



Child Nutrition Programs  
Procurement Manual  
June 2018



Parts of this manual were adapted from the Wyoming Department of Education  
Child Nutrition Programs

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- (1) mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

This institution is an equal opportunity provider.

The purpose of this manual is to provide guidance so that all School Food Authorities (SFAs), Child and Adult Care Food Program Sponsors, and Summer Food Service Program Sponsors operating **ALL** Child Nutrition Programs (CNP) are able to conduct procurement in accordance with the rules and regulations set forth by USDA. SFAs refers to the person or persons that administer and oversee the Child Nutrition Programs in schools and residential child care institutions. Program Sponsors refers to the person or persons who administer the Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP). To ensure consistency, this manual will refer to all as Sponsors.

It is important that Sponsors understand the thresholds that must be followed, and the procurement method that must be used when purchasing goods and services that fall within those thresholds.

USDA thresholds must be followed unless the State or local thresholds are more stringent; then the most stringent threshold is followed. For example: Delaware allows the purchase of goods or non-professional services of up to \$10,000 to be an open market purchase; quotes are not required. USDA’s open market purchase, referred to as micro purchase, is \$3,500. USDA’s threshold is more restrictive than Delaware’s threshold, therefore Sponsors must follow USDA’s threshold.

<b>THRESHOLDS</b>	
<b>DELAWARE</b>	<b>USDA</b>
Less than \$10,000 – open market purchase \$10,000 - \$24,999 – quotes (informal procurement) <ul style="list-style-type: none"> <li>• For goods and non-professional services</li> </ul> \$25,000 or more – Bid or Proposal (formal procurement) <ul style="list-style-type: none"> <li>• For goods and non-professional services</li> </ul> \$50,000 or more <ul style="list-style-type: none"> <li>• For professional services</li> </ul>	\$3,500 or less – micro purchase (same as open market purchase) \$150,000 or less – quotes (informal procurement) \$150,001 or more – Bid or Proposal (formal procurement)

In order to avoid confusion, all CNP operators in Delaware must follow the thresholds below when purchasing goods and services:

- ✓ Up to \$3,500 – micro purchase
- ✓ \$3,501 to \$24,999 – informal procurement for goods and non-professional services (solicit quotes)
- ✓ \$3,501 to \$50,000 – informal procurement for professional services (solicit quotes)
- ✓ \$25,000 and over – formal procurement for goods and non-professional services (Invitation for Bid) or (Request for Proposal)
- ✓ \$50,001 and over – formal procurement for professional services (Invitation for Bid) or (Request for Proposal)

Remember, procurement is not a scary word, in simple terms procurement is just “Buying Stuff.”



USDA requires that all purchases made with funds generated by Child Nutrition Programs, be conducted in accordance with all Federal procurement requirements.

**Reasons to do Procurement:**

- ✓ Promote free & open competition for your business
- ✓ Get the best quality goods and services at the lowest prices
- ✓ Comply with Federal, State & Local regulations

**Child Nutrition Program Procurement Specific Regulations:**

- ✓ National School Lunch Program – [7 CFR 210.21](#)
- ✓ School Breakfast Program – [7 CFR 220.16](#)
- ✓ Summer Food Service Program – [7 CFR 225.17](#) and [7 CFR 225.15\(m\)](#)
- ✓ Child and Adult Care Food Program – [7 CFR 226.22](#) and [7 CFR 226.21](#)
- ✓ USDA Foods – [7 CFR 250](#), Subpart D

**Federal Procurement Regulations (governs all Federal funds):**

- ✓ [2 CFR 200.317-326](#)

**Procurement Procedures and Written Standard of Conduct:**

- ✓ [2 CFR 200.318\(a\)](#) requires all non-Federal agencies (Sponsors) to have documented **procurement procedures** which reflect applicable State, local, and tribal laws and regulations, as long as the procurements conform to applicable Federal law and standards in [2 CFR Part 200](#).
  - Procurement procedures, often referred to as procurement plans, are a written set of procedures and instructions for conducting procurement. Written plans and procedures identify what needs to be done, who is responsible for doing it, and the process for doing it. The plan should include a step-by-step process for purchasing goods and services.
- ✓ [2 CFR 200.318\(c\)\(1\)](#) requires all non-Federal agencies (Sponsors) to 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. Standards of conduct, often referred to as a code of conduct, must prohibit employees from soliciting gifts, travel packages, and other incentives from prospective contractors. In addition, the code of conduct must 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.

