

Procurement Section

Notes

PROCUREMENT PROCEDURES AND PRACTICES

- A. **The primary purpose of procurement is to assure that open and free competition exists to the maximum extent possible.** The procurement procedures practiced by a school food authority (SFA) must not restrict or eliminate competition. For example, descriptions of goods, equipment, or services to be procured should not contain features that unduly restrict competition. *A person (contractor or vendor) who develops or drafts specifications, requirements, statements of work, Invitations for Bid (IFB), Requests for Proposal (RFP), contract terms and conditions, or other documents for use by a grantee or sub grantee conducting procurement under the United States Department of Agriculture (USDA) entitlement programs shall be excluded from competing for such procurements.* (Reference 2 CFR 200.318[a]) Competition helps assure that goods, equipment, and services will be obtained at the lowest possible cost. All procurements must be obtained through competition. The actual type of procurement method used is of secondary importance. Of primary importance is that open and free competition exists when purchases are made. Each SFA must have protest procedures in place to handle any protest a district may receive concerning its procurement practices. **The contract must be awarded to the lowest-priced, responsible, and responsive bidder.**
- B. **ALL Goods and Services purchased with Child Nutrition Funds MUST be USED by Child Nutrition or the price must be pro-rated based on Child Nutrition use**
- C. **Competition.** All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards. Some of the situations considered to be restrictive of competition include, but are not limited to:
- Placing unreasonable requirements on firms in order for them to qualify to do business.
 - Requiring unnecessary experience and excessive bonding.
 - Noncompetitive pricing practices between firms or between affiliated companies.
 - Noncompetitive awards to consultants that are on retainer contracts.
 - Organizational conflicts of interest.
 - Specifications will be sent to each vendor.
 - Any arbitrary action in the procurement process.
- D. SFAs will use their own procurement procedures which reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law and the standards.
- E. **Forecasting** describes how you determine the amount of each food item is needed; **sourcing** describes matching the products you want to possible suppliers

ALLOWABLE PROCUREMENT PRACTICES

- A. Obtaining publicly available information such as:
- Product brochures, product specification handouts, etc.
 - Information obtained from the Internet.
 - Information/recommendations obtained from other food service personnel.
 - Information obtained by visiting food service operations, industry and professional trade shows.
 - Trade journal information.

- B. Obtaining information from manufacturers and distributors, including:
 - 1. Recommendations of one product versus another product.
 - 2. Features that make one product different from another.
 - 3. The price for the product.
 - 4. The price for specific features.
 - 5. The model number, make, and manufacturer of products that may be acceptable.
 - 6. Specification sheets and product information handouts.

UNALLOWABLE PROCUREMENT PRACTICES

- A. ***Purchasing items with Child Nutrition Funds that were not procured per USDA Procurement Standards.***
- B. For cost plus fee contracts, SFAs are prohibited from using nonprofit school food service account funds to pay any amount above net allowable costs, computed by deducting certain rebates, discounts, and other credits.
- C. For cost plus fee contracts, contractors are required to identify appropriate information to permit SFAs to identify allowable and unallowable costs and the amount of all such discounts, rebates, and credits on invoices and bills presented for payments.
- D. **Purchases made for individuals through the Child Nutrition Program (CNP) account are not allowable.** If an SFA makes this a practice, the tax-exempt status of that SFA could be placed in jeopardy. In addition, food cannot be purchased for individuals through a vendor, even if the individual is paying the appropriate sales tax and the full price for the item. This would be receiving a favor from the vendor and would violate the code of conduct established by the SFA
- E. Sites may not enter into a sales agency agreement with a food vendor. **The vendor may not bring the food product into the site and make direct sales to the final consumer (students, teachers, etc.). SFAs must purchase the food items from the vendor and may then resell to students, etc.**

PROCUREMENT DOCUMENTATION AND PROCUREMENT REVIEWS

- A. **Procurement Documentation to be maintained.** SFAs will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to, the following:
 - 1. Rationale for the method of procurement.
 - 2. Selection of contract type - fixed price, cost plus fee or cost reimbursable.
 - 3. Copies of advertisements for formal bids and requests for proposals.
 - 4. Copy of procurement instruments, including instructions to offerers, specifications, and any addenda.
 - 5. Dated list of potential contractors/vendors who were sent specifications, who was sent a contract, or who picked up RFPs/IFBs.
 - 6. Documentation of telephone quotations and copies of written quotations received from vendors.

7. Bids/proposals submitted by vendors/contractors with date indicated when price quotes were received or time-stamped bid envelope. Bid/quotation/proposal evaluation sheets, including documentation whenever the lowest bid or quotation price is not accepted.
8. Copies of bid/proposal award letters and letters to unsuccessful offerers, if applicable.
9. Copies of contracts.
10. Documentation of insurance, if required by bid/proposal.
11. Copies of bid and/or performance bonds, if required by bid/proposal.
12. Signed and dated invoices.

Note: SFAs must make available any specifications used on proposed procurements to ensure that the item and/or service specified is the one being proposed for purchase.

B. **Procurement Reviews** are conducted using **PRIOR** year documentation. However, FSMC documents will be from **CURRENT & PRIOR** year.

1. Access by the SFA, the State agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
2. All schools will be reviewed on procurement every 5 years.
3. The majority of districts will be reviewed the same year as the district's Administrative Review.
4. These reviews are a desk review.

5 **Procurement reviews are conducted by DWG CPA, Inc.**

- Consulting. Questions regarding the procurement review can be sent to dwgcpa@dwgcpa.com.
- *If the district has questions regarding the procurement process, contact Kendra Merveldt at 405-521-3327 or Kendra.Merveldt@sde.ok.gov.*

6. **Procurement Review Documentation:**

- District's Procurement Plan.
- Chart of Procedures.
- Protest Procedures.
- Buy American Information.
- Code of Conduct.
- Bid Documentation including product specifications and solicitation information.
- Contracts – RFP/IFB.
- Invoices/Receipts.
- FSMC Documents including invoices, contract, and renewal information, if applicable.
- Revenue & Expenditure from Prior Year and current year if using a FSMC.
- USDA Procurement Tool

PROCUREMENT STANDARDS (Reference 2 CFR §200.318)

- (a) Documented procurement procedures. The recipient or subrecipient must maintain and use documented procedures for procurement transactions under a Federal award or subaward, including for acquisition of property or services. These documented procurement procedures must be consistent with State, local, and tribal laws and regulations and the standards identified in §§ 200.317 through 200.327.
- (b) Oversight of contractors. Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. See also § 200.501(h).
- (c) Conflicts of interest.
 - (1) The recipient or subrecipient 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, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the Federal award. A conflict of interest includes when the employee, officer, agent, or board member, any member of their immediate family, their partner, or an organization that 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 an entity considered for a contract. An employee, officer, agent, and board member of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors. However, the recipient or subrecipient may set standards for situations where the financial interest is not substantial or a gift is an unsolicited item of nominal value. The recipient's or subrecipient's standards of conduct must also provide for disciplinary actions to be applied for violations by its employees, officers, agents, or board members.
 - (2) If the recipient or subrecipient has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian Tribe, the recipient or subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient or subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
 - (d) Avoidance of unnecessary or duplicative items. The recipient's or subrecipient's procedures must avoid the acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. When appropriate, an analysis should be made between leasing and purchasing property or equipment to determine the most economical approach.
- (e) Procurement arrangements using strategic sourcing. When appropriate for the procurement or use of common or shared goods and services, recipients and subrecipients are encouraged to enter into State and local intergovernmental agreements or inter-entity agreements for procurement transactions. These or similar procurement arrangements using strategic sourcing may foster greater economy and efficiency. Documented procurement actions of this type (using strategic sourcing, shared services, and other similar procurement arrangements) will meet the competition requirements of this part.
- (f) Use of excess and surplus Federal property. The recipient or subrecipient is encouraged to use excess and surplus Federal property instead of purchasing new equipment and property when it is feasible and reduces project costs.

- (g) Use of value engineering clauses. When practical, the recipient or subrecipient is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering means analyzing each contract item or task to ensure its essential function is provided at the overall lowest cost.
- (h) Responsible contractors. The recipient or subrecipient must award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract. The recipient or subrecipient must consider contractor integrity, public policy compliance, proper classification of employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), past performance record, and financial and technical resources when conducting a procurement transaction. See also § 200.214.
- (i) Procurement records. The recipient or subrecipient must maintain records sufficient to detail the history of each procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.
- (j) Time-and-materials type contracts.
 - (1) The recipient or subrecipient 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 recipient or subrecipient 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) Because 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 recipient or subrecipient awarding such a contract must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) Settlement of contractual and administrative issues. The recipient or subrecipient is responsible for the settlement of all contractual and administrative issues arising out of its procurement transactions. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the recipient or subrecipient of any contractual responsibilities under its contracts. The Federal agency will not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a Federal concern. The recipient or subrecipient must report violations of law to the Federal, State, or local authority with proper jurisdiction.
- (l) Examples of labor and employment practices.
 - (1) The procurement standards in this subpart do not prohibit recipients or subrecipients from:
 - (i) Using Project Labor Agreements (PLAs) or similar forms of pre-hire collective bargaining agreements;
 - (ii) Requiring construction contractors to use hiring preferences or goals for people residing in high-poverty areas, disadvantaged communities as defined by the Justice40 Initiative (see OMB Memorandum M-21-28), or high-unemployment census tracts within a region no smaller than the county where a federally funded construction project is located. The hiring

- preferences or goals should be consistent with the policies and procedures of the recipient or subrecipient, and must not prohibit interstate hiring;
- (iii) Requiring a contractor to use hiring preferences or goals for individuals with barriers to employment (as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102(24))), including women and people from under-served communities as defined by Executive Order 14091;
 - (iv) Using agreements intended to ensure uninterrupted delivery of services; using agreements intended to ensure community benefits; or
 - (v) Offering employees of a predecessor contractor rights of first refusal under a new contract.
- (2) Recipients and subrecipients may use the practices listed in paragraph (1) if consistent with the U.S. Constitution, applicable Federal statutes and regulations, the objectives and purposes of the applicable Federal financial assistance program, and other requirements of this part.

CODE OF CONDUCT

The local SFA must maintain a written code or standard of conduct that governs the performance of its officers, employees, or agents who are engaged in the award and administration of contracts supported by program funds. An example of a procurement plan that includes the required principles for the Code of Conduct begins on **page P-51**.

The following conduct will be expected of all persons who are engaged in the awarding and administration of contracts supported by the School Food and Nutrition Program Funds. These written standards of conduct include:

- A. No employee, officer, or agent of the (*SFA*) shall participate in the selection or in the award or administration of a contract supported by program funds if a conflict of interest, real or apparent, would be involved.
- B. 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
 - 5. A less-than-arm's-length transaction—this is one party's ability to control or influence the other party to the transaction. A less-than-arm's length transaction occurs:
 - When a transaction is conducted between related parties, meaning that the integrity of the transaction could be compromised.
 - When one party to the transaction is able to control or influence the actions of the other party.

Examples could include:

 - Hiring the CEO's brother as a janitor
 - Purchasing goods or services from a business owned by an officer, employee, or relative of the institution/sponsor's entity
 - Agreement for computer maintenance between a business and person(s) who are related to the institution/sponsor's employees or board members
- B. The (*SFA*) 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 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

PROTEST PROCEDURES

SFAs will have protest procedures (refer to **page P-62**) to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protester 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:

- 1. Violations of federal law or regulations and the standard of 2 CFR 200.318(c)(1) (violations of state or local law will be under the jurisdiction of state or local authorities).
- AND***
- 2. 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

MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

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:

- Placing qualified small, minority, and women's business enterprises on solicitation lists.
- Assuring that small, minority, and women's business enterprises are solicited whenever they are potential sources.
- 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
- Establishing delivery schedules where the requirement permits, which encourage participation by small, minority, and women's business enterprises.
- Using the services and assistance of the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce.
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

BUY AMERICAN PROVISION

Buy American requires schools to purchase ninety percent (90%) of domestic agricultural commodities and food products annually. Schools participating in the federal school meal programs are required to purchase domestic commodities and products for school meals to the maximum extent practicable. A domestic commodity or product refers to an agricultural commodity produced in the US and a food product processed in the US that is substantially (at least 51 percent) made using agricultural commodities produced in the US. This definition of domestic product serves both the needs of schools and American agriculture. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are considered domestic products as these products are from the territories of the U.S. (Reference Memos SP-38-2017 and SP 23-2024)

- A. **Implementing the Buy American provision.** Any entity purchasing food or food products on behalf of the SFA **MUST** follow the same Buy American provisions and exceptions that an SFA is required to follow, must comply with the Buy American provision. All agricultural commodity or food product purchases made from the nonprofit school food service account are subject to the Buy American provision, subject to the limited exceptions implementation of this provision should be done by including **Buy American in documented procurement procedures such as the procurement plan, all procurement solicitations, and contracts including in bid specifications; and contract monitoring. Documentation is required from vendor(s) to ensure products purchased are American-grown or nondomestic unless listed on the Buy American Exemption list (USDA FAR list).**
- B. **Limited exceptions to the Buy American provision.** USDA allows for two exceptions to the Buy American provision. This allows for some foods purchased to not meeting the *domestic* standard as described (i.e., nondomestic) These exceptions, as determined by the SFA, are:
- The product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality and are placed on the domestically nonavailable FAR 25.104 list or known as the **Buy American Exemption list.**
 - OR**
 - Competitive bids reveal the costs of a U.S. product is significantly higher than the nondomestic product
1. **Cost.** If competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product, the SFA must, keep the **Buy American Justification form** as documentation justifying the exception. The justification form can be found on **page P-89.**
 2. If a product is listed on the Federal Acquisitions Regulations Nonavailable articles list found at 48 CFR 25.104 or on the **OSDE Buy American Exemption**, these food items can be served but are required to be listed in the Buy American tracker. *A Buy American Justification form is not required to be maintained for food items on the exemption list.* The food items on these list are not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality. The current food items on the Buy American Exemption /the domestically nonavailable FAR 25.104 include:
 - Bamboo shoots
 - Bananas
 - Beef, corned, canned
 - Beef extract
 - Brazil nuts, unroasted
 - Capers
 - Cashew nuts

- Chestnuts.
- Cocoa beans: Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form
- Grapefruit sections, canned
- Olive oil
- Olives (green), pitted or unpitted, or stuffed, in bulk
- Oranges, mandarin, canned
- Pineapple, canned
- Spices and herbs, in bulk
- Sugars, raw
- Tapioca flour and cassava
- Tea in bulk
- Thyme oil
- Vanilla beans
- Water chestnut.
- Yeast, active dry and instant active dry

C. ***How Buy American requirements apply to fish and fish products.*** Farmed fish must be harvested within the United States or any territory or possession of the United States, Wild caught fish must be harvested within the Exclusive Economic Zone which is no more than 200 nautical miles from the baseline of the territorial sea, adjacent to the 12 nautical mile territorial sea. It includes waters around the continental U.S., Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and other territories or possessions where the U.S. exercises sovereignty, or by a United States flagged vessel.

D. FNS has defined a percentage of ***up to 10% of nondomestic foods that may be purchased annually.*** Before utilizing an exception, alternatives to purchasing nondomestic food products should be considered. For example, SFAs should ask:

- Are there other domestic sources for this product?
- Is there a domestic product that could be easily substituted if the nondomestic product is less expensive (e.g., substitute domestic pears for nondomestic apples)?
- Am I soliciting bids for this product at the best time of year? If I contracted earlier or later in the season, would prices and/or availability change?

E. ***USDA Buy American Tracker.*** The USDA tracker is required to be maintained annually to ensure only 10% of the items purchased are nondomestic. The ten percent is based on total annual cost of commercialized food. Each district is required to maintain the ***USDA Buy American Tracker*** to ensure compliance. For districts using a FSMC, the FSMC is required to keep this information. The amount listed in the Exemption Summary tab will match the Total Food Cost for each month that is listed in Section 6 of the Attachment M. ***The USDA Buy American Tracker can be found in Other Documents under the Interactive forms section. (Memo SP 23-2024a)***

Note: The USDA Buy American tracker is only for food purchased by the district from vendors. It does not include USDA Foods or Department of Defense (DoD).

F. ***The Buy American provision supports local and small business.*** Using food products from local sources supports local farmers and provides healthy choices for children in the school meal programs while supporting the local economy. Requiring compliance with the Buy American provision also supports SFAs working with local or small, minority, and women-owned businesses as required by federal regulations (see 2 CFR 200.321). FNS encourages purchasing food products from local and regional sources when expanding farm to school efforts.

GEOGRAPHIC PREFERENCE - BUYING LOCAL

CNP operators must use full and open competition in alignment with Federal Procurement Regulations at 2 CFR 200.319 when purchasing goods, including local foods, for Program meals and snacks. USDA encourage schools to purchase unprocessed, locally grown, and locally raised agricultural products to the maximum extent practicable and appropriate. The provision applies to all child nutrition programs as well as to purchases made for these programs by State agencies and USDA DoD Fresh. The final rule clarified the implementation of the geographic preference option for CNP operator be applied to “unprocessed locally grown or locally raised agricultural products,” and is defined in such a way as to allow for some minimal processing, food handling, and preservation techniques. District's are allowed to apply a geographic preference by using local (e.g., “locally grown”, “locally raised”, or “locally caught”) as a specification for local unprocessed agricultural products purchased for program meals, snacks, and milk. SFAs can require that an unprocessed agricultural product be locally grown, raised, or caught to meet the solicitation requirements and remove products or bids that do not meet this standard from consideration. Districts may continue to apply a geographic preference through additional points or credit during evaluation for local unprocessed agricultural products. To differentiate between the concept of a geographic preference option and the two strategies that may be used to implement it. Under the expanded geographic preference option, SFAs may choose to:

- Use local as a specification (i.e., the written description of a product or service that a vendor must meet to be considered responsive to a solicitation) for local unprocessed agricultural products. CNP operators may target local foods through technical requirements sometimes associated with locally grown, raised, or caught foods, when using the small purchase and formal procurement methods if they do not overly restrict competition. For example, CNP operators may require as part of their solicitation that products are delivered within a certain number of hours of harvest or certified organic, or that certain other services are offered, such as producer profiles or farm visits.;

Example: Oklahoma grown beef, Watermelon within 100 miles from the district, etc.

- Use a defined scoring advantage for local unprocessed agricultural products. CNP operators must define the amount of preference or credit awarded to unprocessed agricultural products;

OR a mixture of both options.

The updated regulations for the geographic preference option are found in 7 CFR §210.21(g) (1) and USDA Policy Memo SP 22-2024 and SP 11-25.)

Micropurchasing is the most common method of procurement when purchasing local. If the amount spent is more than \$10,000 per transaction. Small purchase or formal procurement must be used.

CONTRACT PROVISIONS—2 CFR §200 APPENDIX II

- (a.) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, 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.

- (b.) All contracts in excess of \$10,000 must address **termination for cause** and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (c.) **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (d.) **Davis-Bacon Act**, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the **Copeland “Anti-Kickback” Act** (40 U.S.C. 3145), 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 must 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 or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (e.) **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 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.
- (f.) **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 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.

