

## PROCUREMENT POLICY and PROCEDURES

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)(1)	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:
	Contract Provisions
	Debarment and Suspension Regulation
	Lobbying Regulation
2 CFR 200.333-337	Retention, Transfer, Storage and Access Requirements for Records
2 CFR 200.338	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
7CFR 210	National School Lunch Program Regulations
7 CFR 210.21	National School Lunch Program Procurement Regulations
7 CFR 210.21(d)	Buy American
	Allowable and Unallowable Costs
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
7 CFR 245	Eligibility Regulations
7 CFR 250	USDA Foods / Commodity Distribution Regulations

## **Methods of Procurement: (2 CFR 200.300 and 7 CFR 210.21):**

### **1. Informal Procurement:**

- **Micro Purchases** – Aggregate purchases not exceeding \$3,000 which may be awarded without soliciting competitive quotations - if price is reasonable. District must document assurance of reasonable and necessary costs; purchases are distributed equitably among qualified suppliers; Buy American applies; documentation required.
- **Small Purchases** – Aggregate purchases not exceeding Federal Small Purchase Threshold \$150,000 or the State Purchase Threshold of \$10,000. Minimum of three (3) quotes and assurance of open and free competition, Buy American; documentation required.

### **2. Formal Procurement** – required for purchases of \$150,000 or more for Federal; \$10,000 or more for State Ark. Code Ann. 6-21-304:

- **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, awarded based on score with primary weight on price (not price alone). District must document assurance of advertising, proper evaluation/award. 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. This type can be used in public emergency. Documentation is required.
  - **Note: Open and Free Competition** - The formal bid process IS REQUIRED if purchased services are \$10,000 or more. Ark. Code Ann. 6-21-304 requires that all Food Service Contracts (including consulting services) in excess of \$10,000 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 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.

\_\_\_\_\_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 of \$150,000 or more. Describe in the Procurement Policy how this requirement will be met.

\_\_\_\_4. The State of Arkansas purchasing requirements provide for formal Invitation for Bid (IFB) or RFP procedures for purchases of \$10,000 or more. Describe in the Procurement Policy how this requirement will be met for purchases of \$10,000 to \$150,000.

\_\_\_\_5. SFA's/LEA's determine the threshold for formal and informal procurement to be used \$3,000 to the \$10,000 level. Describe in the Procurement Policy the processes which will be used for purchases with a threshold of \$3,000 to \$10,000 (open market purchases) for informal procurement methods.

\_\_\_\_6. 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 \$3,000. 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. Describe in the Procurement Policy the process which will be used for purchases \$3,000 and below.

\_\_\_\_7. 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 FIN-15-074. 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.

\_\_\_\_8. 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. Describe in the Procurement Policy how these requirements will be met.

\_\_\_\_9. The SFA/LEA may choose to participate in a Purchasing Cooperative for the 2015-16 School Year. 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.)

**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:**

Purchasing cooperatives and the applicable federal and state regulations for such contracts or inter-local agreements with educational service cooperatives are addressed in the ADE Commissioner’s Memo FIN-15-057. If the SFA/LEA has agreed to participate in a Purchasing Cooperative, then 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:**

Procurements for FOOD SERVICE MANAGEMENT COMPANY (FSMC) CONTRACTS must follow the Arkansas Department of Education procurement procedures and will require the submission of an SFA/LEA letter of intent to procure FSMC services. 7 CFR 210.2 states “*Food Service Management Company* means 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.” For example, if an SFA/LEA wishes to contract all labor management for meal preparation and services to students to an outside company as well as the managing the procurement of food for use in the program then this contract would be referred to as a food service management company contract. Each school year an ADE Commissioner’s Memo will be published to advise SFA/LEAs as to the timelines and requirements for such procurements. ADE Commissioner’s Memos FIN-15-025 and FIN-15-026 currently address the FSMC Procurements for the School Year 2015-16.

**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

\_\_\_\_\_  
District Child Nutrition Director Signature

\_\_\_\_\_  
Date