**Types of Purchases Made in Child Nutrition Programs:** Any good or service required for the preparation, service, or administration of reimbursable meals, which may include, but not limited to:

- ✓ Supplies such as forks, napkins, cleaning supplies, office supplies
- ✓ Food for preparing and serving reimbursable meals
- ✓ Food service equipment such as ovens, walk-in freezers, steamers
- ✓ Custodial/cleaning services
- ✓ Pest control
- ✓ Food Service Management Companies or Commercial Food Vendors
- ✓ Point of Service software



## Purchasing Methods:

1. **Micro-Purchase:** Purchases made where the aggregate amount does not exceed \$3,500. The term “aggregate” means a combination of several items. In procurement terms, the aggregate dollar amount would be the cost of all food service goods or services purchased in one single transaction. When using the micro-purchase method:
  - Soliciting quotes is not required
  - Prices must be reasonable
  - Purchases should be distributed equitably among qualified suppliers to ensure that competition occurs

SNP Example: Bread delivery shorted the school hamburger rolls. Hamburgers are on the menu and will be served in 2 hours. The nutrition department purchases 25 packs of hamburger rolls at \$2.99 each for a total of \$74.75 from a local grocer.

SFSP Example: A sponsor needs to purchase small, Ziploc-type bags for baby carrots on the lunch menu. The sponsor goes to a local dollar store and purchases the bags for \$30.00. The following week the sponsor goes to a local grocer for the same bag purchase.

CACFP Example: A home daycare provider purchases 2 gallons of milk for the children’s meals each week. One week, the center staff purchases the milk from a local convenience store located within a block of the daycare home. The following week, the staff purchases the milk from a local grocer and so on. The purchases should be spread equitably among the vendors that can provide the milk.

NOTE: It may be more cost effective to do informal or formal procurement for milk since this is a recurring purchase. Purchases cannot be split to avoid formal/informal procurement.

**2. Small Purchase (Informal Procurement):** Informal procurement, often referred to as “Three Bids and a Buy”, allows program operators to request quotes from an adequate number of vendors (three) without issuing a formal bid or request. This method can be used when the estimated purchase amount falls below \$25,000 for goods and non-professional services or under \$50,000 for professional services.

- ✓ Ensure same specifications are given to vendors
- ✓ Document responses (template quote log in Appendix)
- ✓ Contact a minimum of 3 qualified vendors
- ✓ Award to the most responsive and responsible vendor with the lowest price

SNP Example: A new warmer is needed in a school kitchen. In conducting research, the Sponsor determines that a new warmer meeting the specifications needed will run approximately \$5,000. The Sponsor drafts the specifications needed and contacts three (3) equipment vendors known to carry and stock warmers. This can be done over the phone or via email. The Sponsor documents the quotes provided and awards to the vendor that is the most responsive and responsible with the lowest price.

SFSP Example: A Sponsor needs to purchase 10 mobile warmers for their expanding mobile program and for serving hot meals. In conducting research, the Sponsor determines each warmer will cost approximately \$1,100. The Sponsor drafts the specifications and contacts three (3) vendors for price quotes. The Sponsor documents the quotes provided on the SFSP Informal Quote Log. The Sponsor then selects the vendor that is most responsive and responsible with the lowest price.

CACFP Example: A daycare center needs to purchase a new, commercial grade, large capacity reach-in refrigerator. The Sponsor researches and discovers the new refrigerator may cost up to \$15,000. The Sponsor contacts the State Agency for approval to purchase the equipment (and revises the CACFP budget in DENARS if approved to purchase). The Sponsor director develops the specifications needed for the refrigerator including size, delivery requirements, etc., and contact at least three (3) potential vendors to obtain quotes. The Sponsor director logs the quotes on the CACFP Informal Procurement Quote Log and awards the contract to the most responsive and responsible vendor with the lowest quoted price.

