

Procurement Policy and Procedures 2019-2020 Original Agreement

Each School Food Authority (SFA)/Local Education Agency (LEA) approved to operate a federal child nutrition program must have a Procurement Policy and Procedures that meets federal, state and local SFA/LEA laws, regulations and policies. This Procurement Policy and Procedures will be used to purchase food, equipment, supplies and services with nonprofit school food service account funds.

2 CFR 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, and AUDIT REQUIREMENTS FOR FEDERAL AWARDS are applicable to SFA/LEA and Non-profit 501 (c) (3) Charter Schools respectively.

All procurements must follow the regulatory language cited in 2 CFR 200 and any other applicable federal regulations, including, but not limited to:

2 CFR 200.318	General Procurement Standards
2 CFR 200.318(c)	Code of Conduct
2 CFR 200.319	Competition
2 CFR 200.320	Methods of Procurement
2 CFR 200.324	Federal awarding agency or pass-through entity review
2 CFR 200.326	Appendix II Part 200 including:
	(A) Contractual Procedures
	(B) Termination Clause
	(C) Equal Employment Opportunity
	(D) Davis-Bacon Act
	(E) Contract Work Hours and Safety Standards Act
	(F) Rights to Inventions Made Under a Contract or Agreement
	(G) Environmental Protection
	(H) Debarment and Suspension Certification
	(I) Lobbying Certification
2 CFR 200.333-337	Retention, Transfer, Storage and Access Requirements for Records
2 CFR 200.338-342	Remedies for noncompliance
2 CFR 200.400	Cost Principles Policy guide
2 CFR 200.403	Factors Affecting Allowability of Cost
2 CFR 200.404	Reasonable Costs
2 CFR 200.405	Allocable Costs
2 CFR 200.406	Applicable credits
2 CFR 200.407	Prior written approval (prior approval)
2 CFR 200.410	Collection of unallowable costs
2 CFR 200.414	Indirect Cost
2 CFR 200.420	Considerations for selected items of cost
2 CFR 200.426	Bad Debts
7 CFR 210	National School Lunch Program Regulations
7 CFR 210.21	National School Lunch Program Procurement Regulations
7 CFR 210.21(d)	Buy American
7 CFR 215.14a	Special Milk Program for Children, if applicable
7 CFR 220.16	School Breakfast Program Regulations
7 CFR 225.17	Summer Food Service Program Regulations, if applicable

Methods of Procurement: (2 CFR 200.320 and 7 CFR 210.21):

The SFA agrees to use the current year purchasing thresholds for micro, small, and formal purchases. The SFA will use the most restrictive federal, state, or local threshold for individual and aggregate purchases.

- **Micro Purchases** –Purchases may be awarded without soliciting competitive quotations. The district must document assurance of reasonable and necessary costs, ensure purchases are distributed equitably among qualified suppliers, and documentation is required.
- **Small Purchases** –Purchases may be awarded with a minimum of two (2) quotes. There must be assurance of open and free competition, and documentation is required.
- **Formal Purchases:**
 - **Invitation for Bids (Sealed Bid)** – Contains technical specifications, must be advertised, public bid opening, award on price alone, should have 2 or more responsible bidders – firm fixed price – to responsible bidder.
 - **Request for Proposal (Competitive Proposal)** – Solicitation must be publicized and includes evaluation criteria, award is based on score with primary weight on price (not price alone). District must document assurance of advertising, proper evaluation/award. The SFA must receive and document discounts, rebates, and credits in cost reimbursable contracts.

- **Non-competitive Proposals** – District must assure adherence that the item is available only from a single source and after solicitation of a number of sources, competition is determined inadequate. May be used in an emergency. Documentation is required.
- **Open and Free Competition** - The formal bid process IS required if purchased goods and services exceed the small purchase threshold. Ark. Code Ann. 6-21-304 requires that all Food Service Contracts (including consulting services) in excess of \$20,500 must be formally bid or procured (this issue is discussed in greater detail in Arkansas Attorney General's Opinion Number 95-294). A procurement made for food services such as a consulting contract using school district funds is not eligible for a school board exemption from the formal procurement process.

* The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. 2 CFR 200.323(d)

Local Procurement Policy and Procedures Requirements:

The SFA/LEA must have an approved Child Nutrition Procurement Policy which contains all of the following information and has been implemented by the SFA/LEA available for review by the ADE, CNU staff during monitoring reviews, legislative audit or private auditors, or other regulatory agencies.

Place a check mark by each number below to attest the SFA is adhering to all Procurement Policy and Procedure Requirements.