- (g.) **Clean Air Act** (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (h.) **Debarment and Suspension** (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 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 2 CFR §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.
 - To ensure that an SFA does not enter into a contract with a debarred or suspended company or individual, each SFA must obtain satisfaction that a Vendor or FSMC is neither excluded nor disqualified before doing business with the FSMC. The uniform federal suspension/debarment certification has been abolished, and the collection of paper certifications is no longer mandatory. New rules provide greater flexibility in meeting requirements. An SFA may meet the requirements by either of the two methods listed below:
 1. Checking the Excluded Parties List System. This is available on the Internet at **<https://www.SAM.gov>**
 2. Collecting a certification that the vendor or FSMC is neither excluded nor disqualified. Since a federal certification form is no longer available, an SFA may use the State agency prototype on **page P-94-95**.
- (i.) **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must 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 must 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 non-Federal award.
- Lobbying certification must be obtained for procurement contracts of more than \$100,000. Any vendor whose contract award is for more than \$100,000 must complete a Certification Regarding Lobbying form located on **page P-91**. The SFA must keep this signed certification statement on file with a copy of the vendor’s contract.
 - Any SFA or its vendors who participate in lobbying activities must complete a Disclosure of Lobbying Activities form on **page P-92-93**. SFAs must submit this completed form to the State agency. A vendor would submit its completed form to the SFA.
- (j.) See § 200.323 **Procurement of recovered materials**

- (k.) See § 200.216 *Prohibition on certain telecommunications and video surveillance equipment or services.*
- (l.) See § 200.322 *Domestic preferences for procurements*
- (m.) **Buy American Provision** requires schools to purchase ninety percent (90%) of domestic agricultural commodities and food products annually. Schools participating in the federal school meal programs are required to purchase domestic commodities and products for school meals to the maximum extent practicable. Domestic commodity or product means an agricultural commodity that is produced in the US and a food product that is processed in the US substantially (at least 51 percent) using agricultural commodities that are produced in the US. This definition of domestic product serves both the needs of schools and American agriculture. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are considered domestic products as these products are from the territories of the U.S. (Reference 7 CFR 220.16(d), SP-38-2017, and SP 23-2024) **Vendor must supply documentation to ensure food purchased is purchased in Oklahoma.**
- (n.) **Oklahoma Non-Kickback Affidavit** under 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. The undersigned (architect, contractor, supplier or engineer), of lawful age, being first duly sworn, on oath says that this contract is true and correct. Affiant further states that the (work, services or materials) will be (completed or supplied) in accordance with the plans, specifications, orders or requests furnished the affiant. Affiant further states that (s)he has made no payment directly or indirectly to any elected official, officer or employee of the State of Oklahoma, any county or local subdivision of the state, of money or any other thing of value to obtain or procure the contract or purchase order.

Located on **page P-88** is a sample Nonkickback Affidavit Form that should be used for purchases. 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.

BEVERAGES AND SNACK AGREEMENTS

- A. Several questions have been raised regarding exclusive beverage and snack contracts. The following is a summary of existing regulatory requirements as they pertain to these contracts.
 - 1. 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
 - 2. Additionally, if nonprofit school food service products are included in the contract, any rebates, commissions, scholarship fund contributions, or any other payments back to the SFA or SFA-related organizations must be reimbursed to the nonprofit SFSA on a prorated basis.
 - 3. Finally, since contracts can be multi-year, it should be noted that there is no federal prohibition on multi-year contracts other than for FSMCs. It is suggested school procurement officials consider the impact of multi-year 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.

4. 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.
5. 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. Look for the term ***Exclusive Pouring Rights***. Make any amendments if necessary. This provision is to prevent contract limitations on the sale of fluid milk in competition with other beverages.

ESCALATION/DE-ESCALATION CLAUSE

- A. SFAs need to contemplate not only the need for including an economic price adjustment clause (an escalator/de-escalator clause) in their contracts, but also to carefully enforce the terms of the clause and demand price reductions when appropriate.
- B. A contract with an economic price adjustment is appropriate when:
 1. Contract performance will or may cover an extended period of time.
 2. There is serious doubt concerning the stability of market conditions during the period of the contract.
 3. Adjustment standards or indices agreed to are based on contingencies outside the contractor's control.
 4. Contingencies, such as increases in labor costs, that would otherwise be included in the contract price can be identified and covered separately in the contract.
- C. The economic price adjustments, which allow an SFA to adjust costs in the contract, must be tied to an appropriate standard or cost index. Relating the price adjustments in a contract to an index allows the SFA to ensure that increases under the contract are not without basis. For example, if fuel prices are increasing drastically, then an appropriate index—such as the Consumer Price Index (CPI)—will reflect this change.
- D. It is recommended that the escalation/de-escalation clause be tied to the *Consumer Price Index, Southwest Region* and be stated as such in the RFP/Contract. SFAs may then check the Web site at **<http://www.bls.gov/regions/southwest/cpi-summary>** to ensure prices are adjusted accordingly.
- E. As always, the terms of the economic price adjustment, including the appropriate standards or indices to which it will be tied, must be expressly identified in the original solicitation and contract documents. Additionally, as under any circumstances, the contract must be awarded to the lowest-priced, responsible, and responsive bidder.
- F. However, it is important to note that the SFA needs to decide whether it would like to include these in its contract; it is not the vendor's decision. Along the same lines, it is important to recognize that the SFA should be advised by the contractor when costs go up, but they will not necessarily notify the SFA when costs go down. Keep in mind that the economic price adjustment clause is intended not only to give vendors an option to increase their price for the SFA, ***but also*** for the SFA to demand

price reductions when appropriate. (Reference USDA Memo Code 2009-SP-10)

G. If the fixed cost (market price) fluctuates, every 30 days the fixed cost will increase or decrease by the same amount. This must be stated in the SFA's RFP/Contract

H. Rebates/Manufacturer Discount

1. If 25 percent of the products purchased are the vendor's brand, the SFA will receive a 1 percent rebate on the 25 percent of purchased products.
2. If the vendor receives an up-front manufacturer discount, the discount is automatically applied to the product before the product is priced for purchase. The invoice to the SFA is going to reflect the discount. The SFA may not be aware of the discounted price.

BONDING REQUIREMENTS

- A. *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.
- B. *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.

METHODS OF PROCUREMENT AND SOLICITATION PROCESS

Informal Methods:

- A. **Micropurchasing**—The purchase of products and services (similar or dissimilar purchased once as a single, collective unit) whose *aggregate costs do not exceed \$10,000*.
1. Price comparisons are not required for micropurchases as long as the SFA considers the price to be reasonable. SFAs must maintain documentation of the reason they chose a particular vendor.
 2. Program operators *may not always purchase from only one source*; rather, purchases must regularly be made using available qualified sources to the extent practicable.
 3. If the aggregate cost of these items (that is, the total bill) does not exceed the micropurchase threshold, this transaction qualifies as a micropurchase under 2 CFR Part 200.320(a).
 4. The district can raise their micropurchasing threshold from \$10,000 up to \$50,000. However, in order to do so, program operators are responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and document procurement procedures. To increase the threshold: (Memo SP 02-2022 (Corrected))
 - (1) Program operators must self-certify.
 - (2) SFAs choosing to self-certify must prepare and include a justification for the choice. The self-certification must include a justification, clear indication of the threshold, and supporting documentation of any of the following:
 - (a) A qualification as a low-risk auditee, in accordance with the criteria in 2 CFR 200.520;
 - (b) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or

(c) For public institutions, a higher threshold consistent with State law.

- (3) ***The higher threshold must be approved by the State Agency and self-certified on an annually.***

Note: This can be used in times of supply chain issues. The district does not have to "spread the wealth," but consider the price to be reasonable based on research, experience, purchase history, or other information and documents it files accordingly. (2 CFR 200.320(a)(1)(ii))

B. Small Purchase Procedures—Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, goods, or equipment that do not cost more than the simplified acquisition ***threshold of \$250,000.*** (2 CFR 200.320[b])

1. When small purchase procedures are used, the following stipulations and terms must be considered:
 - a. The SFA can set a lower threshold than \$250,000. ***NOTE: If the SFA has a lower threshold, it must follow that amount.***
 - b. Price quotes shall be obtained from an adequate number of qualified sources. USDA defines an adequate number as two.
 - c. The goods, equipment, or services to be purchased must be adequately and consistently described for each prospective supplier so that each one can provide price quotes on the same merchandise or service. These specifications must be either verbal or written. Both must be documented.
 - (1) Send solicitation document and specifications by fax, e-mail, telephone, or deliver in person to at least two vendors.
 - (2) Responses from vendors can be either written or verbal form. Verbal quotes must be documented.
 - d. **Small purchase conditions and clauses.** The following list includes requirements, not exclusive, to be addressed in the solicitation document.
 - SFA 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.
 - Contract Provisions per 2 CFR 200 Appendix II: ***See Page P-12 for the full statements.***
 - (a) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate (contracts more than the \$10,000 threshold).
 - (b) ***USDA Equal Opportunity*** information (contracts \$10,000 or more)
 - (c) Requiring ***Buy American*** as outlined in 7 CFR Part 210.21(d); specific instructions for prior approval of all of nondomestic product(s) (all contracts)
 - (d) ***Termination for Cause*** information (contracts \$10,000 or more)
 - (e) Statement assuring positive efforts will be made to involve small, minority, and women-owned businesses (all contracts)
 - (d) ***Beverage Agreement*** not allowing exclusive pouring rights
 - (f) ***Clean Water Act*** provision (contracts \$150,000 or more)
 - (g) ***Rights to Inventions Made Under a Contract or Agreement***, if applicable

- (h) **Contract Work Hours and Safety Standards Act** (contracts \$100,000 or more)
- (i) **Davis-Bacon and Copeland Nonkickback** Information (Construction contracts \$2,000 or more)
- (j) **Minority firms, women's business enterprises, and labor surplus area firms** statement

- **Forms required to be sent back with the bid from the vendor**

- Signed **Byrd Anti-Lobbying form** for contracts over \$100,000
- Signed **Oklahoma NonKickback Affidavit** for purchases orders over \$25,000

3. Awarding the Contract for Small Purchase

The district does not have to award the contract to the lowest bidder as long as they can justify why they are using the vendor selected.

- 4. Price quotation records must be retained three years plus the current year or until audit findings are resolved.

Formal Methods:

- C. **Formal procurement method** is required if the contract of bid is over \$250,000. There are two types of formal methods—a **sealed bid** or an **Invitation for Bid (IFB)** or a **Competitive Proposal** in the form of a **Request for Proposal (RFP)**. **Formal contracts are allowed to have up to four renewals if it is specified in the original contract.**

1. Difference in IFB and RFP

- a. **Invitation for Bid (IFB) or Sealed bid** is awarded solely on price and not other factors. Bids are solicited publicly and are typically fixed-price contracts.
- b. **Request for Proposal (RFP)** is awarded by considering other factors other than price. The most bid that is scored the highest with price being the main consideration wins the bid. Bids can be fixed-priced, cost reimbursable, or cost plus fee.

- (1) **Analysis of price**—The contract documents should clearly indicate factors to be considered in determining the price.

- **Transparency:** The contract documents must be clear about how the price will be established.
- **Price Reasonableness:** Contracting officers are required to establish price reasonableness.
- **Competition:** Adequate price competition is the normal way to establish price reasonableness.
- **Price Analysis:** The USDA may use price analysis techniques to assess a proposed price without evaluating the separate cost elements.
- **Cost Analysis:** They may also use cost analysis techniques, including verifying cost data and evaluating cost elements, to ensure a fair price.
- **Market Conditions and Factors:** The contracting officer should be aware of market prices for comparable goods and services and other relevant factors that affect price, such as speed of delivery, warranty, quantities ordered, etc.
- **Primary Evaluation Factor:** Cost is a primary factor in evaluating and scoring bids or proposals.

2. Bid Process for Invitation for Bid and Request for Proposals

a. **Advertising/Solicitation for IFB/RFP** (Reference 2 CFR 200.230(b))

1. **Invitation for Bid (IFB) or Sealed bids** must be publicly advertised such as in press releases, social media, or general information disseminated through various channels like a school website. Publishing in a newspaper is a best practice.
2. **Request for Proposal (RFP)** requires a public notice. A public notice must be published by a third party, such as a newspaper. It is permissible to also advertise on social media or the school website. *(a public notice must be archivable in different locations and formats, accessible to everyone, and verifiable, so the public knows they were not altered following publication)*
3. **Solicitations/Newspaper advertisements for IFB and RFP are to be announced for a minimum of two weeks and should contain:**
 - * General description.
 - * 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 prebid meeting, if provided, and if attendance is a requirement for bid award.
 - * Deadline for submission of sealed bids or proposals.
 - * Address of location where complete specifications and bid forms may be obtained.
 - * Each vendor will be given an opportunity to bid on the same specifications.

Advertisement Example:

REQUEST FOR PROPOSALS: FOOD VENDOR
Request for Proposal for a cost-reimbursable contract for providing food and food-related items to the ABC School District. The RFP can be picked up at 123 Education Lane, Smarttown, OK 12345 or emailed any time between 8:00 am and 3:00 pm. Proposals are subject to all the conditions and specifications stated in the Request for Proposal and will be received at the address above and shall be marked on the envelope "Cafeteria Food Vendor, #100" Proposals will be received until March 15, 20XX for supplying ABC School Food Authority with food service management services during the 20XX-20XX school year. For more information, contact Ms. Smart at Smart@ABCschools.com.

- b. The IFB or RFP will clearly define the **purchase conditions and clauses**. The following list includes requirements, not exclusive, to be addressed in the procurement document.
- Contract period including renewals, if indicated in the original contract. *(The contract is a one year contract with up to four renewals).*
 - Type of Contract: **Fixed-priced, Cost Reimbursable, or Cost plus Fee**. See **page P-25-27**.
 - SFA 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.
 - State (terms and conditions) which 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 regarding the return of purchase incentives, discounts, rebates, and credits to the

SFA's nonprofit Child Nutrition (CN) account.

- Contract provisions as required in 7 CFR Part 210.16(a)(f) for all cost reimbursement contracts.
- Contract provisions as required in Appendix II for 2 CFR Part 200. *See page 12 Item d* for the required provisions including the full statement.
- 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 [CPI] or other as stated in terms and conditions for pricing and price adjustments).
- Method of evaluation and type of contract to be awarded (include points for RFP contracts)
- 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, the State Department of Education (the *State Agency*), United States 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.
- Description of process for enabling vendors to receive or pick up orders upon contract award.
- **Contract Provisions per 2 CFR 200 Appendix II: See Page P-12 for the full statements.**
 - (a) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate (contracts more than the \$10,000 threshold).
 - (b) **USDA Equal Opportunity** information (contracts \$10,000 or more).
 - (c) Requiring **Buy American** as outlined in 7 CFR Part 210.21(d); specific instructions for prior approval of all of nondomestic product(s) (all contracts).
 - (d) **Termination for Cause** information (contracts \$10,000 or more).
 - (e) Statement assuring positive efforts will be made to involve small, minority, and women-owned businesses (all contracts).
 - (d) **Beverage Agreement** not allowing exclusive pouring rights.
 - (f) **Clean Water Act** provision (contracts \$150,000 or more).
 - (g) **Rights to Inventions Made Under a Contract or Agreement**, if applicable.
 - (h) **Contract Work Hours and Safety Standards Act** (contracts \$100,000 or more).
 - (i) **Davis-Bacon and Copeland Nonkickback** Information (Construction contracts \$2,000 or more).
 - (j) **Minority firms, women's business enterprises, and labor surplus area firms** statement.
- **Forms required to be sent back with the bid from the vendor**
 - * Signed statement of noncollusion (all contracts using the formal method).
 - * Signed Debarment/Suspension Certificate or statement included in contract or copy of Excluded Parties List System (EPLS) for all contracts using the formal method.
 - * Signed Byrd Anti-Lobbying form for contracts over \$100,000.
 - * Signed Oklahoma NonKickback Affidavit for purchases orders over \$25,000.

- c. Specifications and estimated quantities of products and services prepared by SFA and provided to potential contractors desiring to submit bids/proposals for the products or services requested. Example of Specifications is located on **page P-30-31**.

- (1) A developer or vendor writing specifications or descriptions for procurements will be **PROHIBITED** from submitting bids or proposals for such products or services.
- (2) 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 district by the date specified.

e. **Formal Contract Renewals** —The contract between the SFA and the vendor using formal procurement shall be of a duration no longer than one year, and options for the yearly renewal of a contract may not exceed four additional one-year extensions. In order to renew the contract, it must state it in the original contract.

- If the changes made to the original contract will be over \$150,000, this would result in a material change amount. If the district thinks it will go over \$150,000, the contract would need to be rebid.

f. The district will be responsible for securing all bids or proposals.

g. The district will be responsible to ensure all SFA procurements are conducted in compliance with applicable federal, state, and local procurement regulations.

5. Awarding the Bid for Invitation for Bid (IFB) and Request for Proposal (RFP)

a. **Bid Openings —Invitation for Bid (IFB) or Sealed Bids**

On the date established for opening the bid, the person responsible for receiving the proposals must safeguard them in order to prevent unauthorized disclosures. The proposal opening requires a sign-in sheet to document the persons present at the opening. All bids will be opened on the date and time indicated on the IFB. **The bid with the lowest price automatically wins the bid.**

- All procurement documentation is to maintain all required records for **THREE** years after final payment and current year records.

b. **Contract Clauses, Provisions, and Forms to be Included in Formal Solicitation (2 CFR 200 Appendix II)** These provisions are to be in solicitations of a certain amount. Each clause has a dollar amount tied to it. If you will be spending this amount or more for with the vendor selected, the provision is required to be in the solicitation.

c. **Bid Openings and Evaluations—Request for Proposal (RFP)**

On the date established for opening the proposals, each member of the evaluation team should score each proposal independently. If the RFP allows alternative proposals, care must be taken to ensure the offerer's alternatives address the basic guidelines established in the RFP.

It is imperative that proposal openings and evaluations be conducted fairly. Inconsistent actions by the individuals responsible for this component of procurement can result in proposal protests or legal action. In awarding a competitive negotiation (RFP), a set of

award criterion in the form of a weighted evaluation sheet will be provided to each bidder in the original RFP. 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.

- (1) **Proposal opening and evaluation**—The person responsible for receiving the proposals must safeguard them in order to prevent unauthorized disclosures. The proposal opening requires a sign-in sheet to document the persons present at the opening.

On the date established for opening the proposals, each member of the evaluation team should score each proposal independently. If the RFP allows alternative proposals, care must be taken to ensure the offerer’s alternatives address the basic guidelines established in the RFP. ***The opening date and evaluating date do not have to be on the same day.***

- (a) Proposals should not be compared to one another.
- (b) Proposals that fail to address all requirements are unresponsive and cannot receive further consideration.
- (c) The team members should be instructed to use a pass-or-fail basis for eliminating unresponsive proposals and then use the preestablished scoring system for evaluating the responsive proposals.
- (d) It is required to sign the bid tabulation of the evaluation criterion score sheet of competitive proposals signifying a review and approval of the selections.

- (2) **Evaluating RFP Proposals**—Proposals should be thoroughly reviewed and subjected to an impartial evaluation. An evaluation plan should be prepared prior to the receipt of any proposals. ***(The district can create their own evaluation form, use the electronic one in Other Documents, or use the form found on page P-86-87)***

- (a) **Information on evaluation team**—A committee of 3-5 people will evaluate all Request for Proposals. The committee members should be determined prior to the date the proposals are due.
- (b) **Evaluating the Proposals**—An RFP is awarded by the using a rubric. The district will create criteria or can use criteria created by OSDE as shown below. The weighted amount the district will use to score must be submitted in the original RFP. This way the vendors bidding on the contract will know what is important to the district. ***Price is the primary factor and MUST have the most points awarded.***

NOTE: The SFA may delete or add criteria to the list on the following page.

Evaluation Sample: an electronic evaluation form can be found in Other Documents under the Procurement section. ***The district weight must be worth 100 total points.*** ***(The district does not have to award points for all areas listed. This can be used as a guide or example)***

Weight	Criteria
(____) points	Price (*Note: most points must be awarded to price)
(____) points	A Variety of Food Items that Meet CNP Requirements
(____) points	Quality
(____) points	Products with a CN Label or a Product Formulation Statement
(____) points	Ordering System
(____) points	Customer Service
(____) points	_____
(____) points	_____
(____) points	_____

100 Total Points

- (c) **Scoring the Proposals—Proposals will be evaluated individually by the selected committee** against the criteria the district has determined with assigned weights. All individual scores will be added together to make the group score. Awards will be made to the responsible firm whose proposal is the most advantageous to the program. Reference 2 CFR 200.320[d][4].). An example of evaluation scoring can be found in Other Documents in the Procurement section or on **page P-84-87**. An interactive version is located in Other Documents under the Procurement section.

The individuals in the committee that will be evaluating the proposals should have sufficient knowledge of the goals of the SFA, experience in school food service or congregate feeding, financial management experience (of food service, if possible), and experience in evaluating proposals. It is recommended that the SFA invite the State agency to attend the evaluation of the proposals.

- Someone at the district is responsible for reviewing the procurement system to ensure compliance with applicable laws.
- Someone at the district is responsible for documenting the actual products specified in the RFP has been received.
- Anytime an item is not available, the district will select an acceptable alternate. The contractor must inform the responsible person at the district by the time and date specified when 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, the written approval of the product.
- Full documentation as to the reason an accepted item was unavailable, and to the procedure used in determining acceptable alternates.
- One or a group of individuals at the district are responsible for maintaining all procurement documentation.