3. **Large Purchase (Formal Procurement):** Formal procurement must be used when purchasing good and non-professional services in Delaware of over \$25,000 or more or \$50,000 or more for professional services. There are two methods of formal procurement depending on what you are purchasing.

**Request for Proposal (RFP)** is used when procuring goods or services where factors in addition to price must be considered.

- ✓ Must be publicly advertised
- ✓ Can result in a fixed-price or cost reimbursable contract
- ✓ Proposal must include evaluation factors with price being weighed the highest
- ✓ There is no requirement for a public opening of proposals
- ✓ Records must be maintained of the original RFP, evaluation of the proposals received and the final award

SNP Example: The school wishes to contract with a commercial pizza vendor (Season's, Domino's, Pat's Pizza, etc.). The Sponsor issues an RFP which includes all specifications (e.g. how often the pizza is needed, what time the pizza should be delivered to the school, how many pizzas, etc.). The RFP includes a taste testing at a specific date and time. The evaluation criteria may be as follows:

Price	_____ 40 points
Taste	_____ 30 points
References	_____ 30 points
Total	_____ out of 100

SFSP Example: A large SFSP Sponsor that provides meals to over 30 sites wishes to purchase a new walk-in freezer and walk-in refrigerator. The Sponsor conducts research to determine what the market value for the size walk-ins they need and contacts the State Agency for approval. Once approved, the SFSP Sponsor issues an RFP for the walk-ins. The evaluation may include:

Price	_____ 40 points
Removal of old equipment	_____ 20 points
Installation	_____ 20 points
References	_____ 20 points
Total	_____ out of 100

CACFP Example: A daycare center issues an RFP for a commercial food vendor to provide reimbursable breakfast and lunch meals to 250 children for 175 operating days. The Sponsor would like to offer the children fresh fruit and vegetables at least three (3) times per week at both breakfast and lunch. The evaluation criteria may include:

Price	_____ 30 points
Cycle Menu Acceptance	_____ 20 points
Fresh Fruit & Vegetables	_____ 20 points
References	_____ 20 points



**Invitation for Bid (IFB)** can be used when purchasing goods or services where price is the only difference.

- ✓ IFB must be publicly solicited and opened
- ✓ Fixed price contracts only
- ✓ No significant difference among goods, products, or services except price
- ✓ Negotiation is not used

SNP Example: The SFA needs to procure a milk vendor to supply your 10 schools with milk and juice. There are three (3) local dairies that produce and deliver milk and juice to schools. The SFA issues an IFB since the only difference between the milk vendors will be price.

SFSP Example: A summer Sponsor with 25 feeding sites needs to procure a milk vendor for 10 weeks while summer meals are being served. There are three (3) local dairies that are able to make milk deliveries. The Sponsor issues at IFB since the only difference in milk vendors would be price.

CACFP Example: A large daycare center wants to procure a milk vendor who can deliver milk and juice three times a week to the center. There are three (3) local dairies that are able to make milk deliveries. The Sponsor issues an IFB since the only difference in milk vendors will be price. The contract is awarded to the vendor with the lowest price.

**4. Non-Competitive Proposal:** Solicitation of a proposal from only one source can only be used

- ✓ After solicitation from a number of sources, competition is inadequate
- ✓ An emergency situation
- ✓ True “sole source” exists, only one vendor provides the goods or services
- ✓ Must obtain prior approval from State Agency

SNP Example: An RFP is publicly solicited for a pre-packaged food vendor for a small single-site school of 110 students. Due to the rural location of the school, only one vendor submitted a proposal although several were contacted and sent the RFP. The school notifies the State Agency and gets permission to sign the contract.

**Contract Provisions (All Federal Awards):** It is important to remember that not all contract provisions are applicable to all Child Nutrition Programs or contracts. The list below applies to all Child Nutrition Programs but may not be applicable for all contracts. For example, the Davis-Bacon Act is only applicable for contracts involving construction. Contract provisions can be found in [7 CFR 3019](#), Appendix A and [2 CFR 200](#), Appendix II.