____ 1. Name(s) and position(s) of those person(s) authorized by the SFA/LEA as purchasing agent(s) and who is/are responsible for compliance with local, state and federal program regulations and who must follow the approved Local Procurement Policy for the Child Nutrition Programs. This name(s) are submitted on the SFA/LEA's Child Nutrition Contact Information sheet.

____ 2. SFA's/LEA's Procurement Policy must ensure that all solicitations:

- a. Incorporate a clean and accurate description of technical requirement of the material, product or service being procured, which may include a statement of qualitative nature of the material, product or service,
- b. Set minimum essential standards to which the material, product or service must conform if it is to satisfy its intended use, and
- c. Must not contain features which unduly restrict competition. (2 CFR 200.319(c)(1)).

____ 3. USDA regulations require formal Invitation for Bid (IFB) or Request for Proposal (RFP) for purchases falling into the formal purchase threshold.

____ 4. SFAs/LEAs will comply with and enforce the Buy American Provision set forth in 7 CFR 210.21(d) for the purchase of all agricultural goods purchased for Child Nutrition Programs.

____ 5. USDA regulations allow for procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services where the aggregate dollar amount does not exceed \$10,000. LEAs may elect a lower threshold. The SFA/LEA must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations or bids if the SFA/LEA considers the price to be reasonable.

____ 6. SFA's/LEA's must have an approved Written Code of Conduct for Employees Involved in Procurement in Child Nutrition Program as described in Commissioner's Memo CNU-18-037. This written code of conduct is mandated by federal regulations 2 CFR 200.318(c)(1) and must:

- Prohibit employees from soliciting gifts,
- Prohibit employees from travel packages and
- Prohibit employees from other incentives from prospective contractors.
- Prohibit an employee from participating in the selection, award and administration of any contract to which an entity or certain persons connected to them, have financial interest.
- Provide for Child Nutrition Program (CNP) operators to set standards when financial interest is not substantial or the gift is an unsolicited item of nominal value and may be acceptable (for example: coffee mug or calendar).
- Must provide for disciplinary actions to be applied in the event the standards are violated.

____ 7. SFA's/LEA's must ensure that pouring rights and vending contracts within the district meet all federal, state and local regulations, including federal regulations regarding use of non-profit food service account funds and required purchasing by the Child Nutrition Programs and state regulations restricting access times, serving sizes and variety of contents.

____ 8. The SFA/LEA may choose to participate in a Purchasing Cooperative. If applicable, describe how the Purchasing Cooperative will meet local, state and federal procurement regulations. (Reminder, all Purchasing Cooperative procurement documentation must be available for review.)

SFA/School District: _____

LEA #: _____

Additional Procurement Information:

All procurement transactions must reflect the intent and purpose of federal regulations related to open and free competition, necessary and reasonable costs, code of conduct/ethics, and the prohibition of state preference in bid award determinations.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations to bid or requests for proposals must be excluded from competing for such procurements. (2 CFR 200.319). Open and free competition cannot be circumvented. Documentation must be maintained to prove that the appropriate procurement procedures were used and that the final selection is the most efficient and economical for the Child Nutrition programs.

Purchasing Cooperatives Information:

Although participating in intergovernmental and inter-agency agreements can offer greater economy and efficiency for procurement or use of common or shared goods or services (2 CFR 200.318(e)), Program operators participating in these agreements must still conduct competitive procurement in accordance with 2 CFR Part 200.318-.326 and applicable program regulations and guidance. If the SFA/LEA has agreed to participate in a Purchasing Cooperative, a copy of the document(s) representing the agreement(s) or any inter-local agreement(s) between the education cooperative, SFA/LEA, and any third party related to the Purchasing Cooperative must be available for review by ADE, CNU staff during monitoring reviews, legislative audit or private auditors, or other regulatory agencies, as needed during hours of program operation to ascertain compliance.

Food Service Management Company Contracts Information:

The FSMC shall conform to the SFA's agreement with the Arkansas Department of Education Child Nutrition Program. All FSMCs desiring to contract with Arkansas LEAs/SFAs must register with the Arkansas Department of Education on an annual basis. According to 7 CFR 210.2 "*Food Service Management Company* is defined as a commercial enterprise or a nonprofit organization which is or may be contracted with by the school food authority to manage any aspect of the school food service." This would include labor management for meals prepared and served to students and the procurement of food items or goods used in the program operation. Solicitation is carried out using the Request for Proposal (RFP) approved by the United States Department of Agriculture (USDA). Information regarding the FSMC contracting process is available on the ADE, CNU website under the Food Service Management and Commissioner's Memo sections.

Signing this statement certifies that all local, state, and federal requirements and regulations related to procurement and use of federal funds have been implemented by the SFA/LEA.

Superintendent Signature

Date

Child Nutrition Director Signature

Date