- (d) **Selecting the Winner of the Bid** —The contract will be awarded to the responsible bidder/proposer whose **proposal that received the highest score per the group win the bid**. Any and all bids or proposals may be rejected in accordance with the law.

- (e) All procurement documentation is required to maintain. Current year records and previous **THREE** years records are to be maintained after final payment and all other pending matters (audits) are closed for all negotiated contracts

- d. **Formal Contract Renewals for IFB and RFP** —Any approved contracts (except those for food service management companies [FSMCs] and state contracts) may be renewed year after year if the language in the RFP addresses renewals. The contract between the SFA and the vendor using formal procurement shall be of a duration no longer than one year, and options for the yearly renewal of a contract may not exceed four additional one-year extensions.

1. The renewal contract should be in writing each year. It should including price/fee increase or decrease provisions, if any, and must be stated in the contract and the RFP as appropriate. Any other changes to the contract should be included in the renewal agreement and signed by both parties. If the changes made to the contract that is over \$150,000, this would be considered a material change amount. This would require the district to rebid should be in writing each year. It should including price/fee increase or decrease provisions, if any, and

must be stated in the contract and the RFP as appropriate. Any other changes to the contract should be included in the renewal agreement and signed by both parties. If the changes made to the contract are over \$150,000 would result in going over the material change amount. This would require the district to rebid.

- D. **Material/Substantive changes of \$150,000 or more to the original contract** will require rebidding the contract. First, changes that must be initiated as a result of new services being desired by the SFA that are beyond the scope of the original contract. Second includes those changes, though within the scope of the contract, that substantially change the value, terms, or conditions of the existing contract.

When an SFA identifies a new service to be acquired that is beyond the scope or original intent of the contract, a separate solicitation that allows for full and open competition from all qualified bidders would be needed for the new service desired.

Examples: Adding a new services or increasing a bid include catering items, à la carte sales, vended meals, convenience stores, vending machines, concessions, the SFSP, and the ASSP. If any of these new services are to operate in a facility participating in the NSLP, SBP, or SMP, then the entire contract for school food service would need to be rebid. Exceptions to the process of conducting a formal competitive procurement are allowable if the original RFP requested, and the contract provided for, the priced option(s) to implement the added service(s).

- E. **Noncompetitive Proposals**— Noncompetitive proposals may be utilized in emergency situations when time does not permit conducting a formal competitive procurement and the current contractor has all the capabilities necessary to perform the new service. Procurement by **noncompetitive proposals** is procurement if: solicitation of a proposal from only one source; or after a solicitation of a number of sources, competition is determined inadequate.

1. Noncompetitive proposals may be used when (2 CFR 200.320[r]):

- a. Award of the contract is not feasible under small purchase procedures, sealed bids, or competitive proposals **and at least one of the following circumstances apply:**
 - (1) The item is available only from a single source.
 - (2) Emergency circumstances will not permit a delay resulting in competitive solicitation.
 - (3) Competition is determined to be inadequate after solicitation of a number of sources.
 - (4) Awarding agency authorizes noncompetitive proposals.

b. The SFA must get State agency approval for all noncompetitive proposals.

TYPES OF CONTRACTS

(See the following page for more information on contract awards)

A. Fixed Priced or Fixed Fee

- B. **Cost Reimbursable** is when the buyer covers all costs incurred by the seller, including labor, materials, and overhead.

- **Rebates and Discounts:** all cost reimbursable contracts (including contracts with cost reimbursable provisions) require provisions which limit the use of the nonprofit school food service account to pay only for allowable costs – those costs net of all discounts, rebates and other applicable credits; (Reference 7 CFR 210.21(f), 215.14a(d), and 220.16(e))

C. **Cost Plus Fixed Fee** is the buyer pays the seller's costs, plus a fixed fee or a fee based on a percentage of those costs, to cover the seller's profit and overhead.

D. **Cost plus a percentage of cost and percentage of cost methods of contracting is *PROHIBITED*.**

E. Contract Cost and Price (2 CFR §200.324)—Applies to formal methods

1. 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.
2. 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.
3. 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.
4. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.
5. The SFA 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.

Type of Contracts—Advantages and Disadvantages Summary	
Type of Contract	Advantages and Disadvantages
Fixed Price and Fixed Fee Price	Protects against escalating costs
	Provides a stated price
	No upward or downward adjustment for the duration of the contract, including all renewal periods
	Firm prices and do not change
	Price will generally be higher
	Provides maximum incentives for vendor efficiency
	Least administrative burden on the contracting parties
	Competitive sealed solicitations (i.e., IFB) must result in a fixed price contract
	May contain an economic price adjustment tied to an appropriate index
Cost Reimbursable	Reimburses the vendor for costs under the contract
	Does not provide for any other payment
	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
	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; vendor required to identify those costs
	Use when uncertainties involved in a contract's performance will not allow costs to be estimated with enough accuracy to use fixed contract pricing
	Frequently occur in the SNP as cost plus fixed fee contracts
	Must require the return of rebates, discounts, and other applicable credits
	Must include provisions
	SFA can only pay allowable costs
	Documentation of these costs and discounts, rebates, and other applicable credits will be required to be available for review by the SFA, State agency, or Food and Nutrition Service (FNS)
	Failure to comply with program regulations could require a district to utilize General Funds to cover some or all of the costs of the contract
Cost Plus Fixed Fee	Provides for the reimbursement of allowable costs plus the payment of a fixed fee to the vendor
	Use when market conditions are such vendors are unwilling to commit to a fixed price for an extended period
	Provides for upward and downward revision of the stated contract price upon the occurrence of specified occurrence of specified contingencies (i.e., cost indexes of labor or material)
	Must be specifically identified
	Fees are clearly defined in the contract and incidentals, such as promotion allowances, cash discounts, label allowances, rebates, applicable credits, and freight rates
	Fees discussed and agreed upon before signing the contract
	Clearly state that price adjustments should reflect both increases and decreases (e.g., fuel prices drastically increase price goes up and when fuel prices decrease price goes down)
	RFPs can result in either a fixed price or cost reimbursable contract
	Vendor provides supporting documentation for auditing purposes upon request from the SFA staff
	Cost must be adequately documented for the vendor to receive reimbursement
	Includes fees that are fixed, documented, and cannot fluctuate based on volume
	Fixed fee component of the cost plus fixed fee contract does not represent the costs associated with the item and/or service being purchased. The fixed fee component of the cost plus fixed fee represents the vendor's related costs (i.e., storage and distribution, delivery of the products, and the vendor's profit for performing the services).
	Provisions for changes to the fixed fee component must be identified in both the solicitation and the contract
	Provides the vendor with only minimum incentives to control costs
	Work required presents too great a risk to vendor

SOLICITATION TYPES AND AWARDING THE BID

- A..Awarding by line item—Bid is awarded by each product separately to the lowest bidder.
- B. Awarding by bottom line—Bidder with lowest price receives award based on ***TOTAL*** price when all items are combined.
- C. Awarding prime vendor—When 80 percent or more of food is purchased from one source.
(*This is the most common method in small districts*)

Solicitation Types and Advantages and Disadvantages

Type of Solicitation	Advantages	Disadvantages
Line Item Bid	<ul style="list-style-type: none"> • Best price for an individual item 	<ul style="list-style-type: none"> • Many suppliers • Need to remember what products are purchased from each supplier • Vendor may only be awarded one item • May not be able to meet distributor minimums for deliveries • May limit the number of responding vendors • May actually cost you more in the long run
Market Basket/ Product Groupings Solicitation	<ul style="list-style-type: none"> • Allows more vendors • Volumes for the entire lot tend to be large so pricing is strong • Limits the total number of suppliers to a manageable level • Provides opportunity to purchase specialty items 	<ul style="list-style-type: none"> • Some suppliers may not be able to supply all the items in a lot • Some lots may not be a large enough volume to warrant sufficient competition
Prime Vendor (All or Nothing)	<ul style="list-style-type: none"> • District only deals with one supplier • Orders are placed, delivered, and invoiced with one supplier 	<ul style="list-style-type: none"> • Some items may cost more since they are mixed together with the calculations for all products • May limit the number of responding vendors • May limit the availability of specific brands

STRATEGIES IN DEVELOPMENT OF SPECIFICATIONS

- A. Writing specifications may be the most challenging and important step in the purchasing process. The primary objective of good specification writing is to assure the acquisition of what you want and need. A ***planned menu*** is the starting point in which to make decisions regarding what to purchase. ***Do not accept price printouts from the vendor (these are NOT specifications).***
- C. Specifications are sent with the district's solicitation. The items listed are the exact items the district wants to purchase. This ensures each vendor is bidding on the exact same item to give you accurate pricing.
- B. Consider the following questions when developing specifications:
1. Is the item readily available?
 2. Is the price affordable?
 3. Has acceptability been determined?
 4. What type of product will meet the need?
- C. Specifications should be:
1. Simple, but precise.
 2. Identified with terms used in the marketplace; i.e., size, count, diameter, grade (quality), pack.
 3. Capable of being met by several bidders.
 4. Clear and understandable.
 5. Include the item descriptions, product specification, pack size, bid unit, estimated quantity, unit price, and CN label.
It is ***UNALLOWABLE*** to specifying only a ***brand name*** product instead of allowing ***an equal*** product to be offered.
 6. Use local as a specification (i.e., the written description of a product or service that a vendor must meet to be considered responsive to a solicitation) for local unprocessed agricultural products. CNP operators may target local foods through technical requirements sometimes associated with locally grown, raised, or caught foods, when using the small purchase and formal procurement methods if they do not overly restrict competition. For example, CNP operators may require as part of their solicitation that products are delivered within a certain number of hours of harvest or certified organic, or that certain other services are offered, such as producer profiles or farm visits.;
Example: Oklahoma grown beef, Watermelon within 100 miles from the district, etc.

See the following pages for examples of specifications.

SPECIFICATION EXAMPLES Page 1 of 2						
Item Description	Product Specification	Pack Size	Bid Unit	Est Quantity	Unit Price	Comments
Apples, fresh	125-138 Count	40 pound	Box			
Applesauce, canned	Smooth	6/10	Case			
Peaches, canned	Halves in Natural Juices	6/10	Case			
Pears, canned	Diced in Light Syrup	6/10	Case			
Pineapple, canned	Chunks in Natural Juices	6/10	Case			
Pineapple, canned	Slices packed in Natural Juices	6/10	Case			
Beans, green canned	Cut in low sodium	6/10	Case			
Peas, black-eyed, dry, canned	Cooked with seasoning, brand like Allen's, low sodium	6/10	Case			
Beans, Pinto, dry	Private label	10 Pound	Bag			
Carrots, canned	Sliced in low sodium	6/10	Case			
Corn, canned	Cream Style	6/10	Case			
Potatoes, French-fries, frozen	Oven-ready, crinkle-cut, approved brands equivalent to: ABC Foods A-103, DEF Foods X502, Pots R29	6/10	Case			
Potatoes, dehydrated	Granules, low moisture	10 Pound Box	Case			
Tomatoes, canned	Peeled, diced, low sodium	6/10	Case			
Muffins, banana nut	Whole grain-rich. 2oz minimum. 4oz maximum	Individually wrapped	Case			
Waffle, frozen	Waffle, frozen, plain, round, whole grain-rich. Poly pouch packed	144 count	Case			
Pasta: egg noodles	Whole grain-rich, flat ribbon shape, medium width.	10-lb box	Pound			

EXAMPLE ONLY

SPECIFICATION EXAMPLES Page 2 of 2						
Item Description	Product Specification	Pack Size	Bid Unit	Est Quantity	Unit Price	Comments
Pasta: spaghetti	Made from whole grain-rich semolina and durum wheat flour, 10 lb only	10-lb box	Pound			
Ground Beef, frozen	80/20	10-lb roll	Case			
Bologna, turkey	Sliced - each slice to weigh 1 oz; no binders, extenders, fillers; CN label required,	12-lb bulk	Pound			
Cheese, mozzarella,	Shredded, part-skim milk, lower sodium	6/5 lb	Case			
Chicken nuggets, breaded, frozen	Boneless chicken breast patty nugget, whole grain-rich bread-ing. Maximum 6 nuggets, minimum 5 nuggets, fully cooked. CN label required	Please specify portions	Case			
Ham, water added	Fully cooked, boneless, smoked and cured. ham and water product, maximum 35%.	8/10 lb packages	2/Case			
Hot dogs, frozen	Frankfurters, frozen, no binders, extenders, or fillers; CN label required OR all beef	8 franks per pound	80 per Case			

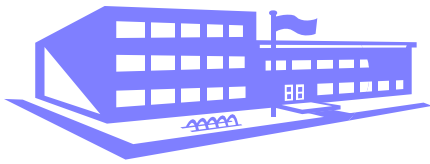
EXAMPLE ONLY

SPECIFICATIONS

Item Description	Product Specification	Pack Size	Bid Unit	Estimated Quantity	Unit Price	Comments

SOLICITATION DOCUMENT

- A. Solicitation Document is cover letter (solicitation announcement) that should always be included when soliciting to vendors. This ensures the district meets USDA regulations by including the required provisions. Solicitation documentation is to be sent out to those utilizing small purchase and formal purchase procedures. The solicitation document should include:
1. Institution letterhead
 2. Date of letter
 3. Copy of specifications
 4. A method of response
 5. The method of evaluation
 6. The method of acceptance of successful responses
 7. Deadline for bid
 8. Bid/price quote contract period
 9. Delivery times and places
 10. HACCP compliance requirement
 11. Ordering procedures
 12. Substitutions and shortages
 13. Special conditions (i.e., Nutrition Facts labels)
 - 14 . Termination for cause
 15. Buy American Provision
 16. Minority Firms, Women's Business Enterprises, and Labor Surplus Area Firms statement
 - 17 . Geographic preference, if applicable



MODINE PUBLIC SCHOOLS
1234 MODINE AVENUE
MODINE, OKLAHOMA 00000

EXAMPLE OF A SOLICITATION ANNOUNCEMENT

February 13, 20XX

Modine Public Schools announces the opportunity for responsible bidders from the food industry to respond to the attached food specifications valid for the period of **July 1, 20XX**, to **May 30, 20XX**. All bidders wishing to respond to this bid period must do so by **2 p.m., April 15, 20XX**, at the Education Service Center at the above address or emailed to Cafeteria.Manager@modine.org.

No other format for the bid response other than the attached specification forms will be accepted. Responses will be evaluated based on the following criteria:

- Best price
- Meeting food descriptions
- Quantity availability
- Past history, if applicable
- Quality of food
- Meeting delivery requirements

Vendors will be expected to ensure that deliveries to Modine Public Schools will be dropped at 1234 Modine Avenue on Mondays and Thursdays between the hours of 1 to 3 p.m. Delivery trucks and product drops must be HACCP-compliant. Sales staff will provide on-site, phone, or e-mail/online ordering methods with e-mail/online confirmation of orders. Any vendors making substitutions of product must contact the district for approval before a substitution can be made.

Nutrition Facts information or Nutrition Facts labels must be provided on all products along with any applicable child nutrition labels or product formulation statements. **If substitutions are necessary, the vendor must contact the district for approval before the delivery is made.**

If food vendor does not meet quality standards, delivering unapproved substitutions, or violating terms. Modine will reach out to the vendor to rectify any inconsistencies. If the issues are not resolved after seven times, Modine may terminate the agreement for cause.

BUY AMERICAN PROVISION

Section 104(d) amended Section 12(n) of the National School Lunch Act (NSLA) (42 U.S.C. 1760) requires SFAs participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) **to purchase 90% of food items grown and processed in the United States.** The term domestic food commodity or product means agricultural USA Foods produced in the United States **SUBSTANTIALLY** using agricultural USDA that are produced and processed in the USA. **Each food item must be 51% of the American grown and processed. Documentation is required to ensure products purchased are grown in the United States.**

Modine Public Schools reserves the right to accept or reject any part, or all, of the bid you submit. If all criteria contained within this document are met, successful bidders will be considered. **Modine PS will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.**

Bids will be evaluated on a *per Market Basket* and will awarded on May 5, 20XX. All bidders will be notified in writing. Modine Public Schools reserves the right to terminate a vendor who is awarded business but does not follow through with the above requirements.

This institution is an equal opportunity provider.

SELECTING THE BID WINNER

Full and open competition is achieved when potential bidders/offers receive all information necessary to respond properly to a solicitation; and responses are accurately evaluated for contract award. Contracts must be awarded to the responsive and responsible bidder/offers whose bid/proposal is lowest or most advantageous to the program with price and other factors considered of which cost/price must be primary.

Bids cannot be opened until the date stated in the solicitation by the district. Formal procurement methods require a time when the bids will be opened.

Vendors submitting a bid solicited as small purchase or sealed bids are stating they are responsive and responsible.

Responsiveness: The bidder must adhere to all the terms and conditions in the solicitation or contract.

Responsibility: The bidder must demonstrate the ability to perform all aspects of the contract,

Small Purchase:

Contracts must be awarded to the responsive and responsible bidder/offers whose bid/proposal is lowest or most advantageous to the program with price and other factors considered of which cost/price must be primary.

The vendor selected does not have to be the one with the lowest price. However, it has to be justified why the vendor was selected over the one with the lowest price.

Invitation for Bid (IFB or Sealed Bid): Bids are solicited publicly and are typically fixed-price contracts.

- The primary consideration is cost, and the expectation is to receive competitive bids.
- The contract is awarded to the lowest responsive and responsible bidder.
- Bids are publicly opened and read.
- The agency reviews the low bid to ensure it is responsive and that the bidder is responsible.
- A contract award is then made in writing.

Request for Proposal (RFP):

The award is the bidder offering the most advantageous proposal, which is the bidder with the highest group evaluation score.

Evaluation of Proposals: A committee evaluates proposals based on the criteria outlined in the RFP, ensuring they meet the minimum requirements.

Scorecard and Shortlisting Proposals are scored using a matrix, and the best-suited responses are shortlisted.

Negotiations (an option if it is notated in the RFP): The issuing organization may conduct negotiations with the top-rated bidders to refine details and secure the best possible terms.

Final Selection and Award: The winning bidder is selected, and the contract is awarded, often in the form of a written acceptance of the bid.

Notification: The selected vendor is to be notified, and unsuccessful bidders are informed of the decision

Rejection of Bids: Any or all bids can be rejected if there is a sound, documented reason. Bids that are received **AFTER** the date and time indicated in the solicitation and advertisement are not considered responsive and are to be thrown out.

Unallowable Procurement Practices

- Allowing a potential contractor to write the bid or proposal terms, product specifications, procurement procedures, or contract terms.
- Placing unreasonable requirements on firms.

- Allowing a potential contractor to evaluate bids or proposals submitted by competitors.
- Delegating bid/proposal acceptance or recommendation for acceptance to a potential contractor competing on the procurement.
- Allowing a potential contractor access to sealed bid information before the bids are publicly opened.
- Disclosing the content of proposal offers submitted by others to a potential supplier prior to the supplier submitting an offer.
- Negotiating under the formal advertising method (sealed bid) of procurement.
- Accepting non-responsive bids or offers.

Solicitation Documentation to be maintained:

- Document the entire procurement process information.
- Keep on record all occasions you reached out or contacted vendors.
- Keep all quotes or rates received.
- Notate the dates bids were received.
- Ensure the documentation indicates quantity of goods or frequency of services.

USDA FOODS

1. Coordination Between the SFA and DHS

The SFA must coordinate with the DHS to ensure that processors providing food products to its commercial distributor have a state processing or participation agreement with the DHS. Multistate processors must also have a National Processing Agreement with the Food and Nutrition Service (FNS). The SFA may only order USDA Foods for delivery to processors that have such agreements in place. The SFA must also verify with DHS the types of approved end products, the quantity of end products that it is eligible to receive, and the value of USDA Foods contained in the end products. DHS must ensure that the SFA is aware of any restrictions in the state processing or participation agreement relating to approved end products or methods of end product sales, or other provisions. Such restrictions must be included in the SFA's solicitation for the services of a commercial distributor.

2. Coordination Between the Distributor and Processor

The distributor and processor should collaborate closely to ensure that processed end products are provided only to SFAs eligible to receive them. In many cases, end products will be identical to commercial products; i.e., the commercial products meet substitution requirements in 7 CFR §250.30(f) and grading requirements in 7 CFR §250.30(g) for the processing of USDA Foods. In such cases, the distributor may commingle commercial food products and end products at its facility and sell such commingled food products to any of its customers. Sales of such food products to the SFA must ensure provision of credit for the value of USDA Foods for the quantity of end products that the SFA is eligible to receive. However, for end products produced from non-substitutable USDA Foods (i.e., beef and pork), the distributor must ensure that only the SFA receives such end products.