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” [Appendix II \(C\)](#)
2. *Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), 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 shall 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 is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency. [Appendix II \(D\)](#)
3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency. [Appendix II \(D\)](#)
4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)*—Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall 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 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall 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. [Appendix II \(E\)](#)

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 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. [Appendix II \(F\)](#)
6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). [Appendix II \(G\)](#)
7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of \$100,000 or more shall 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 shall 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 recipient. [Appendix II \(J\)](#)
8. *Debarment and Suspension (E.O.s 12549 and 12689)*—All parties doing business with the Department of Agriculture should consult the Department's regulations for debarment and suspension found at 7 CFR 3017. No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, “Debarment and Suspension.” This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees. [Appendix II \(I\)](#)

#### **Program Specific Contract Provisions:**

1. *Buy American provision requirements.* (Applies only to National School Lunch Program/School Breakfast Program). Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a provision, Section 12(n) to the National School Lunch Act (NSLA) (42 USC 1760(n)), requiring school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodities or products. This Buy American provision supports the mission of the Child Nutrition Programs, which is to serve children nutritious meals and support American agriculture. [2 CFR 210.21 \(d\)](#)

2. Minority Business Enterprises. (Applies only to Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP)). [7 CFR 225.17\(d\)](#) and [7 CFR 226.22\(f\)](#) require that CACFP and SFSP requires that small business, minority-owned businesses, and women's business enterprises are used whenever possible. The steps below must be included in the sponsor's procurement plan/procedures:
  - ✓ Include qualified businesses on solicitation lists and notify them of solicitations whenever they are a potential source
  - ✓ Use the services and assistance, as appropriate, of organizations such as the Small Business Administration and the Minority Business Development Agency.

**Contracting with Food Service Management Companies (FSMC) or Commercial Vendors:** Delaware Department of Education Child Nutrition Programs has a template RFP for FSMC and Vended Meals. SFAs and Sponsors must use these templates. It is extremely important that you plan the procurement and write out your specifications. When reviewing the RFPs make sure:

- ✓ The vendor has responded to the RFP completely and accurately
- ✓ The vendor has not attempted to modify any provision or any part of the solicitation document
- ✓ The vendor is able to comply with all requirements to be considered responsive
- ✓ Vended meals must be fixed cost per meal contracts
- ✓ Contracts must be monitored

**Farm to School, Farm to Summer, Farm to Preschool:** Farm-to-School initiative was developed to encourage the purchase of unprocessed, locally grown and/or locally raised agricultural products from small, local farmers and producers, however, SFAs and sponsors must still make sure that all purchases are done in accordance with all procurement regulations.

Depending on the purchases being made and the dollar amount, small schools, SFSP sites, and daycares may be able to purchase using the micro-purchase or small purchase method.

Schools, daycares and summer sites that receive funds through USDA Federal reimbursement may apply geographic preferences when procuring unprocessed, locally grown or locally raised agricultural products.

## APPENDICES

- I. Informal Procurement Quote Log
- II. SNP Sample Bid Solicitation
- III. CACFP Sample Bid Solicitation
- IV. Template Procurement Procedures and Code of Conduct
- V. 2 CFR Parts 200.317 – 200.326 Super Circular, Procurement Standards

## LINKS

Delaware Department of Education, CACFP Procurement Page: <https://www.doe.k12.de.us/Page/2788>

Delaware Department of Education, SNP Procurement Page: <https://www.doe.k12.de.us/Page/2805>

Delaware Department of Education, SFSP Procurement Page: <https://www.doe.k12.de.us/Page/2813>

State of Delaware Awarded Vendors: [http://contracts.delaware.gov/vendor\\_list.asp?c=0&s=a](http://contracts.delaware.gov/vendor_list.asp?c=0&s=a) All SFAs and Program Sponsors operating Child Nutrition Programs in Delaware may access contracts awarded by Government Support Services.

Delaware Farm to School: <https://agriculture.delaware.gov/communications-marketing/farm-to-school/>

## GLOSSARY

**SNP:** School Nutrition Program including National School Lunch Program, School Breakfast Program, Afterschool Snack Program, Fresh Fruit and Vegetable Program, and Special Milk Program.

