract terms for a pre-procurement review. Non-federal entities shall comply with FNS or SCN requested changes to procurement procedures and solicitation and contract documents to ensure that such procedures and documents reflect applicable procurement and contract requirements.

FNS or SCN may conduct a pre-procurement review when:

1. The SFA's procedures or operation fails to comply with the procurement standards in this part;
2. The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition, or only one bid is expected to be received in response to a solicitation;
3. The procurement is expected to exceed the simplified acquisition threshold and specifies a "brand name" product;
4. The procurement is expected to exceed the simplified acquisition threshold, and a sealed bid procurement is to be awarded to an entity other than the apparent low bidder; or
5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

The SFA is exempt from the pre-procurement review in paragraph if FNS or SCN determines that its procurement systems comply with the standards of 2 CFR 200.

The SFA may request that FNS or SCN review its procurement system to determine whether it meets these standards for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding and third-party contracts are awarded regularly.

The SFA may self-certify its procurement system. However, self-certification does not limit FNS or SCN's right to review the system. Under a self-certification procedure, the FNS and SCN may rely on written assurances from the SFA that it is complying with the standards of 2 CFR 200. The SFA must cite specific policies, procedures, regulations, or standards as complying with these requirements and have its system available for review.

Child Nutrition Director is responsible for:

- providing procurement documents to FNS or SCN when they are requested.

Section I: Bonding Requirements
2 CFR 200.326

FNS or SCN may accept the non-federal entity's bonding policy and requirements for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold. Before doing so, FNS or SCN must determine that the Federal interest is adequately protected. If such a determination has not been made, 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 any required contractual documents within the specified timeframe.
- b. A performance bond on the contractor's part for 100 percent of the contract price. A performance bond is a bond executed in connection with a contract to secure the fulfillment of all the contractor's requirements under a contract.
- c. A payment bond on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.

Child Nutrition Director is responsible for:

- ensuring that the bonding requirements described in a, b, or c are followed when payments above the simplified threshold are charged to the nonprofit school foodservice account for construction or facility improvements.

Section J: Contract Provisions
2 CFR 200.327 & 7 CFR 210.21(f)

Contracts and purchase agreements used by the non-federal entity must contain the applicable provisions described in Appendix II of 2 CFR 200, and 7 CFR 210.21 as applicable.

Child Nutrition Director is responsible for:

- ensuring that all contracts and purchase agreements used by the Child Nutrition Program include the required applicable provisions.
- utilizing the Child Nutrition Program [Contract Clauses and Provision Guide](#) to create contracts and to purchase awards.
- utilize the Contract [Clauses and Provisions Tables](#) to ensure required language is included in all formal procurement bids and proposals

2 CFR 200 Appendix II Contract Provisions

The provisions of 2 CFR 200 are uniform administrative requirements; these regulations are universally applicable to all federally funded programs

- A. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address **administrative, contractual, or legal remedies** in instances where contractors violate or **breach contract terms**, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of \$10,000 must address **termination for cause** and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- C. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- D. **Davis-Bacon Act**, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance 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, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the

wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- E. The contracts must also include a provision for compliance with the **Copeland “Anti-Kickback” Act** (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- F. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- G. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- H. **Clean Air Act** (42 U.S.C. 7401-7671q.) and the **Federal Water Pollution Control Act** (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- I. **Debarment and Suspension** (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under

statutory or regulatory authority other than Executive Order 12549.

- J. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- K. See Section F, **Procurement of recovered materials** 2 CFR 200.323.
- L. See Section J, **Prohibition on certain telecommunications and video surveillance services or equipment** 2 CFR 200.216.
- M. See Section E, **Domestic preferences for procurements** 2 CFR 200.322 & 7 CFR 210.21.

Cost Reimbursable Contracts 7 CFR 210.21(f):

The non-federal entity must include the following provisions in all cost reimbursable contracts, including contracts with cost reimbursable provisions, and in solicitation documents prepared to obtain offers for such contracts:

1. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the non-federal entity.
2. The contractor must separately identify for each cost submitted for the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or
3. The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;
4. The contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;
5. The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;
6. The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and
7. The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the non-federal entity,

the State agency, or USDA.