The distributor must notify the processor of its sales of end products to the SFA in a timely manner so that the processor may report such sales and reductions of donated food inventories to DHS in its monthly performance reports. Such notification may be provided by electronic means; e.g., through sales velocity reports or other automated sales reports.

3. ***Soliciting Bids From Commercial Distributors for End Products/Commodity Processing/Diverted Commodities (Reference USDA Policy Memo FD-119-2012)***

In most cases, SFAs solicit bids for procurement of commercial food products from commercial distributors and, in a separate solicitation, solicit bids for procurement of end products from processors, even when identical food products are sold commercially through distributors.

In instances where the services of a processor have already been procured by a commercial distributor in accordance with federal procurement requirements, the SFA may solicit bids from that commercial distributor to procure both commercial food products and end products as long as the solicitation and resulting contract clearly address the specific requirements relating to end products. In the solicitation, the SFA must provide for the following:

- a. End products must be obtained from a processor that has a state processing agreement (or state participation agreement, as appropriate) with the state distributing agency (Department of Human Services—DHS).
- b. Only end products with approved end product data schedules, and that meet substitution and grading requirements in 7 CFR §250.30, may be provided.

- c. The SFA must receive credit for the value of the USDA Foods contained in the end products, either through a discount from the gross case price or a refund or rebate after the sale of the end product.
- d. The distributor must collaborate with the processor to ensure that the SFA is an eligible recipient of end products and to ascertain the quantity of end products, or the value of donated food, for which the SFA is eligible.
- e. The distributor must provide notification to the processor of end product sales so that the appropriate inventory draw-down may occur.

DoD Purchases (Department of Defense Purchases)

USDA has clarified how SFAs may use funds provided under Sections 4 and 11 or 19 of the National School Lunch Act (NSLA), 42 U.S.C. 1751, to purchase fresh fruits and vegetables from DoD Fresh Fruit and Vegetable Program (DoD Fresh) vendors.

SFAs may not contract with individual vendors non-competitively to purchase products using Sections 4 and 11 or FFVP funds, even if the same vendors already provide the SFA with product through DoD Fresh using Section 6 funds. Rather, SFAs must meet the competition requirements in 2 CFR 200.319(a). These regulations require SFAs to conduct either an informal or formal procurement, depending on whether the estimated value of the purchase is above or below the most restrictive applicable small purchase threshold (federal, state, or local). In conducting the procurement, it is permissible for SFAs to include vendors who provide services through DoD Fresh when soliciting bids. After evaluating all bids, if the SFA determines that the DoD Fresh vendor's bid is the winning submission, the SFA must directly contract with the vendor as it would any other commercial procurement. It is not permissible for SFAs to place orders through DoD's FFAVORS system for any purchases, either formally or informally, to be paid with Sections 4 and 11 or FFVP funds. SFAs that are currently using FFAVORS for purchases paid for with Sections 4 and 11 or FFVP funds will no longer be able to do so. (Reference USDA Memo SP-25-2014)

- * Section 4 funds are the SFA's reimbursements for the paid meals and Section 11 funds are the SFA's reimbursements for the free and reduced-price meals.

FARM-TO-SCHOOL

SFAs may purchase food from local farmers or farmer's markets. Farm-to-School ***encourage institutions participating in the NSLP and SBP to purchase locally produced foods to the maximum extent practicable.*** USDA allows geographic preference when procuring unprocessed locally grown or locally raised agricultural products. Geographic preference may be applied to unprocessed agricultural products which are locally grown and locally raised and that have not been cooked, seasoned, frozen, canned, or combined with any other products. If an SFA is interested in Farm to School, contact **Alex Cox** with the Oklahoma Department of Agriculture, Food, & Forestry at **alex.cox@ag.ok.gov** or **405-522-6768**. (Reference USDA Policy Memo SP-30-2008, SP-06-2015, and SP-07-2016)

A. Inspections and Licensing

1. Donated: Produce From an Individual Farmer

The Oklahoma State Department of Health does **NOT** require any type of inspection or licensing as long as the food items are purchased or donated directly from ***an individual farmer*** and are whole and intact (not processed). If purchased, federal procurement procedures must be followed. In addition, the food item purchased or donated must not be considered a ***potentially hazardous food*** as defined by Oklahoma State Department of Health Food Service Establishment Regulations, Chapter 257. ***Potentially hazardous food*** means a food that is natural or synthetic and requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxic production of ***Clostridium botulinum***, or, in raw shell eggs, the growth of ***Salmonella enteritidis***. Potentially hazardous foods include, but are not limited to, animal foods (a food of animal origin) that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures that are not modified in a way that results in mixtures that do not support growth. Potentially hazardous food does not include air-cooled hard-boiled eggs with the shell intact; a food with a water activity of 0.85 or less; a food with a pH level of 4.6 or below when measured at 75°F; a food in an unopened, hermetically sealed container; a food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of ***S. enteritidis*** or ***C. botulinum*** cannot occur; or a food that may contain infectious or toxigenic microorganisms or chemical or physical contaminants at a level sufficient to cause illness, but that does not support the rapid and progressive growth of infectious or toxigenic microorganisms.

2. Donated Meat: From an Individual Farmer

If a meat/poultry product is donated by a local farmer or purchased from a local farmer, the school must make sure the product was inspected either at a state or federal plant. If purchased, federal procurement procedures must be followed.

3. Purchasing Food From a Farmer's Market

According to the Oklahoma State Department of Health, ***farmer's market*** means a designated area in which farmers, growers, or producers from a defined region gather on a regularly scheduled basis to sell at retail non potentially hazardous farm food products and whole shell eggs to the public. A portion of the raw food ingredients used by the individual vendor to produce a product must have been grown or raised by the vendor. The individual vendors wishing to process food as defined by Chapter 260 of the regulations must obtain a state food processor's license. Farmer's markets must be registered with the Oklahoma Department of Agriculture Food and Forestry and comply with the ***Food Service Establishment Regulations***, Chapter 257, and/or ***Good Manufacturing Practice***, Chapter 260. This definition does not include individual farmers who grow and sell unprocessed fruit and/or vegetables from the farm, roadside, or truck. ***Any vendors who prepare or sell any potentially hazardous foods at the farmer's markets must abide by all applicable sections of Chapter 257 of the regulations, including acquiring a license from the department.***

4. Herbicides and Pesticides

The Oklahoma State Department of Health recommends that SFAs obtain a guarantee from farmers that the crops/food items purchased from the local farmer were grown with herbicides and pesticides free of any carcinogens. This is not a regulatory requirement.

B. Farm-to-School Procurement Steps

1. Contact a few farmers within the area to inquire about the availability of specific product items for use in your CNP or go the Oklahoma Department of Agriculture, Food, and Forestry website to see the current Farm to School Producer partners.
2. Request from each farmer a list of produce grown, showing typical periods of availability during the school year. Many crops normally harvested in the spring and summer months can also be grown in Oklahoma for harvest in the fall and early winter. Just ask the farmers to indicate which produce could be available during the periods August—December, December—March, March—May, and also May—August if you have summer feeding programs.
3. Upon reviewing the lists of available produce, estimate the approximate volumes used weekly for each item in which you are interested.
4. Arrange appointments to meet with farmers to gather information about possible quantities available, grading, packaging, delivery, pricing, and payment. If the SFAs anticipated annual purchase of a particular product will be less than the applicable small purchase threshold, the SFA can use these simplified procedures and contact a number of local farmers.

Note: Micropurchasing is the recommended Procurement method for Farm-to-School. Small purchase would be required if spending more than \$10,000 per transaction.

To facilitate purchase of locally grown produce, SFAs can: identify and encourage local farmers to submit price quotes; look into alternative pack sizes and distribution methods that reflect product availability, using pricing structures such as fixed delivery charges with product prices that respond to the current market value; and explore new and different products that are available through local farms.

SFAs also need to develop specifications that reflect the characteristics of the products they seek. For example, local farmers grow a specific lettuce variety that students prefer but that the SFA cannot get through its broker or distributor. The SFA can write its specification requiring this lettuce variety. However, just writing the specification alone will not be adequate to ensure local farm participation. The SFA must have ***laid the groundwork***; i.e., identifying and encouraging local farm participation for the procurement to be successful.

Use this information to help create appropriate product specifications. ***Quality Foods for Quality Meals*** from USDA's Fruits and Vegetables Galore provides product sheets for fruits and vegetables that may be used to develop specifications. To ensure the freshest product possible, consider using a statement such as ***days from harvest*** in your product specifications.

5. Obtain and document price quotes for produce items as you specify in order to get the freshest product at the best price.
6. Forward Contract:

A forward contract is generally understood to involve a contract between two parties to buy or sell products at a specified time in the future at a price agreed upon today. Entering into a forward contract with local producers in advance of the season may pose risk as farmers may experience crop loss due to outside elements such as weather or infestation. An SFA/institution/sponsor is the steward of the nonprofit school food service account and must ensure that all costs are reasonable, necessary, and allocable. Thus, careful consideration must be given to such contracts

and the potential risk weighed against the benefit. Additionally, the entity needs to ensure that the farmer is capable of providing substitutions that are meaningful in the event of crop failure and to incorporate language into the contract affording meaningful substitutions or a return on the original financial investment. (Reference USDA Memo SP-03-2013)

PURCHASING AGREEMENTS

Purchasing agreements are classified into three groups:

- Child Nutrition Program (CNP) Program operator-only and/or CNP State agency cooperatives,
- Agents, and
- Third-Party entities (e.g., state-run cooperative agreements, inter-agency agreements, non-Program operators such as public, private, and non-profit entities, group purchasing organizations, group buying organizations, third-party vendors).

1. ***CNP Program operator-only and/or CNP State agency cooperative agreement.*** This is an agreement formed solely between CNP Program operators and may include CNP State agency cooperatives formed to increase purchasing power. This agreement is not a method of procurement, rather an agreement to competitively procure goods and services. Such agreements may include a fixed fee to cover overhead or administrative costs as specified in the cooperative agreement.
2. ***Agent.*** An agent is a person or business authorized to act on a client's behalf. An agency may be necessary for procuring goods or services when/if the client does not have the necessary technical understanding of the equipment, service, food or other food service supplies to be purchased; or lacks time or expertise to conduct a proper procurement. A procurement agent represents a special fiduciary relationship of trust between itself and its client. In other words, the agent must be contractually required to conduct all competitive procurement methods with its client's interests solely in mind. An agent's services in excess of the micro-purchase threshold currently set at \$50,000 must be competitively procured in accordance with Federal procurement methods outlined in 2 CFR 200.320.
3. ***Third-Party entities.*** Third-Party entities include State procurement agency agreements, inter-agency agreements, group purchasing organizations, group buying organizations, and third-party vendors.
 - (a) ***State procurement agency agreements:*** This is an inter-governmental agreement with the State which may include public, private, and non-profit entities. This procurement service is not part of the CNP State agency as the services are conducted for State facility needs using State procurement standards and the State allows local educational agencies (LEAs), school food authorities (SFAs), and other CNP operators to purchase from the State's contracted sources. When competitive procurement methods are conducted by the Program operator, this agreement may be one source of prices when using small purchase procedures, sealed bids or competitive proposals, as applicable.
 - (b) ***Inter-agency agreements:*** This is an agreement which may include public, private, and non-profit entities formed to procure goods and services together. An example is an educational hub whose purpose is to purchase goods and services for LEAs. When competitive procurement methods are conducted by the Program operator, this agreement may be one source of prices when using small purchase procedures, sealed bids or competitive proposals, as applicable.

- (c) **Group Purchasing Organizations, Buying Organizations, and Third-Party Vendors.** Collectively referred to here as GPOs, these often include CNP and non-Program operators such as public and private schools, hospitals, universities, law enforcement, public works, etc. who join a third-party company or service provider. GPOs could be private for-profit or nonprofit entities. A GPO is typically structured in a way that may include a membership fee paid by member users, who are then granted access to the GPO price list of products and services. When competitive procurement methods are conducted by the Program operator, GPO price lists may be one source of prices when using small purchase procedures, sealed bids or competitive proposals, as applicable.

A. PURCHASING THROUGH STATE CONTRACT

1. The contract between the vendor and the state of Oklahoma is for one year, with an option to renew every year for four additional years. Because the contract is with the state of Oklahoma (Office of Central Purchasing), no specifications by the SFA are required to be sent to Central Purchasing.
 - (a) The contract is a fixed-cost (vendor cost) plus a fixed fee.
 - (b) The vendor prefers SFAs to begin at the start of the school year or at midyear.
 - (c) If an SFA is on the state contract and finds an item from another vendor that has a lower price, it may be purchased outside the state contract with written documentation.
 - (d) If an SFA is interested in state contracting, contact **Asha Parks** with Central Purchasing at 405-521-2289 or Asha.Parks@omes.ok.gov. **Reference solicitation SW0156**

Note : If a district wants to use state contract, the LEA must still use proper procurement procedures. The district may use Central Purchasing as one source of prices by using small purchase procedures, sealed bids or competitive proposals, if applicable. The district must still contact an additional source for pricing. (Memo SP-05-2017)

B. GROUP PURCHASING ORGANIZATION (GPO): FOOD BUYING GROUP/ COOPERATIVE PURCHASING

A group purchasing organization is a commonly used term to refer to an organization that buys in larger quantities on behalf of other entities. A GPO may call itself many different names and may be referred to as a purchasing cooperative, purchasing consortium, group-buying/purchasing organization, etc. A GPO can be for-profit or not-for-profit. It is vital that all procurement transactions be conducted in a manner providing free and open competition. This principle fully applies to purchases made through any GPO.

1. Districts belonging to a cooperative purchasing group generally realize:
 - a. A reduction in a district's administration time in procuring products.
 - b. A higher quality of products to be purchased.
 - c. The opportunity for a wider range of products.

2. Advantages of cooperative purchasing groups:
 - a. Increased purchasing power
 - b. New menu items
 - c. Labor reduction
 - d. Direct to manufacturer purchasing
 - e. Increased volume and volume discounts
 - f. Networking opportunities
 - g. Procurement decisions by governing board and advisory group
 - h. Increase in expertise and resources
3. Disadvantages of cooperative purchasing group:
 - a. Consensus among members
 - b. Deliveries
 - c. Minimum cases
 - d. Storage
 - e. Administrative fee/membership fee
4. Forming a cooperative purchasing group:
 - a. Conduct a member-user survey
 - b. Analyze the financial needs of the group
 - c. Conduct a meeting with potential members
 - d. Develop business plan
 - c. Develop acceptable contractual agreements
 - d. Prepare solicitation according to federal procurement regulations

Note : If a district wants to use a food buying group, the LEA must still use proper procurement procedures. The district may use the food buying group as one source of prices by using small purchase procedures, sealed bids or competitive proposals, if applicable. The district must still contact an additional source for pricing. (Memo SP-05-2017)

C. CONTRACTING MEALS WITH ANOTHER DISTRICT

1. The district supplying meals will sign a contract with each SFA, Day Care, and/or Head Start Program. The contract required to be used is the *Agreement to Furnish Food* located in Other Documents under the Procurement section. This agreement specifies the SFA is providing the meals served the required meal patterns. The contract establishes a daily time frame in which each contracting entity reports to the preparing SFA the number of meals to be ordered each day. Each contracting entity will be invoiced on a monthly basis for the total number of meals ordered during the invoice period. The contracting entity is responsible for paying for the number of meals **ORDERED**, regardless of whether the meal was served.
2. The preparing SFA is responsible for reporting to each contracting entity the number of meals prepared. Each contracting entity would then claim the number of meals **SERVED** on its own monthly claim. The preparing site would report the meals as contract meals on its claim.
3. The charge established for these contract meals must ***be the rate listed in Schedule B for contract meals***. When the food is delivered or picked up by the district, ***a Contract Meal Delivery Receipt (CMDR) form must be attached indicating the exact food items delivered and the quantity***. This form is located in the Procurement section in Other Documents.

- 4.. If an SFA is contracting with a district that is allocated USDA Foods, the SFA should **NOT** include the commodity allocation rate in the formula when figuring the minimum amount to charge for the contract lunch.
5. A district contracting with another district **MUST** give their allocated USDA Foods to the SFA preparing the meals.
6. The preparing SFA is responsible to meet all NSLP and/or CACFP meal pattern requirements. Each of these requirements are stated in the *Agreement to Furnish Food* document. The signed agreement assures each contracting entity the meals received to meet requirements and therefore can be claimed for reimbursement. The *Agreement to Furnish Food* is located in Other Documents under the Procurement section.
7. If a district contracts meals with an institution or another school, it is required for the preparing district to mark how many meals were prepared in the site's Production Records, and to send a completed copy of the CMRD form for each meal type every day contract meals are delivered. The CMDR can be found on the following page.

D. CONTRACTING MEALS WITH A DAY CARE OR HEAD START PROGRAM

1. The district supplying meals will sign a contract a Day Care, and/or Head Start Program. The contract required to be used is the *Agreement to Furnish Food* is located in Other Documents under the Procurement section. This agreement specifies the SFA is providing the meals served the required meal patterns. The contract establishes a daily time frame in which each contracting entity reports to the preparing SFA the number of meals to be ordered each day. Each contracting entity will be invoiced on a monthly basis for the total number of meals ordered during the invoice period. The contracting entity is responsible for paying for the number of meals **ORDERED**, regardless of whether the meal was served.
2. The preparing SFA is responsible for reporting to each contracting entity the number of meals prepared. Each contracting entity would then claim the number of meals **SERVED** on its own monthly claim. The preparing site would report the meals as contract meals on its claim.
3. The charge established for these contract meals must **be the rate listed in Schedule B for contract meals**. When the food is delivered or picked up by the district, **a Contract Meal Delivery Receipt (CMDR) form must be attached indicating the exact food items delivered and the quantity**. This form is located in the Procurement section in Other Documents.
4. The preparing SFA is responsible to meet all CACFP meal pattern requirements. Each of these requirements are stated in the *Agreement to Furnish Food* document. The signed agreement assures each contracting entity the meals received to meet requirements and therefore can be claimed for reimbursement. The *Agreement to Furnish Food* is located in Other Documents under the Procurement section.
5. If a district contracts meals with an institution, it is required for the preparing district to mark how many meals were prepared in the site's Production Records, and to send a completed copy of the CMRD form for each meal type every day contract meals are delivered. The CMDR can be found on the following page.

CONTRACT MEAL SERVICE DELIVERY RECEIPT

(Keep in your monthly folder. *USE ONE RECEIPT PER MEAL SERVICE.*)

DATE: _____

MEAL TYPE: Breakfast ☐ Lunch ☐ After-School Snack ☐

SITE PREPARING MEAL: _____

SCHOOL/INSTITUTION RECEIVING MEAL: _____

DELIVERY TIME: _____ NUMBER OF MEALS ORDERED/DELIVERED: _____

FOOD ITEMS PREPARED AND QUANTITIES DELIVERED

Menu	Quantity Delivered _____ Number of Participants _____ Number of Adults _____ Bulk Delivery _____ Preportioned _____	*Crediting/ Portioning Information
Milk	Milk provided by: SITE VENDOR (Circle One) Record Quantity: _____ Temperature: _____	
Vegetable/Juice	Temperature: _____	
Fruit/Juice	Temperature: _____	
Whole-Grain Bread/ Bread Alternate		
Meat/Meat Alternate	Temperature: _____	
Extras OR Additional Sides	Temperature: _____	

* Crediting/portioning information for menu planning: i.e., 1 cup spaghetti sauce = 2 ounces meat/meat alternate, 6 chicken nuggets = 2 ounces meat/meat alternate and 1 ounce bread/bread alternate serving, 2 cheese sticks = 1 ounce meat/meat alternate

I acknowledge that the above items and quantities were delivered to this contract site and that all above items were at the proper temperature upon arrival. I did complete the necessary portioning/crediting information. Child Nutrition (CN) labels, product formulation statements, and/or recipes are available for all combination food items or other applicable components.

Signature of Preparer

Signature of Recipient

INSPECTION DELIVERY: Was the food delivered in a safe/sanitary method?

Yes or No

Was the food temperatures proper?