**CACFP:** Child and Adult Care Food Program includes daycare centers, daycare homes, adult care centers, At-Risk Afterschool Meal Program.

**SFSP:** Summer Food Service Program, which can include schools, churches, parks, camps, apartment complexes or any site, approved to serve summer meals through SFSP.

**Fixed Price:** Fixed price or fixed fee means an agreed upon amount that is fixed at the inception of the contract. In some cases, a fixed price contract may contain an economic price adjustment tied to an appropriate index, such as milk. Indexes must be auditable and available to the public.

**Cost Reimbursable Contract:** A cost reimbursable contract is a formal, legally enforceable contract that reimburses the vendor for costs incurred under the contract but does not provide for any other payment to the contractor, with or without a fixed fee. In a cost reimbursable contract, allowable costs will be paid from the nonprofit school nutrition account to the vendor net of all discounts, rebates, and other applicable credits accruing to or received by the vendor. Additionally, this rule requires vendors to provide sufficient information to permit the SFA to identify allowable and unallowable costs and the amount of all such discounts, rebates, and credits on invoices and bills presented for payment to the SFA.

**Responsive:** To be considered responsive, the goods or services provided by the vendor must precisely meet the specifications in the solicitation. Since contract-pricing methods cannot be established by potential vendors, the CNP participant must state the contract cost method (fixed price or cost reimbursable, with or without a fixed fee) that it will use. A vendor must accept the contract pricing method that was established by the CNP participant.

**Responsible:** A vendor is considered responsible if they are capable of successfully performing under the terms and conditions of the contract.

**INFORMAL PROCUREMENT “QUOTES” LOG AND EVALUATION MATRIX**

(Purchases costing more than \$3,500 and less than \$25,000)

Supplier Name:		Bidder 1:			Bidder 2:			Bidder 3:		
<b>I.</b>										
<b>II. Items to be Purchased:</b>	Quantity estimated to be purchased	Unit Price	Extended Price (Quantity x Unit Price)	*BS (✓)	Unit Price	Extended Price (Quantity x Unit Price)	*BS (✓)	Unit Price	Extended Price (Quantity x Unit Price)	*BS (✓)
(a) Delivery Frequency :				<input type="checkbox"/>			<input type="checkbox"/>			<input type="checkbox"/>
(b) Bid will be honored for:				<input type="checkbox"/>			<input type="checkbox"/>			<input type="checkbox"/>
(c) Special Requirements/Specifications (i.e. delivery):				<input type="checkbox"/>			<input type="checkbox"/>			<input type="checkbox"/>
<b>III.</b> Product name & specification:				<input type="checkbox"/>			<input type="checkbox"/>			<input type="checkbox"/>
Product name & specification:				<input type="checkbox"/>			<input type="checkbox"/>			<input type="checkbox"/>
Product name & specification:				<input type="checkbox"/>			<input type="checkbox"/>			<input type="checkbox"/>
Product name & specification:				<input type="checkbox"/>			<input type="checkbox"/>			<input type="checkbox"/>
Product name & specification:				<input type="checkbox"/>			<input type="checkbox"/>			<input type="checkbox"/>
Product name & specification:				<input type="checkbox"/>			<input type="checkbox"/>			<input type="checkbox"/>
<b>Total:</b>		\$	\$	\$	\$	\$	\$	\$	\$	\$
*Bidder Selected (BS)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
*Bidder Selected (BS); school can award all items to one bidder (lowest total price) or award purchase on a line item basis (lowest line item price). School need to tell the bidders which option they will use for awarding the purchase when they are asking for pricing. Schools can state that either option may be used by the school to award the purchase.										
<b>IV. Method of contact:</b>	Email/Fax/Mail/in person/Phone									
<b>V. Name of person quoting pricing:</b>										
<b>VI. Date contacted:</b>										
<b>VII. Additional Notes:</b>										
<b>VIII.</b>	Signature and title of person completing this form:									IX. Date:
<b>X. (a) Name of bidder selected:</b>										
<b>(b) Bidder selected was notified on:</b>	(If notification was in writing attach document to the procurement log/evaluation matrix)									
<b>(c) Method of notification:</b>	(Email/Fax/Mail/in person/Phone)									

