

School Nutrition Programs

PROCUREMENT PROCEDURES FOR SCHOOL FOOD AUTHORITIES

The _____ adopts this Policy to identify their procurement procedures for the
[Insert name of School Food Authority (SFA)]

United States Department of Agriculture's (USDA) School Nutrition Programs. School Nutrition Programs include the National School Lunch Program (NSLP), School Breakfast Program (SBP), Afterschool Snack Program (ASP), Special Milk Program (SMP), Fresh Fruit and Vegetable Program (FFVP), Seamless Summer Option (SSO) of the NSLP, Summer Food Service Program (SFSP), the At-Risk Afterschool Meals component of the Child and Adult Care Food Program (CACFP) and the Schools/Child Nutrition USDA Foods Program.

The SFA is ultimately responsible for ensuring all procurement procedures for any purchases by the SFA and/or a food service management company (FSMC) comply with all Federal regulations, including but not limited to 7 CFR 210, 220, 225, 226, 245, 250; 2 CFR 200; State procurement statutes and administrative codes and regulations; local SFA/Board of Education procurement policies; and any other applicable State and Local laws.

Procurement Procedures for School Nutrition Programs

[Insert name of SFA]

The procurement procedures contained on the following pages will be implemented beginning _____, until amended. All procurements must maximize full and open competition. Source documentation must be available to determine open competition, the reasonableness, the allowability and the allocation of costs.

The _____ intentionally seeks to prohibit conflicts of interest in
[Insert name of SFA]
all procurement of goods and services.

School Business Administrator

Date

Superintendent of Schools

Date

[Insert name of SFA]

PROCUREMENT PROCEDURES

A. General Procurement

The procurement procedures will maximize full and open competition, transparency in transactions, comparability, and documentation of all procurement activities. The _____ procedures for procuring items for use in the School Nutrition Programs is as follows:

[Insert name of SFA]

Nutrition Programs is as follows:

1. The School Business Administrator/Board Secretary will ensure all purchases will be in accordance with the Federal Funds Procurement Method Selection Chart – (State Agency Form # 358) – See Appendix A. Formal procurement procedures will be used as required by [2 CFR 200.318-326](#) and any State and local procurement code and regulations. Informal procurement procedures (small purchase) will be required for purchases under the most restrictive small purchase threshold.
2. The following procedures will be used for all purchases:

Product/Services	"Estimated" Dollar Amount	Procurement Method	Evaluation	Contract Award Type	Contract Duration/Frequency

B. Micro-purchase Procedures

1. Public/Charter SFAs:

Purchases of supplies or services, as defined by 2 CFR 200.67, will be awarded without soliciting competitive price quotations if the price is reasonable in accordance with N.J.S.A. 18:A:18A-37(a) below thresholds established by the State Treasurer for informal receipt of quotations. Purchases will be distributed equitably among qualified suppliers with reasonable prices. Records will be kept for micro-purchases.

2. Non-public SFAs

Purchases of supplies or services, within the federal micro-purchase threshold as defined by 2 CFR 200.67, will be awarded without soliciting competitive price quotations if the price is reasonable. Purchases will be distributed equitably among qualified suppliers with reasonable prices. Records will be kept for micro-purchases.

C. Small Purchase Procedures

If the amount of purchases for items is less than the district's small purchase threshold, the following small purchase procedures including quotes will be used. Quotes from a minimum number of three (3) qualified sources will be required.

1. Written specifications will be prepared and provided to all vendors.
2. 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.
3. The _____ will be responsible for contacting potential vendors
[Insert title of person/position]
when price quotes are needed.
4. The price quotes will receive appropriate confidentiality before award.
5. Quotes/Bids will be awarded by _____. Quotes/Bids will be
[Insert title of person/position]
awarded on the following criteria. Quote/Bid price must be the highest weighted criteria. Examples of other possible criteria include quality, service, delivery and availability.
6. The _____ will be responsible for documentation of records to
[Insert title of person/position]
show selection of vendor, reasons for selection, names of all vendors contacted, price quotes from each vendor, and written specifications.
7. The _____ will be responsible for documentation that the
[Insert title of person/position]
actual product specified is received.
8. Any time an accepted item is not available, the _____ will
[Insert title of person/position]
select the acceptable alternate. Full documentation will be made available as to the selection of the acceptable item.
9. The _____ is required to sign all quote tabulations, signifying a
[Insert title of person/position]
review and approval of the selections.

D. Formal Procurement

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:

1. An announcement of an IFB or an RFP will be placed in the _____
[Insert newspaper/media, website, other internet source]
to publicize the intent of the SFA to purchase needed items. The advertisement for bids/proposals or legal notice will be run for _____.
[Insert length of time]
2. An advertisement is required for all purchases over the district's small purchase threshold of _____.
[Insert actual amount of the SFA's small purchase threshold]
will contain:
 - 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.
3. In an IFB or RFP, each vendor must be given an opportunity to bid on the same specifications.
4. The developer of written specifications or descriptions for procurements will be **prohibited** from submitting bids or proposals for such products or services.

