

## PROCUREMENT (REGULATION)

### SECTION I - PROCUREMENT PLAN GENERAL REQUIREMENTS

The Holdenville Public Schools plan for procuring items for use in the Child Nutrition Program is as follows:

1. The procurement plan provides for free and open competition, transparency in transactions, comparability, and documentation of all procurement activities.
2. The following **Code of Conduct** will be expected of all persons who are engaged in the awarding and administration of contracts supported by Child Nutrition reimbursement funds. These written standards of conduct include:
  - a. No employee, officer, or agent shall purchase or establish a contract if a conflict of interest, real or apparent, would be involved. Conflicts of interest arise when one of the following has a financial or other interest in the firm selected for the award:
    - 1) The employee, officer, or agent;
    - 2) Any member of the immediate family;
    - 3) His or her partner;
    - 4) An organization which employs or is about to employ one of the above.
  - b. Employees, officers, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
  - c. The purchase during the school day of any food or service from a contractor for individual use is prohibited.
  - d. No item, food, or beverage purchased with nonprofit school food service funds will be removed from the school premises by school personnel.
  - e. Penalties for violation of the standards of code of conduct of the SFA School Child Nutrition Program (CNP) should be:
    - 1) Reprimand by Board of Education
    - 2) Dismissal by Board of Education
    - 3) Any legal action necessary
3. Regardless of procurement method, the following factors will be determined regarding the allowability of costs:
  - a. Be necessary and reasonable for proper and efficient administration of the program(s)
  - b. Be allocable to federal awards applicable to the administration of the programs(s)
  - c. Be authorized and not prohibited under state and local laws
4. Purchasing will be conducted at the most restrictive procurement threshold:

	Federal Procurement Thresholds	SFA/Sponsor Procurement Thresholds (input)
Micro-purchasing	Less than \$10,000	Less than \$10,000
Equipment	Over \$5,000	Over \$5,000
Small/Informal	Less than \$250,000	Less than \$250,000
Formal	Greater than \$250,000 or any total Food Service Management Contract	\$250,000 or greater

**PROCUREMENT, REGULATION (Cont.)**

5. All staff conducting purchasing will be trained on the procurement procedures.
6. All purchasing records will be maintained no less than the current year plus 3 additional years.
7. **Buy American Provision**  
 Section 104(d) amended Section 12(n) of the National School Lunch Act (NSLA) (42 U.S. 1760) to require SFAs participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) in the United States *to purchase for those programs, to the maximum extent practicable, domestic United States Department of Agriculture (USDA) Foods or products*. For purposes of this provision, the term domestic food commodity or product means agricultural USDA Foods produced in the United States, including Guam, American Samoa, the Virgin Islands, Puerto Rico, and the Northern Mariana Islands, and food products processed in the United States **SUBSTANTIALLY** using agricultural USDA Foods that are produced in the United States. The Conference Report accompanying Public Law 105-336 makes it clear that the term **SUBSTANTIALLY** means that over 51 percent of the processed food comes from American produced products. (SD-24-2016)
8. **Geographical Preference**  
 The use of statutorily or administratively imposed in-state or local geographic preferences for procurements under USDA entitlement programs is prohibited, except for unprocessed locally grown or locally raised agricultural products. The Food, Conservation, and Energy Act of 2008 (Public Law 110-246, Section 4302), amended Section 9(j) of the National School Lunch Act (NSLA) to allow institutions receiving funds through CNP to apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products.  
  
 When geographic preference is used, an SFA must still get quotes from several farmers when procuring unprocessed locally grown or locally raised agricultural products so that competitors have an opportunity to compete for the bid.
9. **Protest procedures** are required. SFAs will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the SFA before pursuing a protest with a federal agency. Reviews of protests by the federal agency will be limited to: (Reference USDA Policy Memo2006-SNP-06)
  - a. Violations of federal law or regulations and the standard of 7 CFR §3016 (violations of state or local law will be under the jurisdiction of state or local authorities).  
AND
  - b. Violations of the SFA's protest procedures for failure to review a complaint or protest. Protests received by the federal agency other than those specified above will be referred to the SFA.
10. **Beverage and Snack Agreements** (Reference USDA Policy Memo 99-SP-09)  
 In some cases, the exclusive contracts do not involve nonprofit school food service account (SFSA) funds, in which case there are no federal FNS procurement issues involved. However, if any nonprofit school food service products are purchased via the exclusive contract, then all federal procurement requirements must be met. If small purchase procedures are used for a procurement of \$250,000 or less, price or rate quotations must be obtained from an adequate number of qualified sources. Additionally, if nonprofit school food service products are included in the contract, any rebates, commissions, scholarship fund

**PROCUREMENT, REGULATION (Cont.)**

contributions, or any other payments back to the SFA or SFA-related organizations must be reimbursed to the nonprofit SFA on a prorated basis.