**INFORMAL PROCUREMENT “QUOTES” LOG AND EVALUATION MATRIX**  
**(Purchases costing more than \$3,500 and less than \$25,000)**  
**INSTRUCTIONS FOR COMPLETION**

- I. Determine the vendors/suppliers to contact. If you plan to contact more than 3 vendors, use a second form.
- II. Enter Item(s) to be purchased.
  - (a) What item(s) are you purchasing?
  - (b) How long do you need the quoted price to be honored?
  - (c) Are there any special requirements? (Example: need delivered to individual schools etc.)
- III. Product name and specification. Be sure that each vendor contacted is quoting the exact same product (i.e. red delicious apple, 113 count).
  - Enter the quantity you need.
  - Enter the vendor's quote per unit.
  - Enter the extended price (price quoted x quantity purchasing).
  - Repeat the same process for the second and third vendor contacted.
  - Once you have obtained 3 quotes, review and select the bidder that can provide the product specifications at the lowest price. Put a check mark next to the bidder selected (\*BS ✓)
- IV. Enter the method of contact used for each vendor (phone, fax, email).
- V. Enter the name of the person who quoted the price.
- VI. Enter the date the vendor was contacted.
- VII. Add any additional notes that may be pertinent.
- VIII. Signature and Title of the person who completed the form.
- IX. Date of signature.
- X.
  - (a) Enter name of vendor/bidder selected.
  - (b) Enter date selected vendor/bidder was notified.
  - (c) Enter method of notification.

## Appendix II – SNP Sample Bid Solicitation

ATTENTION: Food Service Management Companies/Pre-plated Food Vendors Companies

[SFA or Sponsor Name] is accepting bids from Food Service Management Companies and/or Pre-plated Meal Vendors to provide [List Meals to be Provided] that meet all United States Department of Agriculture guidelines for meals served in the Child Nutrition Programs.

Bid packets [will be sent out/can be picked up] by contacting:

[SFA or Sponsor Contact]  
[School or Sponsor Name]  
[Address]  
[Phone Number]

The [SFA or Sponsor] [Board of Education or Board of Directors] reserves the right to reject any and all bids or accept the bid that it finds to be the most responsive and responsible bid submitted.

All bids must be received no later than [Date and Time\*]. Bids received after this date and time will not be considered. Bids must be addressed to the attention of [Name] at [Address] in a sealed envelope. The outside of the envelope should be clearly marked Child Nutrition Program Bid.

\*Bid opening must be at least 21 days from the posted solicitation.



## Appendix III – CACFP Sample Bid Solicitation

[Enter Sponsor Name], an approved sponsor in the State of Delaware, invites the submission of sealed bids for prepackaged meals meeting program requirements as described in the bid specification and contract. Bids containing dual prices for one meal type that are tied to a sponsor's ultimate level of meal service will be rejected. Contractors submitting bids must be approved by the State of Delaware, Department of Education to participate in the Child and Adult Care Food Program (CACFP). These meals are to be served to children or adults in the CACFP. Delivery is to be made as per bid specifications and contract.

Invitation for Bid may be obtained by contacting:

[Enter Name of Contact]  
[Enter Sponsor Name]  
[Enter Address]

Sealed bids clearly marked on the outside envelope, "Child and Adult Care Food Program Bid," along with a sample lunch are to be received by [Enter Date and Time] at [Enter Location].

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BOND REQUIREMENTS (to be added to notice if applicable). A bid bond in the amount of [Enter Percentage] percent of the estimated total amount of bid must accompany the bid. The bid bond must be from a company listed in the current Department of Treasury Circular 570 certified to do business in Delaware. No other type of bid bond is acceptable. Percent cannot be less than 5 nor more than 10 of the amount of the bid.