Yes or No

DEVELOPING A PROCUREMENT PLAN

Each SFA shall have on file a written procurement plan approved by the local school board. The procurement plan identifies the SFA's purchasing periods for the goods, equipment, and services related to the CNP. In addition, the plan documents the various methods of procurement procedures being practiced. The USDA provisions and information required to be used for the procurement method(s) use the district uses.

The procurement plan provides justification for using a certain procurement method to obtain an item. The scope of the plan is determined by the organization of the SFA. If procurement is decentralized, the plan may apply to all sites responsible for purchasing or each school may be permitted to develop its own plan. A new procurement plan does not need to be developed every year. However, an annual review of the approved plan is suggested to assure its relevance to current procedures. An example of a procurement plan is on **pages P-50-59**. Also, an example of a formal procurement checklist can be found on **pages P-47-48**.

REQUIRED PROCUREMENT PLAN PROVISIONS

- A. Small Purchase Provisions per 2 CFR 200 Appendix II: *See **Page P-12** for the full statements*
- (a) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate (contracts more than the \$10,000 threshold).
 - (b) **USDA Equal Opportunity** information (contracts \$10,000 or more)
 - (c) Requiring **Buy American** as outlined in 7 CFR Part 210.21(d); specific instructions for prior approval of all of nondomestic product(s) (all contracts)
 - (d) **Termination for Cause** information (contracts \$10,000 or more)
 - (e) Statement assuring positive efforts will be made to involve small, minority, and women-owned businesses (all contracts)
 - (d) **Beverage Agreement** not allowing exclusive pouring rights
 - (f) **Clean Water Act** provision (contracts \$150,000 or more)
 - (g) **Rights to Inventions Made Under a Contract or Agreement**, if applicable
 - (h) **Contract Work Hours and Safety Standards Act** (contracts \$100,000 or more)
 - (i) **Davis-Bacon and Copeland Nonkickback** Information (Construction contracts \$2,000 or more)
 - (j) **Minority firms, women's business enterprises, and labor surplus area firms** statement
 - (k) **Code of Conduct**
 - **Forms required to be sent back with the bid from the vendor**
 - Signed **Byrd Anti-Lobbying form** for contracts over \$100,000
 - Signed **Oklahoma NonKickback Affidavit** for purchases orders over \$25,000

- A. Formal Procurement Provisions per 2 CFR 200 Appendix II: *See **Page P-12** for the full statements*

Formal Procurement requires the same provisions as small purchase in addition to:

- **Forms required to be sent back with the bid from the vendor**
 - Signed statement of noncollusion (all contracts using the formal method)
 - Signed Debarment/Suspension Certificate or statement included in contract or copy of Excluded Parties List System (EPLS) for all contracts using the formal method

SFA FORMAL PROCUREMENT PLAN CHECKLIST

Use this checklist when preparing solicitation documents, conducting informal and formal procurements, evaluating bids and proposals and executing contracts that involve the use of School Nutrition Funds. (This checklist may or may not be applicable to all purchasing processes.)

Procurement Plan	<input type="checkbox"/> Written procurement plan <input type="checkbox"/> Authorized purchaser(s) specified <input type="checkbox"/> Detailed procurement methods to be used (quotes, IFB, RFP, micropurchasing, noncompetitive negotiation), including detailed procedures for each purchasing method <input type="checkbox"/> Award method clearly described (i.e., line item, bottom line) <input type="checkbox"/> Advertisement procedures <input type="checkbox"/> Vendor notification notified of award/nonaward of contract <input type="checkbox"/> Code of ethics/conflict of interest policy <input type="checkbox"/> Other state/local requirements
Procurement Procedures	<input type="checkbox"/> Letter of invitation <input type="checkbox"/> Intent of procurement activity <input type="checkbox"/> Contract time period <input type="checkbox"/> Bid/proposal/quote submission procedures (i.e., sealed bid, written specifications) <input type="checkbox"/> Prebid/proposal meeting date/time/location (if applicable) <input type="checkbox"/> Bid opening date/time/location; proposal opening procedures <input type="checkbox"/> Contact information <input type="checkbox"/> Civil Rights statement <input type="checkbox"/> Other state/local requirements
Terms and Conditions	<input type="checkbox"/> Certification regarding disclosure of lobbying (\$100,000+) <input type="checkbox"/> Debarment/suspension certification form (\$25,000+) <input type="checkbox"/> Noncollusion statement <input type="checkbox"/> Assurance of ethical practices <input type="checkbox"/> Escalation/de-escalation clause <input type="checkbox"/> Price determination statement (fixed-priced, fixed with firm price for delivery, etc.) <input type="checkbox"/> Contract extension or <i>roll-over</i> clause if warranted <input type="checkbox"/> <i>Buy American</i> statement and instructions <input type="checkbox"/> Bid/proposal protest procedures <input type="checkbox"/> Remedy for nonperformance/termination of contract <input type="checkbox"/> HUB statement to involve minority business where possible <input type="checkbox"/> <i>Equal Employment Opportunity</i> compliance statement <input type="checkbox"/> Energy Policy and Conservation Act statement <input type="checkbox"/> Clean Air/Water Act statement <input type="checkbox"/> Civil Rights Act statement <input type="checkbox"/> Return of discounts, credits, and rebates to SFA statement <input type="checkbox"/> Record retention and record access requirements (records maintained for three years from final payment of contract and/or renewal; all base solicitations must be maintained for three years after the final payment on the contract)

Terms and Conditions continued	<ul style="list-style-type: none"> _____ Method of shipment/delivery requirements _____ Method of payment invoices, statements, etc. _____ Purchase instrument to be used and how vendor will receive purchase orders _____ Bid certification form _____ Specifications that are sufficiently detailed to get what is needed but not so specific as to restrict competition _____ Product specifications (approved brand and/or equivalent) _____ Quantity _____ Quality _____ Packaging _____ Pricing (unit and extended) _____ Procedures for documenting/preapproving any substitutions and/or deviations _____ Other state/local requirements
Documentation and Records	<ul style="list-style-type: none"> _____ All IFBs/RFPs/RFQs with appropriate documentation and signatures of authorized purchasers maintained on the original solicitations _____ Comparison charts to document procurement decisions and contract awards _____ Record of public bid openings and/or proposal openings if proposals will be publicly opened _____ Copies of contract award/nonaward letters _____ Copies of advertisements for solicitation of goods/services _____ Determination/document action of correct procurement method used _____ Evaluation of escalation/de-escalation clause _____ Evaluation of contract extension/amendment (roll-over clause) _____ Evaluation/documentation of contract renegotiations/changes to original contract at the timelines and under the same conditions specified in the original solicitation document _____ Evaluation of return of discounts, credits, and rebates (as applicable), and detailed procedure indicating how/when the discounts, rebates, and credits would be assigned to the SFA by the contractor _____ Evaluation of whether procurement methods/activities are consistent with the SFA's approved written procurement plan where/how all documents pertaining to the solicitation and contract/contract amendments will be maintained _____ Noncompetitive purchases (sole source, emergency, etc.) are approximately documented and have received approval from state agency or governing board prior to award, including purchases through means of <i>piggybacking</i> onto another SFA's solicitation document _____ Invoices/payments for items purchased with school nutrition funds _____ Documentation of any contractor performance or breach of contract from vendors _____ Other state/local requirements

Oklahoma's Equipment Approval List for Purchases

Per 2 CFR §200, State agencies are required to grant prior approval for any piece of equipment purchased over **\$10,000**. USDA Memo SP-39-2016 allows state agencies to grant blanket approval for items commonly used in kitchens. The items listed below, in any form, costing \$10,000 or more and used for the sole purpose of CNP, have blanket approval from the State agency, proper procurement must be followed.

State Pre-Approved Equipment List:	
Food Preparation <ul style="list-style-type: none"> • Mixer • Slicer • Work/Prep Tables • Commercial Griddles • Proofer 	Refrigeration/Freezer Systems <ul style="list-style-type: none"> • Reach in Cooler/Freezer • Pass through Refrigerator • Milk Cooler • Walk in Cooler/Freezer • Blast Chiller • Display Cases • Ice Machine
Serving Equipment <ul style="list-style-type: none"> • Salad Bar • Hot Food Bar • Serving Line • Transport Cart • Food Kiosk or cart • Hot Holding Cabinet 	Cleaning Equipment <ul style="list-style-type: none"> • Commercial Dish Machine • Booster Heater • Commercial Sink • Hot Water Tank (CNP use only) • Commercial Disposal
Cooking Equipment <ul style="list-style-type: none"> • Commercial Cook Tops and Ranges • Commercial Ovens (Combo, Convection, or Conventional) • Tilting Skillet/Braising Pan • Steamer • Grease-less (Air) Fryer • Griddle 	Technology (for CNP Use Only) <ul style="list-style-type: none"> • Computer Hardware • Computer Software (Benefit Issuance, Nutrient Analysis) • Point of Service (POS) - scanners, keypads, etc. • Cash Registers

If CNP is planning to purchase any item not on the approved list, the purchase will require approval from the Child Nutrition Program Director. E-mail your request along with the bulleted items listed below and include documentation indicating the price quotes to Jennifer.Weber@sde.ok.gov. If the item to be purchased is not fully dedicated to Child Nutrition, the district's Indirect Cost provided by OCAS, must be used to determine the amount of CN funds that can be used for the purchase, or a methodology to prorate the cost between Child Nutrition and other programs that will use the equipment.

Address each item below when requesting to purchase equipment over **\$10,000** with CN funds and is not on the State pre-approved equipment list:

- Provide at least two quotes for the equipment
- A description of the equipment
- Cost of equipment
- How does this piece of equipment support/improve food service
- Disposal plan of the old equipment being replaced (if applicable)
- Acknowledgment that the purchase and use of this equipment is solely for Child Nutrition Programs and no other programs within in the SFA.

Child Nutrition Procurement Plan

This document is a sample and is not intended to be all inclusive. CN Programs are ultimately responsible to ensure that the plan complies with all Federal Regulations, State Procurement Code and Regulations and local procurement policies.

Name of SFA/Sponsor

**PROCUREMENT PLAN
CHILD NUTRITION PROGRAMS**

This procurement plan will be implemented on _____ from that date forward until amended. All procurements must adhere to free and open competition. Source documentation must be available to determine open competition, the reasonableness, the allowability, and the allocation of costs.

Chairman, Board of Education

Date

Superintendent of Schools

Date

District Name: _____

SECTION I - PROCUREMENT PLAN GENERAL REQUIREMENTS

The 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:
 - i. The employee, officer, or agent;
 - ii. Any member of the immediate family;
 - iii. His or her partner;
 - iv. 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:
 - i. Reprimand by Board of Education
 - ii. Dismissal by Board of Education
 - iii. Any legal action necessary
3. Regardless of procurement method, the following factors will be determined regarding the allowable 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 (enter)
Micro-purchasing	Less than \$10,000	
Equipment	Over \$10,000	
Small/Informal	Less than \$250,000	
Formal	Greater than \$250,000; or any Food Service Management Contract	

5. All staff conducting purchasing for Child Nutrition must be trained on USDA procurement procedures.
6. All purchasing records will be maintained no less than the current year plus 3 additional years.

7. **Buy American Provision**

Buy American requires schools to purchase ninety percent (90%) of domestic agricultural commodities and food products annually. Schools participating in the federal school meal programs are required to purchase domestic commodities and products for school meals to the maximum extent practicable. A domestic commodity or product refers to an agricultural commodity produced in the US and a food product processed in the US that is substantially (at least 51 percent) made using agricultural commodities produced in the US.. This definition of domestic product serves both the needs of schools and American agriculture. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are considered domestic products as these products are from the territories of the U.S. (Reference SP-38-2017 and SP 23-2024)

Documentation is required from vendor(s) to ensure products purchased are American-grown or nondomestic unless listed on the Buy American Exemption list (USDA FAR list). The USDA Buy American Tracker is required to be maintained by the district.

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), allows institutions receiving funds through CNP to apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. Geographical preference can be done using Micropurchasing when procuring unprocessed locally grown or locally raised agricultural products. An SFA must use small purchase or formal procedures if spending over \$10,000 per transaction.(SP 22-2024)

9. **Protest procedures** are required. SFAs must 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 protester 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 2 CFR §200 (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. The district will maintain a **CHART OF PROCEDURES** indicating how all items are procured, and how often they are procured.

11. **Beverage and Snack Agreements**

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 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 multi-year contracts other than for FSMCs. It is suggested school procurement officials consider the impact of multi-year 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. 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.
12. 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, minority, and women's business enterprises on solicitation lists
 - b. Assuring that small, minority, 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, minority, and women's business enterprises.
 - d. Establishing delivery schedules where the requirement permits, which encourage participation by small, minority, 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.
 13. **Oklahoma Non-Kickback Affidavit** under 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. The undersigned (architect, contractor, supplier or engineer), of lawful age, being first duly sworn, on oath says that this contract is true and correct. Affiant further states that the (work, services or materials) will be (completed or supplied) in accordance with the plans, specifications, orders or requests furnished the affiant. Affiant further states that (s)he has made no payment directly or indirectly to any elected official, officer or employee of the State of Oklahoma, any county or local subdivision of the state, of money or any other thing of value to obtain or procure the contract or purchase order.

CONTRACT PROVISIONS AND FORMS (2 CFR 200 Appendix II)

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. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, **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.**
3. All contracts in excess of \$10,000 must address **termination for cause** and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
4. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

5. **Davis-Bacon Act**, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the **Copeland “Anti-Kickback” Act** (40 U.S.C. 3145), 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 must 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 or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
6. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 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.
7. **Rights to Inventions Made Under a Contract or Agreement**. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 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.
8. **Clean Air Act** (42 U.S.C. 7401-7671q.) and the **Federal Water Pollution Control Act** (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
9. **Debarment and Suspension** (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

10. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must 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 must 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 non-Federal award.
11. See § 200.323 **Procurement of recovered materials**
<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.323>
12. See § 200.216 **Prohibition on certain telecommunications and video surveillance equipment or services.**
<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-C/section-200.216>
13. See § 200.322 **Domestic preferences for procurements**
<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR45ddd4419ad436d/section-200.322>

SECTION II – PURCHASING EQUIPMENT

**Name(s) and Title(s) of those responsible for Purchasing Equipment:* _____

If the amount of purchases for equipment is greater than \$10,000, the following procedure will be used.

1. Written specifications will be prepared by the district 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 or stores 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 person(s) listed in Section III. Quotes awarded will be to the lowest and best quote based upon quality, service availability, price, and/or _____.
6. The person(s) listed in Section III 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 person(s) listed in Section III 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.

SECTION III – MICRO PURCHASING

If the amount of purchases for items is \$10,000 *or less than the districts micropurchasing threshold*, the following procedure will be used.

Select one:

- ☐ Purchases below \$10,000
- ☐ Purchases below \$_____ (If District threshold is below \$10,000, must use most restrictive; if it is higher, the district must have State Agency approval)

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.
 - a. The district considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly (2 CFR 200.320a)(1)(ii)).
3. When practicable, micro-purchases will be distributed equitably among qualified suppliers.
4. _____ (Name and/or Title) is responsible for documentation of purchase.

SECTION IV – SMALL PURCHASE PROCEDURES

**Name(s) and Title(s) of those responsible for Small Purchase Procedures:* _____

If the amount of purchases for items less than \$250,000 *or the SFA/Sponsor's small purchase threshold*, Small Purchase Procedures must be followed. Quotes documented from an adequate number of qualified sources will be required.

Select one:

- ☐ Purchases below \$250,000
- ☐ Purchases below \$_____ (If district threshold is below \$250,000, must use most restrictive)

Small Purchase procedures will be applied on ***the basis of:***

- _____ District-wide
- _____ Each Individual Site
- _____ Food-Buying Group/Co-op (specify): _____
- _____ Combination of above (specify): _____

1. Written specifications will be prepared by the district and given to a minimum of two vendors.
2. The person(s) stated in Section IV will be responsible for contacting potential vendors when price quotes are needed.
3. Quotes will be awarded by person(s) stated in Section IV. Quotes awarded will be to the lowest and best quote based upon quality, service availability, price, etc.
4. The person(s) stated in Section IV 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***.
5. The person(s) stated in Section IV will be responsible for documentation that the actual product specified is received.

6. Any time an accepted item is not available, the person stated in Section IV 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.

SECTION V – FORMAL PROCUREMENT PROCEDURES

**Name(s) and Title(s) of those responsible for Formal Procurement Procedures:* _____

Select one or more as applicable:

- ☐ Purchases over \$250,000
- ☐ Purchases over \$_____ (If district threshold is below \$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 will never use a Food Service Management Contracts

Formal bid procedures will be applied on *the basis of*:

- _____ District-wide
- _____ Each Individual Site
- _____ State Contract
- _____ Food-Buying Group/Co-op (specify): _____
- _____ Combination of above (specify): _____

Invitation for Bid (IFB)/Sealed Bid

In awarding a competitive negotiation (IFB) the bid will automatically go to the lowest bidder. **Price** is the only factor that is used to determine a sealed bid.

Request for Proposals (RFP)

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. A committee of 3-5 individuals will each evaluate each RFP.

1. 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: (USDA allows 45 days for IFB & 60 days for RFP from the time the solicitation is given to vendors until the time of bid opening. ***It should not be any less than 30 days***)
2. 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. ***RFP advertising is required to be in a newspaper***) to publicize the intent to purchase needed items. The advertisement for bids/proposals or legal notice will be run for a ***minimum of two weeks***.
3. An advertisement is required for all formal procurement (IFB/RFP)
 - A general description of items to be purchased.
 - The deadline for submission of questions and the date written responses will be provided including an addenda to bid specifications, terms and conditions as needed.
 - A date of prebid meeting, if applicable, and if attendance is a requirement for bid award.
 - A deadline for submission of sealed bids or proposals, and address of location where complete specifications and bid forms may be obtained.
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 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 a vendor will be informed of bid acceptance or rejection.
 - The terms and conditions which bidder must fulfill.
 - Statement assuring efforts will be made to involve minority and small business.
 - Statement regarding Cause for Termination.
 - Forms and statements identified in the **Formal Procurement Checklist**.
 - Statement regarding the return of purchase incentives, discounts, rebates, and credits to the non-profit Child Nutrition account, if applicable in a cost reimbursable contract.
6. 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.
7. If any potential vendor ask questions regarding the specifications or purchase conditions, interpretation will be provided in writing to all potential bidders by the person(s) stated in Section V and date specified.
8. The person(s) stated in Section V will be responsible for securing all bids or proposals.
9. The person(s) stated in Section V will be responsible to ensure all SFA/Sponsor procurements are conducted in compliance with applicable Federal, State, and local procurement regulations.
10. Evaluation Criteria listed below can use to award an RFP.
(Price must be given the highest points and award must equal 100 points. If not interested, the district can leave line of award blank.) A committee of 3-5 individuals will score all vendors using the points the district assigned. The vendor with the highest points will win the bid.

<u>Weight</u>	<u>Criteria</u>
_____ (points)	Price
_____ (points)	Variety and Availability of Food Items that Meet CNP Requirements including CN labels or Product Formulation Statement products
_____ (points)	Food Quality
_____ (points)	Ordering System
_____ (points)	Customer Service
_____ (points)	Business Practices
_____ (points)	_____
_____ (points)	_____
_____ (points)	_____
100 Total Points	

SECTION VI - NON-COMPETITIVE NEGOTIATION

**Name(s) and Title(s) of those responsible for 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 person(s) stated in Section VI will be responsible for the documentation of records to fully explain the decision to use the noncompetitive negotiation. The records will be available for audit and review.
3. The person(s) stated in Section VI will be responsible for reviewing the procedures to be certain all requirements for using single source or noncompetitive negotiation are met.
4. 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 (SFA Official). The record of non-competitive purchases shall include, at a minimum, the following:
 - item name
 - dollar amount
 - vendor
 - reason for non-competitive procurement

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 district. The following emergency procedures shall be followed. All emergency procurements shall be approved by the _____ (Name and Title of person). At a minimum, the following emergency procurement procedures shall be documented:
 - Item name
 - Dollar amount
 - Vendor
 - Reason for emergency
2. If the emergency purchasing need requires a contract, all records and other documents relative to the award of the contract must be retained for three (3) years after final payment. Specifically the SFA shall maintain, at a minimum, the following documents:
 - Written rationale for award cost or price;
 - A copy of the original solicitation;
 - 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 terms and conditions of the contract;
 - Any changes to the contract and negotiation history;
 - Billing and payment records;
 - A history of any contractor breaches

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

CHART OF PROCEDURES

The _____ (*District Name*) 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.