5. 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 **for base year and renewals as permitted;**
 - SFA is responsible for all contracts awarded (statement);
 - 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 small and minority businesses, **women's business enterprises and labor surplus area firms;**
 - statement regarding the return of purchase incentives, discounts, rebates, and **credits under a cost reimbursement FSMC contract** to the SFA's nonprofit school food service account;
 - contract provisions as required in **Appendix II to 2 CFR 200;**
 - Termination for cause and convenience – contracts in excess of \$10,000;
 - Equal Opportunity Employment – “federally assisted construction contracts”;

- Davis-Bacon Act – construction contracts in excess of \$2,000
 - Contract work Hours and Safety Standards – contracts in excess of \$100,000;
 - Right to inventions made under a contract or agreement – if the contract meets the definition of a “funding agreement” under 37 CFR 401.2(a);
 - Clean Air Act – contracts in excess of \$150,000;
 - Debarment and Suspension – all federal awarded contracts, and
 - Byrd Anti-Lobbying Amendment – contracts in excess of \$100,000
 - Contracts must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate
- 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;
 - procuring instrument to be used are purchase orders from firm fixed prices after formal bidding;
 - Price Adjustment Clause for renewal of multi-year contracts as defined in N.J.S.A. 18 A: 18A – 42 is tied to the requirements specified in N.J.S.A – 18A:18A – 2: Definitions. The **Index Rate** means the annual percentage increase rounded to the nearest half percent in the **IMPLICIT PRICE DEFLATOR FOR STATE & LOCAL GOVERNMENT PURCHASES OF GOODS & SERVICES** computed and published quarterly by the U.S. Department of Commerce, bureau of Economic Analysis.
 - 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 an 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);
 - 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, New Jersey Department of Agriculture (NJDA), United State Department of Agriculture (USDA), 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 [Energy Policy and Conservation Act \(PL 94-163\)](#);
 - signed statement of non-collusion;
 - signed [Debarment/Suspension Certificate](#), clause in the contract or a copy of search results from the [System for Award Management \(SAM\)](#);
 - provision requiring “Buy American” as outlined in [7 CFR Part 210.21\(d\)](#) and USDA Guidance Memo [SP 38-2017](#), including specific instructions for prior approval and documentation of utilization of nondomestic food products only ;
 - 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;

- the SFA's Electronic Signature Policy (see New Jersey Uniform Electronic Signature Transaction act, N.J.S.A. 12A:12-1 et seq. <https://www.njleg.state.nj.us/2000?Bills/PL01/116.PDF>)

5. If any potential vendor is in doubt as to the true meaning of specifications or purchase conditions, questions may be sent to the representative listed below. The SFA response will be provided in writing to all potential bidders within _____ days.

- The _____ [*Insert title of person/position*] will be responsible for providing responses to questions and securing all bids or proposals.
- The _____ [*Insert title of person/position*] will be responsible to ensure all SFA 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. Price must be the highest weighted criteria. Examples of other possible criteria include quality, service, delivery, and availability.

Price

7. In awarding an 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.
- _____ [*Insert title of person/position*] 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.
- _____ [*Insert title of person/position*] reviews the procurement system to ensure compliance with applicable laws.
- _____ [*Insert title of person/position*] is responsible for documentation the actual product specified is received.
- Any time an accepted item is not available, the _____ [*Insert title of person/position*]

will select the acceptable alternate. The contractor must inform _____ by _____ if a product is not
[Insert title of person/position] [Insert time]

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 _____ must comply with the Buy American Provision.
[Insert title of person/position]

- 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 person responsible for this documentation is _____.
[Insert title of person/position]
- The _____ responsible for maintaining all procurement
[Insert title of person/position] documentation.

8. Formal bid procedures will be applied on the basis of (*check all that apply*):

- ☐ centralized system
- ☐ individual school
- ☐ multi-school system
- ☐ state contract
- ☐ combination of above (specify):

9. Because of the potential for purchasing more than **public or non-public informal/small purchase threshold amount, or the SFA approved threshold if less**, it will be the responsibility of _____ to document the amounts to be
(Insert title of person/position)
purchased so the correct method of procurement will be followed.

E. Noncompetitive Proposal Procedures

If product or services are available **only** from a single source when the award of a contract is not feasible under small purchase, sealed bid or competitive negotiation, noncompetitive proposal procedures will be used:

1. Written specifications will be prepared and provided to the vendor.
2. The _____ will be responsible for the documentation of records
[Insert title of person/position] to fully explain the decision to use the noncompetitive proposal. The records will be available for audit and review.
3. The _____ will be responsible for documentation that the actual
[Insert title of person/position] product or service specified was received.
4. The _____ will be responsible for reviewing the procedures to
[Insert title of person/position] be certain all requirements for using single source or noncompetitive proposals are met.