NOTE: There is a 14-Day Public Notification for bid requests.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](#), (AD-3027) found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

- (1) mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

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**Appendix IV – Procurement Procedures and Written Code of Conduct Template**

School Food Authorities (SFAs) can use this template to identify their procurement plan for USDA School Nutrition Programs. School Nutrition Programs include the National School Lunch Program (NSLP), School Breakfast Program (SBP), Afterschool Snack Program (ASSP), and Fresh Fruit and Vegetable Program.

This template can be used to guide SFAs in drafting procurement procedures that are SFA specific. Each SFA is responsible for ensuring that all procurement procedures comply with Federal, State, and Local procurement regulations.

**PROCUREMENT PROCEDURES**

**A. General Procurement**

1. The SFA plan for procuring items for use in the School Nutrition Programs is as follows. The procurement procedures maximize full and open competition, transparency in transactions, comparability, and documentation of all procurement activities.
2. If the SFA is purchasing an item or items with an aggregate total of \$3,500 or less, they may conduct a **micro-purchase** (open market). To the extent practicable, the SFA must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the SFA considers the price to be reasonable as required by 2 CFR 200.67.
3. For purchases of material goods and non-professional services between \$3,501 and \$24,999 and professional services up to \$50,000, the SFA must conduct informal procurement at a minimum. The SFA must draft specifications for the goods or services being procured and solicit quotes from at least three (3) qualified vendors.
4. For purchases of \$25,000 or more for goods and non-professional services and \$50,000 or more for professional services, formal procurement procedures must be used as required by [2 CFR 200.318-.326](#).

**B. Formal Procurement**

When a formal procurement method is required, the SFA must solicit through a Request for Proposal (RFP) or Invitation for Bid (IFB).

1. A solicitation of an IFB or a RFP must be placed in a public news publication in order to publicize the intent of the SFA to purchase needed items. The advertisement for bids/proposals must run at least once over two consecutive weeks. The solicitation will include:
  - general description of goods/services being purchased;
  - contact information where potential vendors can get more information/bid packet;
  - date of pre-bid meeting (if applicable) and if attendance is a requirement for bid award;
  - deadline for submission of sealed bids or proposals.
  - time and location of bid opening

-1-

2. In an IFB or RFP, each vendor must be given an opportunity to bid on the same specifications.

3. The developer of written specifications or descriptions for procurements is **prohibited** from submitting bids or proposals for such products or services.
4. The IFB or RFP must clearly define the purchase conditions. The following list includes requirements, not exclusive, to be addressed in the procurement document:
  - contract period;
  - date, time, and location of IFB/RFP opening;
  - how vendor is to be informed of bid acceptance or rejection;
  - delivery schedule;
  - requirements (terms and conditions) that bidder must fulfill in order for bid to be evaluated;
  - benefits to which the SFA will be entitled if the contractor cannot or will not perform as required;
  - statement assuring positive efforts will be made to involve minority and small business;
  - statement regarding the return of purchase incentives, discounts, rebates, and credits to the SFA's nonprofit school food service account;
  - contract provisions as required in [Appendix II to 2 CFR 200](#);
  - contract provisions as required in [7 CFR 210.21\(f\)](#) for all cost reimbursable contracts;
  - contract provisions as required in [7 CFR 210.16\(a\)\(1-10\)](#) and [7 CFR 250.53](#) for food service management company contracts;
  - price adjustment clause (tied to a standard index, i.e., consumer price index, or other as stated in terms and conditions for pricing and price adjustments);
  - method of evaluation and type of contract to be awarded (solicitations using an IFB are awarded to the lowest responsive and responsible bidder; solicitations using a RFP are awarded to the most advantageous bidder/offeror with price as the primary factor among factors considered);
  - method of award announcement and effective date (if intent to award is required by state or local procurement requirements);
  - method of shipment or delivery upon contract award;
  - provision requiring contractor to maintain all required records for three years after final payment and all other pending matters (audits) are closed for all negotiated contracts
  - description of process for enabling vendors to receive or pick up orders upon contract award;
  - signed [Debarment/Suspension Certificate](#);
  - "Buy American" as outlined in [7 CFR Part 210.21\(d\)](#) and [SP 24-2016](#); and
  - specifications and estimated quantities of products and services prepared by the SFA and provided to potential contractors desiring to submit bids/proposals for the products or services requested.
5. The following criteria will be used in awarding contracts as a result of bids/proposals. Price must be the highest weighted criteria. Examples of other possible criteria include quality, service, delivery, and availability.