- a. No federal prohibition on multiyear contracts other than for FSMCs. It is suggested, however, that school procurement officials consider the impact of multiyear contracts, as opposed to one-year contracts, on beverages and snacks. Long-term contracts would appear to be more appropriate for nonperishable products and services such as warehousing and equipment rental. As noted above, however, there is no federal prohibition on these longer-term contracts.
  - b. Public Law 108-265, Section 102, requires a school participating in the NSLP shall not directly or indirectly restrict the sale or marketing of fluid milk products by the school (or by a person approved by the school) at any time or any place on the school premises or at any school-sponsored event.
  - c. Schools participating in the NSLP must check all beverage contracts for language that may limit the sale of milk on school grounds. The sale of milk cannot be limited at any time during the school day or at any place on the school premises. Contracts may have language that is hard to understand. Look for the term ***Exclusive Pouring Rights***. Every school district must have amended their beverage contracts that limit the sale of milk should such language exist. The primary effect of this provision is to prevent contract limitations on the sale of fluid milk in competition with other beverages.
11. The SFA will take all necessary affirmative steps to assure that **minority firms, women's business enterprises, and labor surplus area firms** are used when possible. Affirmative steps shall include:
- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
  - b. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.
  - c. 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.
  - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises.
  - e. Using the services and assistance of the Small Business Administration (SBA), and the Minority Business Development Agency of the Department of Commerce.
  - f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

**Certifications**

1. **Nonkickback Affidavit** - Please note that Oklahoma statute 62 O.S. §310.9 requires a signed and notarized nonkickback affidavit on every purchase order of \$25,000 or more. The affidavit is to be signed by the person or persons authorized to accept payment on behalf of the architect, contractor, engineer, or supplier.
2. **Lobbying Certification** (Reference 200.326[1])
  - a. Lobbying certification must be obtained for procurement contracts of more than \$100,000. Any vendor whose contract award is for more than \$250,000 must complete a Certification Regarding Lobbying form. The SFA must keep this signed certification statement on file with a copy of the vendor's contract.

**PROCUREMENT, REGULATION (Cont.)**

- b. Any SFA or its vendors who participate in lobbying activities must complete a Disclosure of Lobbying Activities form. SFAs must submit this completed form to the State Agency. A vendor would submit its completed form to the SFA.
3. **Debarment or Suspension.** An SFA is prohibited from contracting with an individual or company that has been debarred or suspended in accordance with 2 CFR §180, as adopted and modified by USDA regulations at 2CFR §417. This prohibition does not extend to contracts in existence at the time of the debarment or suspension or to most contracts under \$25,000. Rather, it applies to new contracts and extensions or renewals of existing contracts of \$25,000 or more and to contracts for audit services, regardless of amount.  
**(FORMAL CONTRACTS)**
4. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the nonfederal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 70 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or contracts for transportation or transmission of intelligence.
5. **Equal Opportunity and Discrimination.** The vendor certifies it is an Equal Opportunity Employer, a provider of services and/or assistance, and is in compliance with the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended, and Executive Orders 11246 and 11375. The vendor assures compliance with the Americans With Disabilities Act of 1990 (Public Law 101-336), all amendments to, and all requirements imposed by the regulations issued pursuant.  
**(FORMAL CONTRACTS OF \$10,000 OR MORE)**
6. Contracts in excess of \$150,000 shall contain provisions that require compliance with all applicable standards, orders, or requirements issued under Section 306 of the **Clean Air Act** (42 U.S.C. 1857[h]), Section 508 of the **Clean Water Act** (33 U.S.C. 1368), Executive Order 11738, and **Environmental Protection Agency (EPA)** Regulation (40 CFR §15), which prohibit the use of nonexempt federal contracts, grants, or loans of facilities included on the EPA list of violating facilities. The provision shall require reporting of violations to the grantor agency and to the EPA Assistant Administrator for Enforcement. The contract must recognize mandatory standards and policies relating to energy efficiency that are contained in the State Agency conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

**SECTION II - MICRO PURCHASING**

If the amount of purchases for items is less than \$10,000 and less than the SFA/Sponsors' small purchase threshold, the following procedure will be used.