PRODUCT	PRICE QUOTE TIME FRAME	PROCUREMENT METHOD USED
Milk		
Bread		
Canned fruits		
Canned vegetables		
Frozen fruits		
Frozen vegetables		
Preprepared fruits and vegetables		
Fresh fruits		
Fresh vegetables		
Meats		
Paper products		
Chemicals		
Small equipment		
Large equipment		

EXAMPLE

CHART OF PROCEDURES

The Green Public School (District Name) 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.

PRODUCT	PRICE QUOTE TIME FRAME	PROCUREMENT METHOD USED
Milk	<i>Annually</i>	<i>Small Purchase</i>
Bread	<i>Annually</i>	<i>Small Purchase/Micro</i>
Canned fruits	<i>Annually</i>	<i>Small Purchase</i>
Canned vegetables	<i>Annually</i>	<i>Small Purchase</i>
Frozen fruits	<i>Annually</i>	<i>Small Purchase</i>
Frozen vegetables	<i>Annually</i>	<i>Small Purchase</i>
Preprepared fruits and vegetables	<i>Annually</i>	<i>Small Purchase</i>
Fresh fruits	<i>Monthly</i>	<i>Small Purchase/Micro</i>
Fresh vegetables	<i>Monthly</i>	<i>Small Purchase/Micro</i>
Meats	<i>Annually</i>	<i>Small Purchase/Micro</i>
Paper products	<i>Twice a Year</i>	<i>Small Purchase/Micro</i>
Chemicals	<i>Annually</i>	<i>Small Purchase</i>
Small equipment	<i>As Needed</i>	<i>Small Purchase</i>
Large equipment	<i>As Needed</i>	<i>Small Purchase/Sealed Bid</i>

PROTEST PROCEDURES

- A. Any actual or prospective bidder, offerer, or contractor who considers himself to have been aggrieved in connection with the solicitation, evaluation, or award of a contract by _____ (School District) may formally protest to the _____ (Responsible Person) of _____ (School District). Such protests must be made in writing and received by the _____ (Responsible Person) of _____ (School District). The protesting party must mail or deliver copies of the protest to the _____ (School District), the State agency, and other interested parties.
- B. In the event of a timely protest, the _____ (School District) shall not proceed further with the solicitation or award of the contract.
- C. A formal protest must be sworn and contain:
1. A specific identification of the statutory or regulatory provision that the protesting party alleges has been violated.
 2. A specific description of each action by _____ (School District) that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified.
 3. A precise statement of the relevant facts.
 4. A statement of any issues of law or fact that the protesting party contends must be resolved.
 5. A statement of the argument and authorities that the protesting party offers in support of the protest.
 6. A statement that copies of the protest have been mailed or delivered to the State agency and all other identifiable interested parties.
- D. The _____ (School District) may settle and resolve the dispute over the solicitation or award of a contract at any time before the matter is submitted on appeal. The _____ (School District) may solicit written responses to the protest from other interested parties.
- E. If the protest is not resolved by mutual agreement, the _____ (School District) shall issue a written determination that resolves the protest.
1. If the _____ (School District) determines that no violation of statutory or regulatory provisions has occurred, then the _____ (School District) shall inform the protesting party, the State agency, and other interested parties by letter that sets forth the reasons for the determination.
 2. If the _____ (School District) determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has not been awarded, then the _____ (School District) shall inform the protesting party, the State agency, and other interested parties of that determination by letter that details the reasons for the determination and the appropriate remedy.
 3. If the _____ (School District) determines that a violation of any statutory or regulatory provisions has occurred in a situation in which a contract has been awarded, then the _____ (School District) shall inform the protesting party, the State agency, and other interested parties of that determination by letter that details the reasons for the determination. This letter may include an order that declares the contract void.
- F. The _____ (School District) shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the retention schedule of _____ (School District)

MANAGING THE CONTRACT

It is required by federal regulations that the SFA manage each contract, and helps settle any disputes that may arise.

- A. **The district *MUST* ensure *ALL* contracts, and *ALL* agreements are being followed**
- B. ***Procurement Compliance:*** SFAs must adhere to federal procurement procedures when contracting including with FSMCs to ensure a competitive and transparent process.
- C. ***Contract Terms:*** Clearly define the scope of work, payment terms, and any renewal options within the contract.
- D. ***Monitoring and Communication:*** Establish regular communication channels and check-in meetings with the FSMC to discuss progress, address concerns, and ensure compliance with meal pattern requirements and other program regulations. .
Examples: Items delivered on the day agreed upon, Quality issues, Constant substitutions, Items substituted do not meet meal pattern requirements (no CN label)
- E. ***Performance Monitoring:*** Regularly monitor the vendor to ensure they are adhering the contract as written, or the FSMC's performance through various methods, such as requesting meal pattern compliance worksheets, nutrient analyses, and interim cost statements.
- F. ***Program Compliance:*** The SFA is ultimately responsible for program compliance and should ensure that any vendors and the FSMC is meeting all contractual and regulatory requirements.
- G. ***Documentation:*** Maintain thorough documentation of all aspects of the contract, including solicitations, responses, and evaluation procedures.
- H. ***Training:*** Ensure SFA staff tasked with procurement and contract management receive adequate training on relevant regulations and procedures.
- I. ***State Agency Oversight:*** State agencies play a crucial role in monitoring SFA procurement activities and ensuring compliance with federal regulations ***Best Practices:***

FOOD SERVICE MANAGEMENT COMPANY (FSMC)

It is recommended the district download and read: **Contracting with Food Service Management Companies: Guidance for School Food Authorities** before starting the FSMC process for a better understanding of what is required.

An SFA may contract with an FSMC to manage its food service operation. However, contracting with an FSMC **does not** relieve the accountability for the operation of the CNP under its administration. Under no circumstances shall the FSMC write the actual contract RFP or set up the evaluation criteria for the bid award. The SA prototype RFP must be used. **No other FSMC contract will be accepted.** Paying the FSMC from CNP funds is prohibited until the contract is approved by the State agency and signed by the SFA and FSMC representatives. (Reference USDA Regulation §210.16 and SP- 40-2016). A Fixed-Price fee is the only contract allowed

A. FSMC versus Consultant or Vendor

USDA Regulation 7 CFR §210.2 defines an **FSMC** for the NSLP as a commercial enterprise or nonprofit organization that is or may be contracted with to **MANAGE** (emphasis added) the school food service day-to-day operations. FNS states that “An individual or organization that performs specific, discreet services for an SFA that fall short of managing the program would be a consultant (or vendor).” A consultant will always perform a district function or functions for the SFA, but will not manage the day-to-day operations.

B. Request For Proposal (RFP) for Food Service Management Companies

1. An SFA desiring to contract its food service **MUST** use the State agency prototype. To obtain a copy of OSDE FSMC RFP, contact Karen Davis at the State agency at Karen.Davis@sde.ok.gov or 405-521-3327. The prototype RFP/Contract must be submitted to the State agency for approval once it is completed. It is suggested that this be done at least 60 days prior to advertising the bid so that necessary changes can be made. Once the State agency has approved the completed RFP/Contract prototype, it will be mailed back to the SFA so the bidding process may begin.
 - a. An amendments can be added to the to the RFP. The amendment must be approved by the State agency **BEFORE** it is sent out to vendors. During the solicitation process, if any food service management companies have questions and answers resulting from written offerer inquiries from a preproposal meeting, it must be approved by the State agency and then be submitted to all prospective offerers. No information regarding the RFP should be considered official or binding until it is provided in writing and has prior approval by the State agency.
 - b. A committee of 3-5 people from the district will evaluate all Request for Proposals submitted. The individuals who will be evaluating the proposals should have sufficient knowledge of the goals of the SFA, experience in school food service or congregate feeding, financial management experience (of food service, if possible), and experience in evaluating proposals. It is recommended that the SFA invite the State agency to attend the evaluation of the proposals. **The committee members should be determined prior to the date the proposals are due.**
 - c. SFAs may develop detailed specifications for each food component to be included in its RFP/Contract. Specifications shall cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time.

C. Food Service Management Company Contract

1. The SFA shall ensure that the food service operation is in conformance with its agreement under the program.
2. The SFA shall monitor the food service operation through periodic on-site visits in all schools operating the programs per, 7 CFR 210.16 (a)(3). This cannot be done by the FSMC if the FSMC is in charge of the meal-counting and -claiming system. (Reference 7 CFR §250.51(d) and FSMC for SFAs Guidance, page 15)
3. The SFA shall retain control of the quality, extent, and general nature of its food service and all prices to be charged for meals (contract prices, student prices, and adult prices for *ALL* meals).
4. The SFA shall retain signature authority on the State agency–SFA Agreement, Policy Statement for Free and Reduced-Price Meals, and claims. Approval of Applications for Free and Reduced-Price School Meals may only be delegated to an FSMC if specified in the contract. The SFA must also be responsible for the overall verification process. However, when an automated system is being used for the reviewing of Applications for Free and Reduced-Price School Meals, there is no problem with allowing the FSMC staff to input data. The FSMC staff may also update rosters for approved free and reduced-price eligible students and disseminate this information to cafeteria managers or cashiers. The FSMC staff may be involved in any of the staff work involved in follow-up contacts. Any correspondence would need to be signed by SFA staff.
5. The SFA shall ensure that all federal USDA Foods received and made available to the FSMC accrue only to the benefit of the SFA's nonprofit CNP and are fully utilized therein. All refunds from processors must be retained by the SFA. The FSMC may not subcontract for further processing of USDA Foods.
6. If an à la carte food service is operated, the FSMC agrees to offer free, reduced-price, and full-price reimbursable lunches and/or breakfasts and snacks, if applicable, to all eligible children.
7. **Analysis of price**—The contract documents should clearly indicate factors to be considered in determining the price.
 - (a) **Transparency:** The contract documents must be clear about how the price will be established.
 - (b) **Price Reasonableness:** Contracting officers are required to establish price reasonableness.
 - (c) **Competition:** Adequate price competition is the normal way to establish price reasonableness.
 - (d) **Price Analysis:** The USDA may use price analysis techniques to assess a proposed price without evaluating the separate cost elements.
 - (e) **Cost Analysis:** They may also use cost analysis techniques, including verifying cost data and evaluating cost elements, to ensure a fair price.
 - (f) **Market Conditions and Factors:** The contracting officer should be aware of market prices for comparable goods and services and other relevant factors that affect price, such as speed of delivery, warranty, quantities ordered, etc.
 - (g) **Primary Evaluation Factor:** Cost is a primary factor in evaluating and scoring bids or proposals.

8. Contract provisions

- a. Required contract provisions as required in Appendix II for 2 CFR Part 200. These provisions and clauses are in the State agency FSMC RFP prototype, **(to see the full provision statements for each of the following provisions, go to page P-12):**

- (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate
- (2) **USDA Equal Opportunity** information
- (3) Requiring **Buy American** as outlined in 7 CFR Part 210.21(d); specific instructions for prior approval of all of nondomestic product(s) (all contracts)
 - It is required the district is in compliance with **Buy American** provisions for contracts that involve the purchase of food by the FSMC. While compliance with **Buy American** provisions is an SFA responsibility, the FSMC is required to track all nondomestic food using the USDA Buy American Tracker. The SFA will use the total cost in the Attachment M in Section 6 to determine the Total Amount of Commercialized Cost in the tracker. (Reference SP-23-2024)
- (4) **Termination for Cause** information
- (5) Statement assuring positive efforts will be made to involve **small, minority, and women-owned businesses**
- (6) **Beverage Agreement** not allowing exclusive pouring rights
- (7) **Clean Water Act** provision
- (8) **Rights to Inventions Made Under a Contract or Agreement**, if applicable
- (9) **Contract Work Hours and Safety Standards Act**
- (10) **Davis-Bacon and Copeland Nonkickback Information**

b. Required Forms

- Signed statement of noncollusion (all contracts using the formal method)
- Signed Debarment/Suspension Certificate or statement included in contract or copy of Excluded Parties List System (EPLS) for all contracts using the formal method.
- Signed Byrd Anti-Lobbying form for contracts.
- Signed Oklahoma NonKickback Affidavit for purchases orders over \$25,000.

c. Unallowable FSMC Contract Provisions

- (1) SFAs shall prohibit all contracts that permit all income and expenses to accrue to the FSMC and cost-plus-a-percentage-of-cost and cost-plus-a-percentage-of-income contracts.
- (2) Contracts that provide for FSMC guarantees or payments of funds to the SFA General Fund are not allowed.
- (3) Contracts that provide for indemnification by the SFA of the FSMC or other persons without approval of the grantor or State agency are not allowed.
- (4) Requirements for excessive liability insurance for FSMC not approved vendors are unwarranted and restrict competition. Requirements that the insurance certification survive the termination of the contracts are beyond the scope of the agreement. These requirements could be used to limit open and free competition by serving as a barrier

to entry into the public bidding process for smaller and newly created businesses. All procurement transactions must be conducted in a manner that provides maximum open and free competition.

- (5) Acceleration clauses requiring the payment in full of expenses for amortized equipment or other costs are not allowed in that these would violate the one-year restriction on contracts. States may go beyond this requirement to further restrict cost amortization. Contracts which provide for the payment of interest by the SFA are unallowable.
 - (6) Any provisions that require the CNP account to pay the FSMC for damages for any FSMC employees hired by the district are prohibited due to restrictions on indemnification.
 - (7) FSMC contracts may not contain provisions, or allow noncontractual practices, which provide for payments that do not accrue to the nonprofit SFSA
 - (8) It is suggested that any waiver of liability by the SFA of damages by the FSMC to equipment or facilities should contain an exclusion to this waiver for any damages caused due to negligence
9. Bonding Requirements for food service management company (FSMC) contracts, construction or facility improvement contracts, or for subcontracts exceeding the \$150,000 threshold, the State agency may accept the bonding policy and requirements of the SFA provided the State agency has made a determination that the State agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:
 - a. Each FSMC shall obtain a ***bid bond in the amount of 5 percent or up to 10 percent of the value of the contract*** as determined by the district. A copy of the bid bond shall accompany each bid. (Reference 7 CFR §225.15 [m][5])
 - b. Each FSMC exceeding the small purchase threshold in 2 CFR 200, shall obtain a ***performance bond in the amount of 10 percent or up to 25 percent of the value of the contract***. Districts shall require the FSMC to furnish a copy of the performance bond within ten days of awarding the contract. (Reference 7 CFR §225.15 [m][6])
 - c. FSMC shall obtain ***bid bonds and performance bonds only from surety companies listed in the current Department of Treasury Circular 570. No FSMC can send any alternative forms of bid or performance bonds, including but not limited to cash, certified checks, letters of credit, or escrow accounts.*** (Reference 7 CFR §225.15 [m][7])
10. The SFA shall maintain applicable health certification and assure that all state and local regulations are being met by an FSMC preparing or serving meals at an SFA facility.
11. The SFA shall establish an advisory board composed of parents, teachers, and students to assist in menu planning.
12. The FSMC shall adhere to the 21-day cycle menu that was included in the RFP for the first 21 days of meal service. Changes thereafter may be made with the approval of the SFA. (Reference 7 CFR 210.16[b])
13. The FSMC shall have state or local health certification for any facility outside the school in which it proposes to prepare meals, and the FSMC shall maintain this health certification for the duration of the contract. The FSMC must meet all applicable state and local health regulations in preparing and serving meals at the SFA facility.

14. There may be no time limitation on notification of the FSMC by the SFA of any meals that do not meet specifications, are unwholesome at the time of delivery, or do not otherwise meet the requirements of the contract. In the event of an audit or a state or federal review, overclaims may be assessed for previous claim periods in which meals do not meet requirements. A time limitation on notification would leave the SFA liable for such overclaims without recourse.
15. Specific statement of scope of service to be provided, listing the programs to be operated; e.g., NSLP, SBP, Special Milk Program (SMP), Afterschool Snack Program (ASSP), catering, vending, concession, Child and Adult Care Food Program (CACFP), Summer Food Service Program for Children (SFSP), etc.
16. Either party may cancel for cause with 60-day notification or number of days specified in the RFP.
17. The FSMC and the SFA must comply with all appropriate federal and state labor laws.
18. The FSMC shall maintain such records as the SFA will need to support its claim for reimbursement under this part and shall, at a minimum, report claim information to the SFA promptly at the end of each month. Such records shall be made available to the SFA upon request and shall be retained in accordance with federal and state regulations. Federal regulations require records to be maintained for a period of at least three years after the submission of the final claim for reimbursement for the fiscal year or longer as required to resolve audit issues. (Reference 7 CFR §210.23[c]) All negotiated contracts, except those awarded by Small Purchase Procedures, shall include a provision to the effect that the grantee, federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audits, examination excerpts, and transcriptions.
19. Procurement procedures are to be followed.
20. Duration of contract—The FSMC contract is a year to year contract with up to four renewals.

D. Recommendations When Contracting with a FSMC

1. SFAs should ensure that the FSMC's accounting system is adequate and that adequate cost data is provided.
2. It is recommended that contracts contain estimates of total costs. These estimates should be based in part on the preceding year's operations. This type of estimate is required by Federal Acquisition Regulations; and while these regulations are not legally governing for these contracts, the total cost estimate is a good business practice.
3. Revenues to the nonprofit school food service must be used solely to operate or improve the nonprofit school food service. Scholarships, or any other fund outside the nonprofit SFSA, are not necessary nor reasonable food service expenses and therefore cannot be funded from the SFA nonprofit SFSA.
4. The contract must contain a provision regarding liability for the distribution, loss of, or damage to USDA Foods caused by fault or negligence, as well as the right of the SFA to assert claims against other persons to whom USDA Foods are delivered for care, handling, or distribution.

5. Contracts, other than small purchases under \$250,000, shall contain provisions or conditions that allow for administrative, contractual, or legal remedies in instances where contracts violate or breach contract terms and provide for sanctions and penalties as may be appropriate.
6. The inclusion of a provision requiring compliance with the Civil Rights Act of 1964, as amended, is encouraged. While the responsibility for compliance with the Act is an SFA responsibility, this provision is intended to ensure that the food service operation conducted by the FSMC does not compromise SFA compliance with the Act.

E. Soliciting/Advertising the FSMC Request for Proposal:

1. **Time allowed**—Once the RFP is approved by the State agency, it is highly recommended the district allows at least 60 days from time the time proposals are solicited to the time that they are due. The minimum time allotted is 30 days.
2. **Advertising methods**—Proposals must be placed in a *newspaper for a minimum of two weeks*, solicited at least three qualified FSMCs, and be publicize in order to provide for maximum open and free competition. To accomplish this, copies of the complete RFP should be sent to three prospective offerers. A list of FSMC companies can be found on **page P-76**. Publicizing of the RFP should be done by advertising in major newspapers/trade journals that are normally used by the SFA for publicizing other procurements. The advertisement should be a minimum of two weeks. It is not necessary that the entire RFP be publicized. At a minimum, however, the advertisement should include:
 - The RFP number and date.
 - A brief description of what is being proposed for procurement.
 - Instructions for obtaining a copy of the RFP.
 - The date, time, and location the RFP is due.

Advertisement Example:

REQUEST FOR PROPOSALS: FSMC SERVICES
Request for Proposal for a Fixed-Price Contract for providing food service management services to the ABC School District can be picked up at 123 Education Lane, Smarttown, OK 12345 any time between 8:00 am and 3:00 pm. A required pre-proposal meeting will be held on Thursday, March 15, 20XX at 2:30 pm. Proposals are subject to all the conditions and specifications stated in the Request for Proposal and will be received at the address above and shall be marked on the envelope "Food Service Management Proposal, #100" Proposals will be received until April 30, 20XX for supplying ABC School Food Authority with food service management services during the 20XX-20XX school year. For more information, contact Ms. Smart at Smart@ABCschools.com.

3. **Preproposal meeting**—This is the chance for FSMC to look at the kitchen, store room, fridge space, cooking equipment, etc. This can be conducted in person or via Zoom/Facetime/Teams. The SFAs needs to conduct a preproposal meeting the first time the district goes out to bid. For rebid it is not required but it is suggested as some of the companies bidding may have already viewed the facility. ***It should be held approximately two weeks after the RFP is issued, but prior to the date proposals/offers are due.*** There are two important reasons for holding a preproposal meeting:
 - **Provide information**—To provide information concerning contract performance requirements that may be helpful in the preparation of proposals.