No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include the requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.

Additional 2 CFR 200 & 7 CFR 210, 7 CFR 250 Contract Provisions

These provisions consist of program regulations specifically for the Child Nutrition Programs that are operated by the SFA.

- A. **BUY AMERICAN** 7 CFR 210.21(d) - requires that SFAs purchase, to the maximum extent practicable, domestic commodities or products. A domestic commodity or product is an agricultural commodity that is processed in the United States (including U.S. Territories) and/or a food product that is processed in the United States (including U.S. Territories) substantially using agricultural commodities that are produced in the United States (including U.S. Territories). A Buy American Provision is required to be included in solicitations and agreement or contracts when procuring food that are considered "food components." FNS defines a food component as one of the food groups that comprises reimbursable meals: meats/meat alternates, grains, vegetables, fruits, and fluid milk. Foods that are unprocessed, agricultural commodities must be domestic. All processed food products must contain over 51% of the product's food component, by weight or volume, from U.S. origin (including U.S. Territories) and be processed in the United States (including U.S. Territories).

There are two (2) limited exceptions to Buy American requirements:

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

Exceptions must be requested by vendors and approved by SFAs prior to accepting or receiving non-domestic foods.

- B. **GEOGRAPHIC PREFERENCE** 7 CFR 210.21(g) - A geographic preference for vendors is not allowable in the federal regulations unless provided for in a federal programs' specific regulations. 7 CFR 210.21(g) provides an allowance for SFAs to include a geographic preference for vendors when the SFA is procuring unprocessed locally grown or locally raised agricultural products. When utilizing the geographic preference to procure such products, the school food authority making the purchase has the discretion to determine the local area to which the geographic preference option will be applied. When applying a geographic preference to procure unprocessed locally grown or locally raised agricultural products, SFAs must ensure that solicitation and contract documents clearly define and describe how this will be evaluated for contract award and in contract monitoring procedures as applicable.
- C. **PROCESSING USDA FOOD CONTRACTS** 2 CFR 250.31(b) - identifies the minimum information that must be included in procurement contracts and solicitations for processed end products containing USDA foods in addition to requirements related to the procurement method used. The goal is to ensure that federal rules requiring full and open competition are followed and to

assist SFAs in ensuring that they receive credit for the value of USDA foods in finished end products.

Required information that must be addressed in solicitations and contracts when procuring processed end products containing USDA donated foods:

- The price to be charged for the end product or other processing service;
- The method of end product sales that will be utilized and assurance that crediting for donated foods will be performed in accordance with the applicable requirements for such method of sales in §250.36;
- The value of the donated food in the end products; and
- The location for the delivery of the end products.

- D. **PROCUREMENT AGENTS** USDA Policy Memo SP 05-2017 establishes the guidance that must be followed when procuring a procurement agent who will procure goods and services on behalf of the SFA. The procurement agent must confirm in its response to the solicitation that it 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 Program operator.
- E. **PIGGYBACKING** refers to situations in which the SFA uses an existing contract procured by another entity. This can include contracts that were previously procured by another SFA, as well as contracts procured by districts, or non-SFA only co-operative groups.

To piggyback onto an existing contract, the contract must be confirmed that it was procured in compliance with the Federal regulations and there must have been a clause in the solicitation and executed to allow the practice, and it must identify the limitation of the extension that's allowed to be made before a material change to the contract is determined to have occurred. The limitation of the extension that's identified as allowable must be both objective and measurable. This could be a set dollar amount, a percentage of the contract value, or the number of additional parties that may be added to the contract.