**PROCUREMENT, REGULATION (Cont.)**

1. Purchases will not be separated into 2 or more purchases to meet or be below the \$10,000 threshold.
2. The price quotes will not be required. Competition is not required.
3. When practicable, micro-purchases will be distributed equitably among qualified suppliers.
4. Documentation of purchases will be kept and maintained for 3 years plus the current year.
5. The Superintendent or Designee will be responsible for documentation of purchase.

*Note: Federal threshold of \$2,000 is applicable in the case of acquisitions for construction subject to the Davis Bacon Act*

**SECTION III - PURCHASING EQUIPMENT**

If the amount of purchases for equipment is greater than \$5,000, the following procedure will be used.

1. Written specifications will be prepared and provided to vendors.
2. Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. A minimum of two vendors shall be contacted.
3. The price quotes will receive appropriate confidentiality before award.
4. If using USDA funding for the purchase, the SFA/Sponsor will seek prior approval from Oklahoma Child Nutrition Programs unless the equipment is placed on the Equipment Pre-Approval list located in the Child Nutrition Manual.
5. Quotes will be awarded by the Superintendent or Designee. Quotes awarded will be to the lowest and best quote based upon quality, service availability, and price.
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**.
7. The SFA will be responsible for documentation that the actual product specified is received.

***Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See also §200.12 Capital assets, 200.20 Computing devices, 200.48 General purpose equipment, 200.58 Information technology systems, 200.89 Special purpose equipment, and 200.94 Supplies.***

**PROCUREMENT, REGULATION (Cont.)****SECTION IV - SMALL PROCUREMENT**

If the amount of purchases for items is greater than \$10,000 and less than \$250,000 (*or the SFA/Sponsor's small purchase threshold*), Small Purchase Procedures must be followed. There are two methods of Small Purchasing allowed, either Quotes and/or a Market Basket Study. Quotes documented from an adequate number of qualified sources will be required.

Select one

- ☐ Purchases over \$10,000 but below \$250,000
- ☐ Purchases over \$10,000 but below \_\_\_\_\_ (*Sponsor input if threshold is below federal limit of \$250,000, must use most restrictive*)

**Method 1: Quotes**

1. Written specifications will be prepared and provided to the vendor.
2. Each vendor will be contacted and given an opportunity to provide a price quote on the same specifications. A minimum of two vendors shall be contacted.
3. The SFA will be responsible for contacting potential vendors when price quotes are needed.
4. The price quotes will receive appropriate confidentiality before award.
5. Quotes will be awarded by the Superintendent. Quotes awarded will be to the lowest and best quote based upon quality, service availability, and price.
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.
7. The SFA will be responsible for documentation that the actual product specified is received.
8. Any time an accepted item is not available, the SFA will select the acceptable alternate. Full documentation will be made available as to the selection of the acceptable item. Substituted items will not be made at the vendor's discretion.
9. Purchasing will be based on the following criteria:
  - a) Quality
  - b) Service Availability
  - c) Price

**PROCUREMENT, REGULATION (Cont.)**
**SECTION V - FORMAL PROCUREMENT (N/A)**

Select one or more as applicable

- ☐ Purchases over \$250,000 (*Sponsor input if threshold is below federal limit of \$250, 000, must use most restrictive*)
- ☐ Food Service Management Contracts at any total cost (*does not include vended meal agreements*) n/a, no purchases over \$250,000 or Food Service Management Contracts
1. If the amount of purchases is \$250,000 (or SFW Sponsor approved threshold if less), or for a Food Service Management Contract, formal procurement procedures will be used as required by 2 CFR Part 200.318-326, formerly 7 CFR §3016.36.
  2. Formal bid procedures will be applied on the basis of:

Category	Procurement Method	Evaluation Used	Contract Award Type	Contract Duration/Frequency
Frozen Foods ( <i>Meats, Fruits, Vegetable</i> ); Canned Foods ( <i>same as above</i> )	Formal	Bottom line	Fixed price	Bi-annual (August 1-January 31; February 1-June 15)
Fresh Fruits and Vegetables	Formal	Bottom line	Cost reimbursable plus fixed-fee	Bi-annual, same as above.
Dish Machine Chemicals	Formal	Bottom line	Fixed price with price adjustment	August 1-June 15
Fresh Bread	Formal	Bottom line	Fixed price with price adjustment	Annual by SY
Milk and Dairy Products	Formal	Bottom line	Fixed price with price adjustment	Annual by SY
Office Supplies	District contract	Bottom line	Cost reimbursable plus fixed-fee	Annual July 1-June 30