- **Answer questions**—To answer any questions prospective offerers may have regarding the solicitation.
- a. **Oral presentations**—An oral presentation can be required if marked in the RFP. If oral presentations are a component, great care must be taken to ensure the presentation is scored only for its content. Presentations must be ranked against measurable standards. The team members should be instructed to evaluate the substance of the presentation. Offerers must not be allowed to alter or amend their proposals through the presentation process.

F. Proposal Openings and Evaluations

On the date established for opening the proposals, each member of the evaluation team should score each proposal independently. If the RFP allows alternative proposals, care must be taken to ensure the offerer's alternatives address the basic guidelines established in the RFP.

It is imperative that proposal openings and evaluations be conducted fairly. Inconsistent actions by the individuals responsible for this component of procurement can result in proposal protests or legal action. In awarding a competitive negotiation (RFP), a set of award criterion in the form of a weighted evaluation sheet will be provided to each bidder in the original RFP. 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.

1. **Proposal opening and evaluation**—The person responsible for receiving the proposals must safeguard them in order to prevent unauthorized disclosures. The proposal opening requires a sign-in sheet to document the persons present at the opening.

On the date established for opening the proposals, each member of the evaluation team should score each proposal independently. If the RFP allows alternative proposals, care must be taken to ensure the offerer's alternatives address the basic guidelines established in the RFP. ***The opening date and evaluating date do not have to be on the same day. Any bids received after the deadline are considered not responsive and cannot be considered.***

- (a) Proposals should not be compared to one another.
 - (b). Proposals that fail to address all requirements are unresponsive and cannot receive further consideration.
 - (c) The team members should be instructed to use a pass-or-fail basis for eliminating unresponsive proposals and then use the preestablished scoring system for evaluating the responsive proposals.
 - (d) It is required to sign the bid tabulation of the evaluation criterion score sheet of competitive proposals signifying a review and approval of the selections.
2. **Evaluating the FSMC RFP Proposals**—Proposals should be thoroughly reviewed and subjected to an impartial evaluation. An evaluation plan should be prepared prior to the receipt of any proposals. ***(The district can create their own evaluation form, use the electronic one in Other Documents, or use the form found on page P-84-87)***
 - (a) **Information on evaluation team**—A committee of 3-5 people will evaluate all Request for Proposals. The committee members should be determined prior to the date the proposals are due. Each person will score all proposals individually.
 - (b) **Evaluating/Scoring the Proposals**—An RFP is awarded by the using a rubric that is listed in the RFP. The district will create criteria or can use criteria created by OSDE as shown below. The weighted amount the district will use to score must be submitted in the

original RFP. This way the vendors bidding on the contract will know what is important to the district. ***Price is the primary factor and MUST have the most points awarded.***

NOTE: The SFA may delete or add criteria listed in the RFP.

It is required to submit individual evaluations and the group evaluations to OSDE prior to approval.

3. **Negotiations—The district can only negotiate if it is marked in the RFP.** Negotiations are conducted with offerers whose proposals receive evaluation scores that exceed a numerical value (i.e., cut-off score) established in advance by the evaluation panel. This ***cut-off*** score is determined prior to opening any of the proposals. After the evaluations have been completed and all proposals are ranked, those proposals that meet or exceed the preestablished cut-off score are forwarded to the individual or team responsible for negotiating with the offerers. As with RFP openings, the name of each offerer and the evaluation score must be recorded. Offerers not selected for further negotiation should be notified in writing.
 - Contract negotiations must be conducted in a fair and equitable manner. As with all aspects of procurement, the negotiators must be well prepared. The individuals evaluating the proposals should not be the same individuals who conduct negotiations with offerers whose proposals receive scores above the prescribed cut-off. The negotiators should inform all offerers of the terms and conditions of the negotiation, including which elements will not be negotiable and which elements can be negotiated. If at all possible, the negotiators should be experienced in school food service operations, school finance, and contract negotiations.
 - It is expected that the negotiation process will result in the selection of the successful offerer. However, if after negotiations, two or more offerers are still under consideration, the SFA must make a final selection using an unbiased method; e.g., the offerers are asked to submit a best and final price. The offerers should be informed of the situation and the method the SFA will use to select the successful offerer. The award should be made to the responsible offerer whose proposal is most advantageous to the SFA, price and other factors considered.
4. **Notification to Bid Winner**—The SFA should provide written notification to the successful offerer which clearly states that, while the offerer has been successful, the proposed contract is subject to State agency review. This notice should also inform the successful offerer that if nonsubstantive changes are needed as a result of the State agency review, an opportunity will be provided to amend the proposal.

Board Approval - If board approval of the contract is required, this requirement should also be included in the letter to the successful offerer.

Unsuccessful offerers should be notified promptly.

- G. **USDA Foods** —A provision must allow the USDA Foods distribution agency access to the contract to ensure compliance with the requirements of 7 CFR §250. The contract should include a provision that the FSMC shall maintain accurate and complete records with respect to the receipt, use or disposition, storage, and inventory of USDA Foods. Failure by the FSMC to maintain records required under the contract shall be considered prima facie evidence of improper distribution or loss of USDA Foods. **USDA Foods will remain with the SFA even if the contract is terminated.**

1. The FSMC must credit the SFA for the value of all USDA Foods received for use in the SFA's meal service in the school year or fiscal year (including both entitlement and bonus foods). Donated Foods are considered ***RECEIVED*** when they arrive at the school kitchen, SFA, or

FSMC storage facility in either raw form or processed end products. Such requirement includes crediting for the value of USDA Foods contained in processed end products if the FSMC's contract requires it to:

- (a) Procure processed end products on behalf of the SFA.
- (b) Act as an intermediary in passing USDA Foods value in processed end products on to the SFA.

The FSMC will ensure compliance with the requirements in Subpart C of 7 CFR Part 250 and with the provisions of DHS or SFA processing agreements and will ensure crediting of the SFA for the value of USDA Foods contained in such end products at the processing agreement value.

2. The SFA may permit crediting for the value of USDA Foods through invoice reductions, refunds, discounts, or other means. However, all forms of crediting must provide clear documentation of the value received from USDA Foods; e.g., by separate line item entries on invoices
 - (a) The SFA must require crediting to be performed not less frequently than annually and must ensure that the specified method of valuation of USDA Foods permits crediting to be achieved in the required time period. The SFA must also ensure that the method, and timing, of crediting does not cause its cash resources to exceed the limits established in 7 CFR 210.9(b)(2).
3. The SFA must ensure that, in crediting it for the value of USDA Foods, the FSMC uses the USDA Foods values determined by DHS in accordance with §250.58(e)—The USDA commodity file cost as of a date specified by DHS. Negotiation of such values is not permitted. Additionally, the method of valuation must ensure that crediting may be achieved in accordance with Item b on the previous page and at the specific frequency established.
4. The FSMC must use all donated ground beef, donated ground pork, and all processed end products in the SFA's food service and must use all other USDA Foods, or commercially purchased foods of the same generic identity, of United States origin and of equal or better quality than USDA Foods in the SFA's food service (unless the contract specifically stipulates that USDA Foods, and not such commercial substitutes, be used).
5. The FSMC will not itself enter into the processing agreement with the processor required in Subpart C of 7 CFR Part 250.50.
6. The FSMC will comply with the storage and inventory requirements for USDA Foods.
7. DHS, a subdistributing agency, or the SFA, the Comptroller General, USDA, or their duly authorized representatives may perform on-site reviews of the FSMC's food service operation, including the review of records, to ensure compliance with requirements for the management and use of USDA Foods.
8. The FSMC will maintain records to document its compliance with requirements relating to USDA Foods in accordance with §250.54(b) as follows:
 - (a) The SFA must maintain the following records relating to the use of USDA Foods in its contract with the FSMC:
 - (1) USDA Foods and processed end products received and provided to the FSMC for use in the SFA's food service.

- (2) Documentation that the FSMC has credited it for the value of all USDA Foods received for use in the SFA's food service in the school or fiscal year, including, in accordance with the requirements in §250.51(a), the value of USDA Foods contained in processed end products.
 - (3) The actual USDA Foods values used in crediting.
 - (b) The FSMC must maintain the following records relating to the use of USDA Foods in its contract with the SFA:
 - (1) USDA Foods and processed end products received from, or on behalf of, the SFA for use in the SFA's food service.
 - (2) Documentation that it has credited the SFA for the value of all USDA Foods received for use in the SFA's food service in the school or fiscal year, including, in accordance with the requirements in §250.51(a), the value of USDA Foods contained in processed end products.
 - (3) Documentation of its procurement of processed end products on behalf of the SFA if applicable.
 - (c) The SFA must ensure that the FSMC is in compliance with the requirements of 7 CFR Part 250 through its monitoring of the food service operation, as required in 7 CFR Parts 210, 225, or 226, as applicable. The SFA must also conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the FSMC has credited it for the value of all USDA Foods received for use in the SFA's food service in the school or fiscal year, including, in accordance with the requirements in §250.51(a), the value of USDA Foods contained in processed end products.
 - (d) USDA may conduct reviews of FSMC operations, as necessary, to ensure compliance with the requirements of 7 CFR Part 250 with respect to the use and management of USDA Foods.
9. Extensions or renewals of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to USDA Foods.
 10. The SFA shall always retain title to all USDA Foods.

H. Billing and Payments

1. Paying the FSMC from CNP funds is prohibited until the contract is approved by the SA and signed by the SFA and FSMC representatives.
2. The **ONLY** allowable form an FSMC can use to bill the SFA is the State agency Attachment M. It is **REQUIRED** the FSMC fills out each applicable section including Section 6.
3. The meal equivalent rates for conversion of adult, à la carte, milk, and snack bar revenue is the contract meal rate listed in CARS Schedule B. It is the Free meal rate plus the incentive plus the value of USDA Foods. The meal equivalent rate is stated in the RFP. This rate will change every year in July when the new USDA rates are available.
4. The FSMC is **NEVER ALLOWED** to directly bill the SFA for any reason or service or charge a different amount than listed on the original contract or the renewal agreement.

5. FSMC contracts may not contain provisions, or allow noncontractual practices, which provide for payments that do not accrue to the nonprofit SFSA.
6. Increasing the Lunch Fixed-Priced Fee

The contract can be increased each year during the renewal. The price can increase or decrease per the March, Food Away From Home CPI. When the new CPI is released, the State agency will send out the percentage amount for the following year. ***At no other time can the FSMC change the fixed-priced fee.***

- H. FSMC Contract Renewal —The contract between the SFA and the FSMC shall be of a duration no longer than one year, and options for the yearly renewal of a contract may not exceed four additional one-year extensions.
1. The State agency shall annually review each contract, including all amendments, between any SFA and FSMC to ensure compliance with all the provisions and standards set forth in applicable regulations. **The SA renewal amendment *MUST* be used. Contact Karen Davis at the State agency at Karen.Davis@sde.ok.gov or 405-521-3327 to obtain a copy of the RFP.**
 2. The renewal contract including price/fee increase or decrease provisions, if any, must be stated in the contract and the RFP as appropriate. Price/fee increase or decrease provisions is the March *Food Away From Home* CPI. Once the March CPI is received by OSDE, the FSMC renewal form will be available.
 3. **Material Changes to the FSMC Contracts—*Material/Substantive changes of \$150,000 or more to an FSMC contract to the original contract*** will require rebidding the contract. First, there are those changes that must be initiated as a result of new services being desired by the SFA that are beyond the scope of the original contract. Second includes those changes, though within the scope of the contract, that substantially change the value, terms, or conditions of the existing contract.

Whenever an SFA identifies a new service to be acquired that is beyond the scope or original intent of the contract, a separate solicitation that allows for full and open competition from all qualified bidders would be needed for the new service desired.

Examples of new services include catering, à la carte sales, vended meals, convenience stores, vending machines, concessions, the SFSP, and the ASSP. If any of these new services are to operate in a facility participating in the NSLP, SBP, or SMP, then the entire contract for school food service would need to be rebid. This is due to the requirement that the FSMC may not contract to provide à la carte food service unless the FSMC undertakes the responsibility of managing the NSLP. If the new service will operate outside a facility participating in the NSLP, SBP, or SMP, then the new service may be bid separately. Exceptions to the process of conducting a formal competitive procurement are allowable if the original RFP requested, and the contract provided for, the priced option(s) to implement the added service(s). Also, as an alternative to sending out a separate solicitation, in limited situations noncompetitive proposals as a means of procurement may be allowable. Noncompetitive proposals may be utilized in emergency situations when time does not permit conducting a formal competitive procurement and the current contractor has all the capabilities necessary to perform the new service. When this option is feasible, after negotiating price and terms, the contract would simply be modified to reflect the new services and charges.

The contract would have to be rebid for those substantive changes within the general scope of the contract. Examples of substantive changes within the scope of the contract may include: changes to the formula for determining meal equivalency, any change in fees or basis for fee increases not reflected in the original RFP, a major shift in responsibilities for SFA/FSMC staff, a change in the menu-planning option not reflected in the original RFP, and significant changes in the basis for determining guaranteed returns.

I. Prohibited Items

1. It is not allowed for the FSMC to charge the SFA outside of the Fixed-Price Fee.
2. No firm, corporation, or individual shall blacklist or require a letter of relinquishment or publish or cause to be published or blacklisted any employee, mechanic, or laborer, discharged from or voluntarily leaving the service of such company, corporation, or individual, with intent and for the purpose of preventing such employee, mechanic, or laborer from engaging in or securing similar or other employment from any other corporation, company, or individual. (Reference State Law §40-172)
3. FSMCs may not require any additional liability coverage, regardless of dollar value, beyond that which the SFA would require under procurements not involving an FSMC. This prohibition would be effective in any situation where the SFA conducts its own procurement or where the FSMC procures products on behalf of the SFA. (Reference FNS Instruction SP-25-1998)
4. Changes in the FSMC contract that would create a material change.

- J. For SFAs wanting to contract with an outside company to operate any aspect of food service, the following pages have a list of companies that have been approved to operate in Oklahoma:

FOOD SERVICE MANAGEMENT COMPANIES LIST

Listed in alphabetical order

ARAMARK Educational Services, LLC

2400 Market Street
Philadelphia, PA 19103

Contact Person: Justin Crews, Chief Growth
Officer and Brian Achilles, Director of
Business Development

Phone: (412) 298-9779

Email: growth@aramark.com,
Crews-Justin1@aramark.com
Achilles-Brian@aramark.com

Contact Person: Rose Wooding

Phone: (281) 568-3131 or Fax: (281) 568-2323

E-mail: information@princefoodsystem.com

Selrico Services, Inc

402 Rhapsody Drive
San Antonio, Texas 78216

Contact Person: Christina Aleman

Phone: (210) 410-6580

Email: ChristinaA@selricoservices.com

A'vains LLC dba K-12 by Elior

2611 Brecca Ct
Apopka, FL 32712

Phone: (352) 630-7469

Contact Person: Jonathan Dickl, MBA, SNS,
Director of Business Development

Email: Jonathandickl@elior-na.com

Sodexo Services

5016 NW 10th
Oklahoma City, Oklahoma 73127

Contacts: Jennifer Strong

Cell Phone: (405) 301-0514

Email: Jennifer.Strong@Sodexo.com

FSMC Inquiries and RFP: educationsales.usa@
sodexo.com

Chartwells School Dining Services

Contact Person: Kellye Neal

Cell Phone: (501) 615-3660

Email: kellye.neal@compass-usa.com

Southwest Foodservice Excellence, LLC

9366 E Raintree Drive
Scottsdale, AZ 85260

Contact Person: Tiffany Bieret, Director Business
Operations; Catherine Trevino, Director of
Business Development

Phone: (480) 234-4688

Email: tiffany.bieret@sfellc.org

Email: catherine.trevino@sfefflc.org

Email: BestK12Food@sfellc.org

Genuine Foods

228 Park Avenue South, Ste 69981
New York, New York 10003

Phone: (781) 223-3174

Keystone Food Service

P. O. Box 429

Stillwater, Oklahoma 74076

Contact Person: Brett Feeback

Phone: (405) 550-2006

1st Email: info@keystonefoodservice.com

2nd Email: breannar@keystonefoodservice.com

SLA Management, Inc.

601 S Lake Destiny Rd Suite 405
Maitland, FL 32751

Contact Person: Jake Clifton, President

Phone: (407) 740-7677

Email: j.clifton@slamgmt.com

Email: partnerships@slamgmt.com

Opaa! Food Management, Inc.

16401 Swingley Ridge Road, Ste 600
Chesterfield, Missouri 63017

Contact Person: James Haley

Phone: (308) 380-7485 or Fax: (636) 812-0100

Email: Jhaley@oppaafood.com

OK-rfp@oppaafood.com

Taher, Inc

13800 Diplomat Drive
Dallas, TX 75234

Contact Person: Shauna Strub, Regional VP of
Business Development

Phone: (612) 219-6692 or Fax: (972) 395-5053

Email: s.strub@taher.com

Prince Food Systems, Inc.

11001 Wilcrest Drive, Suite 200
Houston, Texas 77099

SERVICE AND CONSULTING FIRMS LIST

Barlow Education Management Services

2801 North Lincoln

Oklahoma City, Oklahoma 73105

Contact Person: Lou Barlow

Phone: (405) 495-1911

Services: Commodity processing, menu planning, kitchen design, required CNP forms

VENDOR CONTACTS

This form is to be used for SFAs to document single vendor responses. If only one vendor responds, the school food authority (SFA) does not need to do price comparisons.

VENDOR NAME INCLUDING CONTACT INFORMATION	NAME OF CONTACT PERSON	DATE OF CONTACT	CONTACTED BY: LETTER, PHONE, IN-PERSON	RESPONSE RECEIVED

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.

Item 24 to be purchased and specifications: _____

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

[illegible][illegible][illegible]

PROCUREMENT LOG AWARDED BY LINE ITEM OR MARKET BASKET

Supplier Name:		Quantity Estimated to Be Purchased		Unit Price	Extended Price (Quantity X Unit Price)	Won Bid (✓)	Unit Price	Extended Price (Quantity X Unit Price)	Won Bid (✓)	Unit Price	Extended Price (Quantity X Unit Price)	Won Bid (✓)
Items to Be Purchased: • Listed on Product specifications • Delivery frequency: _____ • Bid will be honored for: _____ (Number of Day(s)/Week(s)/Month(s) (School will state time period)												
1. Product name & specification:												
2. Product name & specification:												
3. Product name & specification:												
4. Product name & specification:												
5. Product name & specification:												
6. Product name & specification:												
7. Product name & specification:												
8. Product name & specification:												
9. Product name & specification:												
10. Product name & specification:												
Total					\$			\$				\$
Bidder who won the bid:												
The school can award all items to one bidder (lowest total price) or award on a line-item basis (lowest line-item price). Schools needs to tell the bidders which option it will use for awarding the purchase when it is asking for pricing. School can state that either option may be used by the school to award the purchase.												
Method of Contact: Phone, fax, e-mail, or in person												
Name of Person Providing Bid												
Date Contacted												
Additional Notes												
Signature of person completing this form:												Date:
Name of Bidder Selected for Market Basket: _____												
Bidder Selected Was Notified on: _____ (If notification was in writing, attach document to the procurement log)												
Method of Notification: _____ (E-mail/fax/mail/in person/phone)												

SMALL PURCHASE CHECKLIST

Terms, clauses, and information small purchase are available in the Procurement section of the manual and contract provisions.

PROCUREMENT FOR (list item(s): _____

FORMS & CLAUSES

- ___ Buy American information (*All Food & Milk contracts*)
- ___ USDA Equal Opportunity information (*contracts \$10,000 or more*)
- ___ Termination for Cause information (*contracts \$10,000 or more*)
- ___ Clean Water Act provision (*contracts \$150,000 or more*)
- ___ Contract work Hours and Safety Standards Act (*contracts \$100,000 or more*)
- ___ Oklahoma Nonkickback Affidavit (*Purchase orders over \$25,000*)
- ___ Davis-Bacon & Copeland Anti-Kickback Act (*Construction contracts \$2,000 or more*)
- ___ Debarment & Suspension form (*all contracts*)
- ___ Byrd Anti-Lobbying form (*contracts \$100,000 or more*)

___ Solicitation sent to a minimum of 2 vendors

Vendor 1: _____

Vendor 2: _____

Vendor 3: _____

___ Responses Received from:

Vendor 1: _____

Vendor 2: _____

Vendor 3: _____

What vendor was chosen and why? (keep all documentation for procurement review)

FORMAL PROCUREMENT CHECKLIST

Terms, clauses, and information regarding Formal Procurement are available in the Procurement section of the manual and Formal Procurement Clauses and Statement document.