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5. The noncompetitive micro-purchase method shall be used for one-time purchases of a new food item if the amount is less than the **applicable federal or State micro-purchase threshold** to determine food acceptance by students and provide samples for testing purposes. A record of noncompetitive negotiation purchase shall be maintained by the _____
(Insert name of SFA official)

At a minimum, the record of noncompetitive purchases shall include:

- item name;
- dollar amount;
- vendor; and
- reason for noncompetitive procurement.

6. A member or representative of the local board of education or governing board will approve, in advance, all procurements that result from noncompetitive negotiations.

F. Miscellaneous Provisions

1. New product evaluation procedures will include (e.g., evaluation of product labels, student taste-tests):

2. The SFA agrees that the reviewing official of each transaction will be the _____
[Insert title of person/position].

3. Payment will be made to the vendor when the contract has been met and verified and has met the SFA's procedures for payment. (If prompt payment is made, discounts, etc., are accepted.)

4. Specifications will be updated as need.

5. If product is not as specified, the following procedure will take place (e.g., remove product from service, contact vendor for approved alternate product, remove product from bid):

G. Emergency Purchases

1. If it is necessary to make a one-time emergency procurement to continue service or obtain goods, and the public exigency or emergency will not permit a delay resulting from a competitive solicitation, the purchase must be authorized using a purchase order signed by the _____
[Insert SFA/business official]. The following emergency procedures shall be followed.

All emergency procurements shall be approved by the _____
[Insert SFA official].

At a minimum, the following emergency procurement procedures shall be documented:

- item name;
- dollar amount;
- vendor; and
- reason for emergency

H. Purchasing Goods and Services – Cooperative Agreements, Agents and Third-Party Services (Piggybacking)

1. When participating in intergovernmental and inter-agency agreements the SFA will ensure that competitive procurements are conducted in accordance with 2 CFR Part 200.318-.326 and applicable program regulations and guidance.
2. When utilizing the services of a co-op, agent or third party, the SFA will ensure that the following conditions have been met **and considered as one source of pricing in addition to other prices:**
 - All procurements were subject to full and open competition and were made in accordance with Federal/State/Local procurement requirements;
 - The existing contract allows for the inclusion of additional SFAs/members that were not contemplated in the original procurement to purchase the same supplies/equipment through the original award;
 - The specifications in the existing contract meets their needs and that the items being ordered are in the contract;
 - The awarded contract requires all the federally required certification; e.g. Buy American, debarment, restrictions on lobbying, etc.
 - The agency will confirm the addition of their purchasing power (goods or services) to the procurement in scope or services does not create a material change, resulting in the needs to re-bid the contract;
 - Administrative costs (fees) for participating in the agreement are adequately defined, necessary and reasonable and the method of allocating the cost to the participating agencies must be specified.
 - The Buy American provisions are included in the procurement of food and agricultural products.
 - The agreement includes the basis for and method of allocating each discount, rebate or credit and how they will be returned to each participating agency when utilizing a cost-reimbursable contract.

I. Records Retention

1. 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:
 - 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 lack of competition when competitive bids or offers are not obtained;
 - the basis for award cost or price;

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- 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.

J. OPTIONAL PROCUREMENT PROCEDURE - MARKET BASKET ANALYSIS

APPLIES TO NON-PUBLIC SFAs ONLY

Non-public SFA's must insert Market Basket Analysis language in their adopted Procurement Procedures when utilizing this optional procurement method. Market Basket Analysis allows an SFA to review quotes or bids using an established, representative sample of goods and use this subset of prices to award a contract as long as the published solicitation includes language that allows for this type of an evaluation.

Market Basket Analysis Procurement Procedure Language for RFP/IFB solicitations:

The Market Basket Analysis sample is established to represent (75 %) of the total estimated value of the contract to be awarded. The most recent velocity/sales report from our current supplier(s) was used to project the balance of the year and adjusted for any estimated change in menu and participation for the following year. As a result, the list of (XXX) goods (foods and supplies) to be purchased under the solicitation includes the top (XX) goods purchased by dollar volume representing the (75) % threshold. Prices for the remaining (XX) goods listed in the solicitation should also be included, though they will not be a part of the market basket analysis.

During the term(s) of a contract awarded under a market basket analysis solicitation, additional purchases not included in this solicitation list and resulting awarded contract may become necessary and benefit the Program. The aggregate value of added purchases during each year of the contract, if renewable, shall not exceed (10) % of the estimated total value of the contract. The total value of the contract must be agreed upon and the dollar value listed in every contract and contract renewal. For each contract renewal, the total actual value of the contract in the preceding year and the additions made during the contract term, will be the basis for determining the maximum dollar amount (not to exceed {10} % of additional goods that will be allowed during the next contract renewal year.