3. Formal bid procedures will be applied on **the basis of a:**
  - ☐ Centralized System
  - ☐ Individual Site
  - ☐ Multi-Sponsor Systems
  - ☐ State Contract
  - ☐ Combination of above (specify): \_\_\_\_\_
4. Because of the potential for purchasing more than \$250,000, it will be the responsibility of the SFA to document the amounts to be purchased so the correct method of procurement will be followed.

**PROCUREMENT, REGULATION (Cont.)**

When a formal procurement method is required, the following ***COMPETITIVE SEALED BID or an Invitation for Bid (IFB) or COMPETITIVE PROPOSAL in the form of a Request for Proposal (RFP)*** procedures will apply:

- An announcement of an Invitation for Bid (IFB) or a Request for Proposal (RFP) will be placed in the (Newspaper/media, IPS Website, other internet source) to publicize the intent to purchase needed items. The advertisement for bids/proposals or legal notice will be run for (2 weeks).
- An advertisement is required for all purchases over the districts shall purchase threshold of \$150,000 or greater. The announcement will contain a:
  - general description of items to be purchased
  - deadline for submission of questions and the date written responses will be provided including addenda to bid specifications, terms and conditions as needed
  - date of pre-bid meeting, if provided, and if attendance is a requirement for bid award
  - deadline for submission of sealed bids or proposals, and
  - address of location where complete specifications and bid forms may be obtained.
- In an IFB or RFP, each vendor will be given an opportunity to bid on the same specifications.
- The developer of written specifications or descriptions for procurements will be prohibited from submitting bids or proposals for such products or services.
- The IFB or RFP will clearly define the purchase conditions. The following list includes requirements, not exclusive, to be addressed in the procurement document:
  - Contract period
  - SFA/Sponsor is responsible for all contracts awarded (statement)
  - Date, time, and location of bid opening
  - How vendor is to be informed of bid acceptance or rejection
  - Delivery schedule
  - Set forth requirements (terms and conditions) which bidder must fulfill in order for bid to be evaluated
  - Benefits to 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 nonprofit Child Nutrition account
  - Contract provisions as required in Appendix II for 2 CFR Part 200, formerly 7 CFR Part 3016.36(i)
  - Contract provisions as required in 7 CFR Part 210.21 (f) for all cost reimbursable contracts
  - Contract provisions as required in 7 CFR Part 210.16(a)(1-10) for Food Service Management Company contracts
  - Procuring instrument to be used are purchase orders from firm fixed prices after formal bidding
  - Price adjustment clause (escalation/de-escalation) based on appropriate standard or cost index (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
  - Method of award announcement and effective date (if intent to award is required by State or local procurement requirements)



**PROCUREMENT, REGULATION (Cont.)**

- Specific bid protest procedures including contact information of person and address and the date by which a written protest must be received
- Provision requiring access by duly authorized representatives of the SFA/Sponsor, State Agency, United State Department of Agriculture, or Comptroller General to any books, documents, papers and records of the contractor which are directly pertinent to all negotiated contracts
- 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
- Provision requiring the contractor to recognize mandatory standards/policies related to energy efficiency contained in the State Energy Plan issued in compliance with the Energy Policy and Conservation Act (PL 94-165)
- Signed statement of non-collusion
- Signed Debarment/Suspension Certificate or statement included in contract or copy of Excluded Parties List System (EPLS).
- Specifications and estimated quantities of products and services prepared by SFA/Sponsor and provided to potential contractors desiring to submit bids/proposals for the products or services requested.
- If any potential vendor is in doubt as to the true meaning of specifications or purchase conditions, interpretation will be provided in writing to all potential bidders by the Superintendent or Designee and date specified.
- The Superintendent or Designee will be responsible for securing all bids or proposals.
- The Superintendent or Designee will be responsible to ensure all SFA/Sponsor procurements are conducted in compliance with applicable Federal, State, and local procurement regulations.
- The following criteria will be used in awarding contracts as a result of bids/proposals.
  - Quality
  - Service Availability
  - Price

In awarding a competitive negotiation (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 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/Sponsor, price, and other factors considered. Any and all bids or proposals may be rejected in accordance with law.
- The Superintendent 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.
- The Superintendent reviewing the procurement system to ensure compliance with applicable laws.
- The Superintendent or Designee will be responsible for documentation the actual product specified is received.
- Any time an accepted item is not available, the Superintendent or Designee will select the acceptable alternate. The contractor must inform Superintendent within 10 days a product is not available. In the event a non-domestic agricultural product is to be provided to the SFA/Sponsor, the contractor must obtain, in advance, the written approval of the product. The SFA must comply with the Buy American Provision.