COST PRICE ANALYSIS MUST BE PERFORMED ON EVERY PROCUREMENT TRANSACTION OVER THE SIMPLIFIED ACQUISITION THRESHOLD PER 2 CFR 200.324(a).

PROCUREMENT FOR *(list item(s):* _____

FORMAL PROCUREMENT REQUIREMENTS

___ Newspaper Advertisement (all formal bids) newspaper advertised:

___ Solicitation sent to a minimum of 2 vendors

Vendor 1: _____

Vendor 2: _____

Vendor 3: _____

___ Evaluation criteria for RFP. An RFP is awarded based on overall scoring. The evaluation scoring should be given with the solicitation. PRICE must be given the most points. Other items scored on can be – Experience/references, Diversity in products and/or services, Quality of products, Cost & Performance Bonds, Personnel Management, Business Practices, Accounting and Reporting systems, and Service Capability plan are examples of how an RFP can be evaluated. (IFB/Sealed Bids are awarded lowest price only. No other factors can determine the award)

FORMS & CLAUSES

___ Buy American information (*All Food & Milk 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. (*All formal contracts*)

___ USDA Equal Opportunity information (*contracts \$10,000 or more*)

___ Termination for Cause information (*contracts \$10,000 or more*)

___ Clean Water Act provision (*contracts \$150,000 or more*)

___ Contract work Hours and Safety Standards Act (*contracts \$100,000 or more*)

___ Oklahoma Nonkickback Affidavit (*Purchase orders over \$25,000*)

___ Davis-Bacon & Copeland Anti-Kickback Act (*Construction contracts \$2,000 or more*)

___ Debarment & Suspension form (*all contracts*)

___ Byrd Anti-Lobbying form (*contracts \$100,000 or more*)

Example

RFP Individual Evaluation Form

One form per reviewer. Each reviewer scores each FSMC on their own based on the bid received.

*Evaluation Criteria and weighted points must match the points listed in the RFP

Reviewer: Jane Doe Date: 3/23/XX

Vendor A: Food for Schools, Inc. Vendor B: Okie Foods Vendor C: CNP LLC

Evaluation Criteria:	Weight Pts from RFP	Points from Reviewer:			Notes:
		Vendor A	Vendor B	Vendor C	
Price	30	10	20	30	
A Variety and Availability of Food Items that Meet CNP Requirements including CN label and Product Formulation Statement products	10	10	10	5	
Quality of Food	20	15	20	10	
Ordering System	15	10	15	10	
Customer Service	25	25	20	15	
Business Practices	0	0	0	0	
Total	100	70	85	70	

* Once completed, give form back so the group evaluation form can be completed.

*I validate the score for each vendor is true and correct. I scored each vendor on my own.

Signature of Reviewer: Jane Doe

Example

RFP Group Evaluation Form

**It must be evaluated by the committee of 3-5 people*

School District: Green Public School

Vendor A: Food for Schools, Inc. Vendor B: Okie Foods Vendor C: CNP LLC

Reviewer Name:	Total Points from Each Reviewer:			Notes:
	Vendor A	Vendor B	Vendor C	
Jane Doe	70	85	70	
Joe Superintendent	65	70	75	
Karen Director	85	85	75	
Total	220	240	220	

**The vendor with the highest points is to be awarded the contract. However, if you have marked negotiate, in your RFP, you can do so as indicated in the district's RFP. You will need to complete a new form after negotiations occur.*

Each person that scored the vendor must print and sign.

By signing this form, I validate the above information is true and correct with what I scored on the individual score sheet.

Print Name: <u>Joe Superintendent</u>	Signature: <u>Joe Superintendent</u>
Print Name: <u>Karen Director</u>	Signature: <u>Karen Director</u>
Print Name: <u>Jane Doe</u>	Signature: <u>Jane Doe</u>
Print Name: _____	Signature: _____
Print Name: _____	Signature: _____
Print Name: _____	Signature: _____

RFP Individual Evaluation Form

One form per reviewer. Each reviewer scores each FSMC on their own based on the bid received.

*Evaluation Criteria and weighted points must match the points listed in the RFP

Reviewer: _____ Date: _____

Vendor A: _____ Vendor B: _____ Vendor C: _____

Evaluation Criteria:	Weight Pts from RFP	Points from Reviewer:			Notes:
		Vendor A	Vendor B	Vendor C	
Price					
A Variety of Food Items that Meet CNP Requirements					
Quality					
Products with a CN label or a Product Formulation Statement					
Ordering System					
Customer Service					
Total	0	0	0	0	

** Once completed, give form back so the group evaluation form can be completed.*

***I validate the score for each vendor is true and correct. I scored each vendor on my own.**

Signature of Reviewer: _____

RFP Group Evaluation Form

**It must be evaluated by the committee of 3-5 people*

School District: _____

Vendor A: _____ Vendor B: _____ Vendor C: _____

Reviewer Name:	Total Points from Each Reviewer:			Notes:
	Vendor A	Vendor B	Vendor C	
Total	0	0	0	

**The vendor with the highest points is to be awarded the contract. However, if you have marked negotiate, in your RFP, you can do so as indicated in the district's RFP. You will need to complete a new form after negotiations occur.*

Each person that scored the vendor must print and sign.

By signing this form, I validate the above information is true and correct with what I scored on the individual score sheet.

Print Name: _____	Signature: _____
Print Name: _____	Signature: _____
Print Name: _____	Signature: _____
Print Name: _____	Signature: _____
Print Name: _____	Signature: _____
Print Name: _____	Signature: _____

NONKICKBACK AFFIDAVIT FORM

STATE OF OKLAHOMA)
)
COUNTY OF) SS

The undersigned (architect, contractor, supplier, or engineer), of lawful age, being first duly sworn, on oath says that this contract (purchase order) is true and correct. Affiant further states that the (work, services, or materials) will be (completed or supplied) in accordance with the plans, specifications, orders, or requests furnished the affiant. Affiant further states that he or she has made no payment, directly or indirectly, to any elected official, officer, or employee of the SFA or technology center SFA, of money or any other thing of value to obtain or procure the contract or purchase order.

(Contractor, Supplier, Engineer, or Architect)

Vendor/Company Name

Attested to before me this _____ day of _____,

.

Notary Public (or Clerk or Judge)

My Commission Expires: _____

CNP BUY AMERICAN JUSTIFICATION FORM

This form is required for each non-domestic food product that is being purchased and served in the school child nutrition programs. This form and any supporting documentation should be retained for three years plus the current. For products listed on the Buy American Exemption list (Non-Available Articles List), a Buy American Justification Form is not required.

Non-Domestic Agricultural Product:

Storage Area (dry, cooler, or freezer):

Country of Origin:

Estimated Annual Usage(list in purchase units):

Estimated Annual Cost(annual usage x cost per purchased unit):

Reason for the exception to the Buy American Provision(check applicable box and complete associated questions)

☐ Price of domestic item was significantly higher than non-domestic item

Cost per purchase unit for domestic product:

Cost per purchase unit for non-domestic pro product:

☐ Product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities

Was this item a substitution from the distributor?

Yes

No

If yes, was the substitution approved by the SFA prior to receiving?

Yes

No

Did the SFA consider domestic alternatives?

Yes

No

Explain why the non-domestic product was used in the place of an alternative domestic product:

Additional Notes:

School District:

County-District:

CN Director Signature: _____

Date: _____



OKLAHOMA
Education

INDEPENDENT PRICE DETERMINATION CERTIFICATE

Name of Food Service Management Company

Name of School Food Authority

A. By submission of this offer, the Offerer certifies, and in the case of a joint offer, each party thereto certifies as to his or her own organization, that in connection with this procurement:

1. The prices in this offer have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other Offerer or with any competitor.
2. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the Offerer and will not knowingly be disclosed by the Offerer prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other Offerer for the purpose of restricting competition.
3. No attempt has been made or will be made by the Offerer to induce any person or firm to submit or not to submit an offer for the purpose of restricting competition.

B. Each person signing this offer on behalf of the Offerer certifies that:

1. He or she is the person in the Offerer's organization responsible within the organization for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to A.1 through A.3 above; or
2. He or she is not the person in other Offerer's organization responsible within the organization for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate in any action contrary to A.1 through A.3 above, and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to A.1 through A.3 above.

To the best of my knowledge, this Offerer, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any government agency and have not in the last three years been convicted of or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

Signature of Food Service Management Company's
Authorized Representative

Title

Date

In accepting this offer, the SFA certifies that no representative of the SFA has taken any action that may have jeopardized the independence of the offer referred to above.

Signature of School Food Authority's
Authorized Representative

Title

Date

NOTE: Accepting a bidder's/offerer's offer does not constitute award of the contract.

CERTIFICATION REGARDING LOBBYING

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by Section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federally appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a federal contract, the making of a federal grant, the making of a federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in federal funds at all appropriate tiers and that all sub-recipients shall certify and disclose accordingly.

Name/Address of Organization

Name/Title of Submitting Official

Signature

Date

DISCLOSURE OF LOBBYING ACTIVITIES

APPROVED BY OMB

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT

TO 31 U.S.C. 1352

(SEE REVERSE FOR PUBLIC DISCLOSURE)

1. Type of Federal Action: <input type="checkbox"/> a. Contract <input type="checkbox"/> b. Grant <input type="checkbox"/> c. Cooperative Agreement <input type="checkbox"/> d. Loan <input type="checkbox"/> e. Loan Guarantee <input type="checkbox"/> f. Loan Insurance	2. Status of Federal Action: <input type="checkbox"/> a. Bid/Offer/Application <input type="checkbox"/> b. Initial Award <input type="checkbox"/> c. Postaward	3. Report Type: <input type="checkbox"/> a. Initial Filing <input type="checkbox"/> b. Material Change For Material Change Only: Year _____ Quarter _____ Date of Last Report _____
---	--	--

4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known Congressional District, if known: _____	5. If Reporting Entity in No. 4 Is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____
8. Federal Action Number: (if known)	9. Award Amount: (if known) \$ _____
10. a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI)	b. Individual Performing Services: (including address if different from No. 10a) (last name, first name, MI)
11. Amount of Payment: (check all that apply) \$ _____ <input type="checkbox"/> Actual <input type="checkbox"/> Planned	13. Type of Payment: (check all that apply) <input type="checkbox"/> a. Retainer <input type="checkbox"/> b. One-Time Fee <input type="checkbox"/> c. Commission <input type="checkbox"/> d. Contingency Fee <input type="checkbox"/> e. Deferred <input type="checkbox"/> f. Other: (specify) _____
12. Form of Payment: (check all that apply) a. Cash Nature _____ b. In-kind (specify) Value _____	
14. Brief Description of services performed or to be performed and date(s) of service, including officer(s), employee(s), or member(s), contracted for payment indicated in Item 11: (Attach Confirmation Sheets if necessary)	
15. Continuation Sheets Attached: <input type="checkbox"/> Yes <input type="checkbox"/> No	
16. Information requested through this form is authorized by Title 31 U.S.C. §1352. This disclosure of lobbying activities is a material representation of fact upon which evidence was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. §1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosures shall be subject to a civil penalty of not less than \$10,000 and not more than \$150,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone Number: _____ Date: _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub awardee or prime federal recipient, at the initiation or receipt of a covered federal action or a material change to a previous filing, pursuant to Title 31 U.S.C. §1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Use a Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget (OMB) for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional district, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub-awardee; e.g., the first sub-awardee of the prime is the first tier. Sub-awards include, but are not limited to, subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks *Sub-awardee*, then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example: Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in Item 1; e.g., Request for Proposal (RFP) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the federal agency. Include prefixes; e.g., *RFP-DE-90-001*.
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in Item 4 or Item 5.
10.
 - a. Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
 - b. Enter the full name of the individual performing services, and include full address if different from 10a. Enter last name, first name, and middle initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate item. Check all items that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box. Check all boxes that apply. If *Other*, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the dates of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal officials or employees contacted or the officers, employees, or Members of Congress that were contacted.
15. Check whether Continuation Sheets are attached.
16. The certifying official shall sign and date the form, print his or her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

CERTIFICATION REGARDING DEBARMENT/SUSPENSION

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION—LOWER-TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549 and 12689, Debarment and Suspension, Title 2 CFR, §180, as adopted and modified by USDA regulation at 2 CFR §417, Responsibilities of Participants Regarding Transactions.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON NEXT PAGE.)

1. The prospective lower-tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the prospective lower-tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization/Vendor Name

Name(s) and Title(s) of Authorized Representative(s)

Name(s) and Title(s) of Authorized Representative(s)

Name of Institution/SFA Official

Title of Official

Signature

Date

CERTIFICATION REGARDING DEBARMENT/SUSPENSION

Instructions

1. By signing and submitting this form, the prospective lower-tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower-tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower-tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower-tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms *covered transaction, debarred, suspended, ineligible, lower-tier covered transaction, participant, person, primary covered transaction, principal, proposal*, and *voluntarily excluded*, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower-tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which the transaction originated.
6. The prospective lower-tier participant further agrees by submitting this form that it will include this clause titled *Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower-Tier Covered Transactions*, without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower-tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith that certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower-tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.



USDA MEMOS AND RESOURCES FOR PROCUREMENT

Buy American Provisions	SP-38-2017 and SP-23-2024
Contract Provisions	2 CFR 200 Appendix II
FSMC Guidance Manual for SFAs	SP-40-2016
FSMC Procurement Requirements	SP-07-2009
Geographical Preference: Final Rule and Q&A	SP 22-2024
Micropurchasing Updates	SP-02-2022
Procurement Regulations	2 CFR Part 200 Subpart D
Procurement Questions & Answers	SP-08-2009 and SP-28-2009
USDA Foods and FSMC	FD-80
USDA Foods and Processing	https://www.fns.usda.gov/usda-fis/vendor
Using Cooperatives Agreements, Agents, and Third Party Services Q&A	SP-05-2017
Questions and Answers to using 2CFR 200	SP-02-2016

PROCUREMENT SECTION INDEX

Advertising for Formal Procurement	P-20
Advertising for FSMC Contract	P-69
Allowable Practices	P-3-4
Analysis of Cost.	P-19, P-65
Anti-Kickback Act.	P-15
Anti-Lobbying.	P-14, P-91-93
Approved Equipment Purchases.	P-49
Awarding the Bid (FSMC)	P-70-71
Awarding the Bid (Formal).	P-22
Awarding the Bid (Small Purchase).	P-19
Awarding the Bid Types.	P-28
 Beverages and Snack Agreements	 P-15-16
Beverage Pouring Rights.	P-16
Bid Process (Formal Procurement).	P-20
Bid Process (FSMC)	P-70-71
Bonding (FSMC)	P-67
Bonding Requirements	P-17
Buy American Justification Form	P-89
Buy American Provision.	P-10-11, P-15
Buy American Exemption List	P-10-11
 Certification Regarding Debarment/Suspension	 P-14, P-94-95
Certification Regarding Lobbying	P-14, P-91-92
Chart of Procedures	P-60-61
Checklist for Formal Procurement.	P-83
Checklist for Small Purchase	P-82
Clean Air Act Section 306, Section 508 of Clean Water Act, EPA Regulations	P-14
Code of Conduct	P-8-9
Competition	P-3
Contract Cost and Pricing	P-26
Contract Meal Delivery Receipt.	P-45
Contract Provisions	P-12-15
Contract Provisions for Formal Procurement	P-21
Contract Provisions for Small Purchase	P-18-19
Contract Renewals	P-22
Contract Types-P-25-27	
Contract Work Hours & Safety Standards Act.	P-13
Contracting Meals with another District.	P-43-44
Contracting Meals with a Day Care or a Head Start	P-44
Contractor vs FSMC or Vendor	P-64
Cost Reimbursable and Cost Plus Fee Contracts.	P-25-26
 Davis-Bacon Act	 P-13
Debarment and Suspension	P-14, P-94-95
Disclosure of Lobbying Activities.	P-91-93
Documentation to Maintain	P-4
DOD Purchases.	P-38
Donated Meats	P--39
Developing a Procurement Plan	P-46

PROCUREMENT SECTION INDEX continued

Emergency Purchasing	P-589
Environmental Protection Agency Regulations	P-14
Equal Employment Opportunity.	P-13
Equipment Approval List	P-49
Escalation/Deescalation Clause	P-16-17
Exclusive Pouring Rights.	P-16
Evaluation for and RFP Contract and Evaluation Forms.	P-23-24,P-84-87
Farmer's Market	P-39
Farm-to-School	P-38-39
Farm-to-School Inspections and Licensing	P-39
Farm-to-School Procurement Steps	P-40
Fixed-Priced Contract	P-25
Food Service Management Company (FSMC)	P-64
Food Service Management Company List	P-76
Forecasting	P-3
Formal Procurement Checklist	P-83
Formal Procurement Method.	P-19
Formal Procurement - Required Provisions in the Contract	P-12-15
Forward Contract.	P-40
FSMC Billing and Payments	P-73
FSMC Contract Provisions	P-65-66
FSMC Contract Renewal.	P-74
FSMC - Material Changes to the Contract	P-74
FSMC - Prohibited Items.	P-75
FSMC Proposal Opening.	P-70
FSMC - Request for Proposal (RFP).	P-64-68
FSMC - Required Provisions in RFP Contract Prototype	P-65-66
FSMC Unallowable Provisions	P-66-67
FSMC versus Consultant or Vendor	P-64
Geographic Preference	P-12
Group Purchasing Organization	P-42-43
Herbicides/Pesticides	P-39
Independent Price Determination Certification	P-90
Informal Procurement	P-17
Informal Procurement Log.	P-79
Invitation for Bid/IFB	P-19, P-35
Invitation for Bid/IFB vs Request for Proposal.	P-19
Lobbying Certification	P-14, P-90-91
Managing the Contract	P-63
Material Changes	P-25, P-74
Memos and Resources for Procurement.	P-96
Methods of Procurement.	P-17
Micropurchasing	P-17-18
Minority Firms	P-9

PROCUREMENT SECTION INDEX continued

Negotiations (RFP)	P-35, P71
Noncompetitive Negotiations.	P-59
Noncompetitive Proposals.	P-25
Nonkickback Act	P-15
Nonkickback Affidavit.	P-15, P-88
Payment Bond.	P-17
Performance Bond.	P-17
Preproposal Meeting	P-69-70
Procurement Checklist (Formal)	P-83
Procurement Checklist (Small Purchase)	P-82
Procurement Documentation.	P-4
Procurement Log - Awarding by Line Item or Market Basket	P-81
Procurement Logs	P-78-81
Procurement Methods	P-17
Procurement Plan	P-50-59
Procurement Plan Formal Checklist	P-47-48
Procurement Plan—Specifications	P-29-32
Procurement Procedures and Practices	P-3
Procurement Reviews	P-5
Procurement Standards.	P-6
Procurement Unallowable Practices	P-35-36
Protest Procedures	P-9, P-62
Purchasing Agreements	P-41
Purchase Documentation/Price Quotes	P-80
Purchasing Equipment	P-49
Rebates/Discounts	P-4, P-17, P-25
Record Retention.	P-4-5
Renewal of Approved Contracts	P-19, P-25, P-74
Request for Proposal/RFP.	P-19, P-35
Rights to Inventions.	P-13
Request for Proposal (RFP) vs Invitation for Bid (IFB)	P-19
RFP Evaluation and Forms	P-22-23, P-84-87
Sealed Bids/Invitation For Bid	P-19, P-35
Services and Consulting Firms	P-77
Small Purchase Procedures	P-18-19
Solicitation Documents	P-33
Solicitation for Formal Procurement	P-20
Solicitation Letter Example (Small Purchase)	P-34
Solicitation Types—Advantages and Disadvantages	P-28
Special Brands	P-29
Specifications	P-29-32
State Contract	P-42
Suspension/Debarment.	P-14, P-94-95
Termination for Cause	P-13
Third Party Entity.	P-41
Types of Contracts - Advantages & Disadvantages	P-25-27

PROCUREMENT SECTION INDEX continued

USDA Foods	P-37-38, P-71-73
USDA Memos and Resources for Procurement	P-96
Unallowable Procurement Practices	P-4, P-35-36
Vendor Contact Log.....	P-78
Work Hours and Safety Standards Act	P-13