Other Clauses and Provisions

- F. **ACCESS TO RECORDS** USDA, SCN, Inspectors General, the Comptroller General of the United States, or any of their authorized representatives have the right of access to any records that are pertinent to the performance of the Child Nutrition Program to perform audits, execute site visits, or for any other official use.
- G. **ECONOMIC ADJUSTMENTS** An economic adjustment clause in a contract allows for the adjustment of prices based on specific economic conditions. This clause typically accounts for changes in market indices, labor costs, material prices, or other economic factors that can affect the cost of fulfilling the contract. When used, the economic indicator used must be one that is publicly available such as the Consumer Price Index (CPI). The clause should identify the base or starting price, the economic indicator that will be used and the corresponding reference period, the frequency in which adjustments can be made and the process to initiate the adjustment, and the formula that will be used to calculate adjustments.

**Section K: Prohibition on certain telecommunications and video surveillance services or equipment
2 CFR 200.216**

Non-federal entities are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain covered telecommunications equipment or services.
2. Extend or renew a contract to procure or obtain covered telecommunications equipment or services.
3. Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.

As described in section 889 of Public Law 115-232, “covered telecommunications equipment or services” means any of the following:

1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
2. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
3. Telecommunications or video surveillance services provided by such entities or using such equipment.
4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

For the purposes of this section, “covered telecommunications equipment or services” also include systems 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.

When the non-federal entity accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The non-federal entity is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.

Child Nutrition Director is responsible for:

- ensuring compliance with this regulation in all contracts and purchases for telecommunication equipment or services used in the Child Nutrition Program.

Additional Procedures and Practices include:

- **Child Nutrition Director** will ensure that all procurements involving technology, communication systems, or video surveillance equipment/services are reviewed for compliance with 2 CFR 200.216 prior to purchase or contract award.
- **Child Nutrition Director** will ensure that covered equipment or services (e.g., from prohibited manufacturers or providers) are not purchased, used, or renewed using Fund 51 resources.

- **Child Nutrition Director** shall coordinate with district technology or purchasing staff, when appropriate, to verify that equipment or systems meet federal compliance requirements.
- If a potential violation or concern is identified, the **Child Nutrition Director** shall suspend the procurement action until compliance can be verified and, if necessary, consult with KDE School and Community Nutrition (SCN) or district administration.

Section L: Whistleblower protections
2 CFR 200.217

An employee of a recipient or subrecipient must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. The recipient and subrecipient must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.

Child Nutrition Director is responsible for:

- informing employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712.

Additional Procedures and Practices include:

- Employees report concerns through supervisors or district administration.
- Employees may report concerns related to:
 - Mismanagement or misuse of Federal funds
 - Violations of procurement laws or regulations
 - Abuse of authority related to Federal programs
 - Public health or safety concerns
- The **Child Nutrition Director** ensures that no retaliation occurs against employees who make good-faith disclosures; coordination with district administration will occur if concerns are reported.
- Allegations involving potential violations of law will be referred to appropriate district leadership or authorities

Section M: Prior Approval to Procure

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):

Capital expenditures for equipment are allowable as direct costs, provided that items with a unit cost of \$10,000 or more have the prior written approval from SCN.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a \$10,000 per-unit acquisition cost.

Rearrangement and reconversion costs 2 CFR 200.462:

- Special arrangements and alteration of facilities are allowable as a direct cost if the costs are incurred specifically for the Child Nutrition Program and with the prior approval of SCN.

Rearrangements and alterations to a facility are changes that affect the usability of a building or its parts. These changes can include:

- Remodeling including painting and redecorating
- Rearranging structural parts
- Changing or rearranging walls and partitions
- Adding new door openings
- Converting a space to a different function
- Adding to a building system, such as plumbing fixtures, lighting, or electrical outlets
- Installing supplemental air conditioning

SCN maintains a [list of pre-approved equipment](#) that may be procured without further efforts of approval.

SFAs must complete the [Prior Approval Form for Equipment Purchases](#) to obtain pre-approval approval to procure or pay for services to arrange or alter facilities, and to procure equipment costing more than \$10,000 when not found on the pre-approved equipment list.

Child Nutrition Director is responsible for:

- Obtaining prior written approval from SCN to procure equipment that is not on the pre-approved equipment list.
- Obtaining prior written approval from SCN to procure services to arrange or alter facilities.
- Coordinating with district finance, facilities, and purchasing staff, as appropriate, to ensure compliance with prior approval requirements.