**PROCUREMENT, REGULATION (Cont.)**

- Full documentation as to the reason an accepted item was unavailable, and to the procedure used in determining acceptable alternates, will be available for audit and review. The person responsible for this documentation is Superintendent or Designee.
- The Superintendent is responsible for maintaining all procurement documentation.

**SECTION VI - NON-COMPETITIVE NEGOTIATION**

If items are available only from a single source *when the award of a contract is not feasible under small purchase, sealed bid or competitive negotiation*, NON-COMPETITIVE NEGOTIATION procedures will be used:

1. Written Specifications will be prepared and provided to the vendor.
2. The SFA will be responsible for the documentation of records to fully explain the decision to use the non-competitive negotiation. The records will be available for audit and review.
3. The SFA will be responsible for documentation that the actual product or service specified was received.
4. The Superintendent or Designee will be responsible for reviewing the procedures to be certain all requirements for using single source or non-competitive negotiation are met.
5. Non-competitive negotiations shall be used for one-time purchases of a new food item in order to determine food acceptance by students and for samples for testing purposes. A record of non-competitive negotiation purchase shall be maintained by the Superintendent or Designee. The record of non-competitive purchases shall include, at a minimum, the following:
  - item name
  - dollar amount
  - vendor, and
  - reason for non-competitive procurement

**\*\* Due to the rural location of the district, it is feasible the school will only receive one responsible response.**

**SECTION VII - EMERGENCY PURCHASING**

1. If it is necessary to make a one-time emergency procurement to continue service or obtain goods, the purchase shall be made, and a log of all such purchases shall be maintained by the SFA. The following emergency procedures shall be followed. All emergency procurements shall be approved by the SFA/ Superintendent. At a minimum, the following emergency procurement procedures shall be documented:
  - item name
  - dollar amount
  - vendor, and
  - reason for emergency

**PROCUREMENT, REGULATION (Cont.)**

2. If the emergency purchasing need requires a contract, all books, records and other documents relative to the award of the contract must be retained for three (3) years after final payment. Specifically the SFA/Sponsor shall maintain, at a minimum, the following documents:
- Written rationale for the method of procurement;
  - A copy of the original solicitation;
  - The selection of contract type;
  - The bidding and negotiation history and working papers;
  - The basis for contractor selection;
  - Approval from the State agency to support a tack of competition when competitive bids or offers are not obtained;
  - The basis for award cost or price;
  - The terms and conditions of the contract;
  - Any changes to the contract and negotiation history;
  - Billing and payment records;
  - A history of any contractor claims; and
  - A history of any contractor breaches.

**INFORMAL PROCUREMENT LOG**

TO BE USED FOR PURCHASES OF \$250,000 OR LESS

Check the box next to the supplier that you choose. If chosen supplier does not provide the lowest overall price, explain decision on attached sheet. Document contact with 2 or more vendors.

Items to be purchased and specifications:

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	Date & Method of Contact	Bid Price	Negotiated Price	Notes
Supplier #1				
Supplier #2				
Supplier #3				

**PROCUREMENT, REGULATION (Cont.)****CHART OF PROCEDURES**

The SFA will purchase the following products or group of products and services as per the stated purchase period using the identified procurement method. Price quote time frame period is defined as the time frame for which bids or quotes are obtained and awarded.

<b>PRODUCT</b>	<b>HOW OFTEN ARE PRICE QUOTES OBTAINED</b>	<b>PROCUREMENT METHOD USED</b>
Groceries	Annually	Small/Micro Purchase
Paper products	Annually	Small/Micro Purchase
Chemicals	As needed	Small/Micro Purchase
Small equipment	As needed	Small/Micro Purchase
Large equipment	As needed	Small/Micro Purchase
_____	Quick need basis	Micro Purchase
_____	Quick need basis	Micro Purchase