Price

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6. In awarding a RFP, a set of award criteria in the form of a weighted evaluation sheet will be provided to each bidder in the initial bid document materials. Price alone is not the sole basis for award, but remains the primary consideration among all factors when awarding a contract. Following evaluation and negotiations, a firm fixed price or cost reimbursable contract is awarded.
  - The contracts will be awarded to the responsible bidder/proposer whose bid or proposal is responsive to the invitation and is most advantageous to the SFA, price as the primary and other factors considered. Any and all bids or proposals may be rejected in accordance with the law.
  - A SFA representative is required to sign on the bid tabulation of competitive sealed bids or the evaluation criterion score sheet of competitive proposals signifying a review and approval of the selections.
  - Any time an accepted item is not available, the SFA will select the acceptable alternate. The contractor must inform the SFA if a product is not available. In the event a nondomestic agricultural product is to be provided to the SFA, the contractor must obtain, in advance, written approval for the product. The vendor must comply with the Buy American Provision.
  - Full documentation regarding the reason an accepted item was unavailable, and the procedure used in determining acceptable alternates, will be available for audit and review.
  - The SFA is responsible for maintaining all procurement documentation.

### **C. Small Purchase Procedures**

If the amount of purchases for items is less than \$25,000 for goods and non-professional services or less than \$50,000 for professional services, the following small purchase procedures including quotes can be used. (SFAs can always conduct a formal procurement review even when goods or services are below the formal procurement threshold).

1. Quotes from an adequate number of qualified sources (at least 3) are required.
2. Written specifications will be prepared and provided to potential vendors.
3. Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. A minimum of three vendors must be contacted.
4. The price quotes will receive appropriate confidentiality before award.
5. Quotes will be awarded to the most responsive and responsible vendor with price being the primary consideration.
6. The SFA will be responsible for documentation of records to show selection of vendor, reasons for selection, names of all vendors contacted, price quotes from each vendor, and written specifications.

If the SFA awards to a vendor that is not the lowest price quote, a written explanation must be documented as to why.

7. Bids will be awarded on the following criteria. Price must be the highest weighted criteria. Examples of other possible criteria include quality, service, delivery, and availability.

Price

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8. The SFA is required to sign all quote tabulations, signifying a review and approval of the selections.

**D. Additional SFA Responsibilities:**

The SFA shall agree to retain all books, records, and other documents relative to the award of the contract for three (3) years after final payment. If there are audit findings that have not been resolved, the records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit. Specifically, the SFA shall maintain, at a minimum, the following documents:

- a copy of the original solicitation;
- the selection of contract type (fixed/cost-reimbursable);
- pre-bid meeting attendance logs (if applicable);
- the basis for vendor selection;
- the basis for award cost or price;
- the terms and conditions of the contract;
- billing and payment records;

**E. Code of Conduct**

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal, State, or local award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the SFA may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, the SFA may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.

The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the SFA. Based on the severity of the infraction, the penalties could include a written reprimand to their personnel file, a suspension with or without pay, or termination.

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- (1) mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410;
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- (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

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## Appendix V – 2 CFR 200.317 – 200.326, Super Circular, Procurement Standards

### §200.317 Procurement by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered *materials* and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

### §200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(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.

(c)(1) 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, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and

local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) 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 is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.212 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(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 non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since 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, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.



## **§200.319 Competition.**

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. 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 or requests for proposals must be excluded from competing for such procurements. Some of the 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.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

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

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

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

### **§200.320 Methods of procurement to be followed.**

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.67 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) 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.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for state, local, and tribal governments, the invitation for bids must be publically advertised;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

**§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

**§200.322 Procurement of recovered materials.**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

**§200.323 Contract cost and price.**

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of

analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

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

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

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

#### **§200.324 Federal awarding agency or pass-through entity review.**

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement 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 or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

### **§200.325 Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination 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 such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **§200.326 Contract provisions.**

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

